

Version No. 014
Education and Training Reform Act 2006
No. 24 of 2006

Version incorporating amendments as at 29 January 2009

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
CHAPTER 1—GENERAL	1
PART 1.1—PRELIMINARY	1
1.1.1 Purpose	1
1.1.2 Commencement	2
1.1.3 Definitions	2
1.1.4 Binding of Crown	10
1.1.5 Extra-territorial operation of this Act	10
PART 1.2—PRINCIPLES	11
1.2.1 Principles underlying the enactment of this Act	11
1.2.2 Principles underlying the Government education and training system	12
1.2.3 Principles not to give rise to civil cause of action	13
CHAPTER 2—SCHOOL EDUCATION	14
PART 2.1—COMPULSORY EDUCATION	14
Division 1—Attendance at school	14
2.1.1 Attendance at school	14
2.1.2 Offence for parent to fail to comply with duty	14
2.1.3 What is a reasonable excuse?	14
2.1.4 Parent to notify school of absence	15
2.1.5 Exemption from attendance at school	16
2.1.6 Obligations of parents	16
Division 2—Enforcement of attendance	16
2.1.7 Appointment of school attendance officers	16
2.1.8 Identity card	16
2.1.9 Production of identity card	16
2.1.10 Powers of school attendance officers	17
2.1.11 Offence to hinder or obstruct school attendance officer	17

<i>Section</i>	<i>Page</i>
2.1.12 Power to bring proceedings	17
2.1.13 Certificate to be evidence as to attendance of child	17
2.1.14 Onus of proof	17
PART 2.2—GOVERNMENT SCHOOLS	18
Division 1—Establishment of government schools	18
2.2.1 Establishment of Government schools and educational services	18
2.2.2 Discontinuation of Government schools—limitation of judicial review	18
2.2.3 Limitation on occupier's liability for discontinued Government schools	19
Division 2—Instruction in government schools	20
2.2.4 Instruction in specified learning areas to be free to students under 20	20
2.2.5 Students over 20 may be charged fees	20
2.2.6 Parent not required to contribute to cost of additional support	21
2.2.7 Voluntary financial contributions	21
2.2.8 Overseas students to be required to pay fees	22
2.2.9 Overseas students fees Order	22
2.2.10 Education in Government schools to be secular	23
2.2.11 Special religious instruction	23
2.2.12 Ceremony in relation to being Australian citizens	24
Division 3—Admission to government schools	25
2.2.13 Admission to designated neighbourhood Government school	25
2.2.14 Admission to other Government school	25
2.2.15 Refusal of admission generally	26
2.2.16 Minister may approve admission criteria	26
2.2.17 Refusal of admission for safety reasons	26
2.2.18 Age requirements for enrolment at Government schools	27
Division 4—Discipline of students	27
2.2.19 Discipline of students	27
Division 5—Assistance for students with special needs	28
2.2.20 Assistance for students with special needs	28
PART 2.3—GOVERNMENT SCHOOL COUNCILS	29
Division 1—Definitions	29
2.3.1 Definitions	29

<i>Section</i>	<i>Page</i>
Division 2—Constitution of school councils	29
2.3.2 Minister may constitute school council by Order	29
2.3.3 Minister entitled to act if no school council	33
Division 3—Objectives, functions and powers of school councils	33
2.3.4 Objectives of a school council	33
2.3.5 Functions of a school council	33
2.3.6 Powers of a school council	35
2.3.7 Accountability	36
Division 4—Employment of staff	37
2.3.8 Employment or engagement of teachers and other staff in schools	37
2.3.9 Eligibility of person to be employed as a teacher	38
2.3.10 Dismissal, suspension and termination of employment	38
Division 5—Further powers of school councils	39
2.3.11 Use of school buildings and grounds for activities	39
2.3.12 School council may carry out works	40
2.3.13 Public bodies authorised to perform works for school council	42
2.3.14 School council may form sub-committee	42
2.3.15 School council may delegate powers, duties or functions	42
2.3.16 School council may form committees to manage joint facilities	43
2.3.17 School council may delegate powers, duties or functions to members of committee	43
2.3.18 School council may sell property	43
Division 6—Preschool programs	44
2.3.19 Application of Division	44
2.3.20 School councils may provide for preschool programs	44
2.3.21 Council may grant lease or licence over preschool land	45
2.3.22 Fees for preschool programs	45
2.3.23 Application of, and accounting for, money received	46
Division 7—Reporting and accountability requirements	46
2.3.24 School plan	46
2.3.25 Status of school plan	47
2.3.26 Termination of school plan	47
2.3.27 School council to prepare annual report	47
2.3.28 Powers of Auditor-General regarding council accounts	48
2.3.29 Use of funds by school council	48
2.3.30 Annual reports	49

<i>Section</i>	<i>Page</i>
Division 8—General	49
2.3.31 Limitation on commencement of legal proceedings	49
2.3.32 Indemnity for school council members	50
PART 2.4—GOVERNMENT TEACHING SERVICE	51
Division 1—Preliminary	51
2.4.1 Definitions	51
Division 2—Employment in teaching service	52
2.4.2 Application of Federal awards and agreements	52
2.4.3 Employment of teachers, principals and other staff	52
2.4.3A Remuneration range for executives	54
2.4.4 Filling of vacant positions	54
2.4.5 Public notices	55
2.4.6 Secretary to consider recommendation of school council	55
2.4.7 Eligibility for employment	56
2.4.8 Employment to be on probation	56
2.4.9 Term of employment	57
2.4.10 Reclassification of a position	57
2.4.11 Progression of salary or wages	58
Division 3—The Principal Class	58
2.4.12 Definitions	58
2.4.13 Classification of positions in the Principal Class	60
2.4.14 Contract of employment	60
2.4.15 Matters regulated by a contract of employment	61
2.4.16 Monetary remuneration and employment benefits	62
2.4.17 Travelling and subsistence allowances etc.	63
2.4.18 Performance review of a member of the Principal Class	64
2.4.19 Termination of a contract of employment	64
2.4.20 Vacancy of Principal Class position	66
2.4.21 Contracts prevail in certain circumstances	67
2.4.22 Certain legal proceedings excluded	67
2.4.23 Division 5 of Part 3 of Public Administration Act 2004 not to apply	67
Division 3A—The Executive Class	68
2.4.23A Definitions	68
2.4.23B Classification of positions in the Executive Class	68
2.4.23C Contract of employment	68
2.4.23D Matters regulated by a contract of employment	69
2.4.23E Travelling and subsistence allowances etc.	69
2.4.23F Termination of a contract of employment	69
2.4.23G Vacancy of Executive Class position	70

<i>Section</i>	<i>Page</i>
2.4.23H Contracts prevail in certain circumstances	71
2.4.23I Division 5 of Part 3 of Public Administration Act 2004 not to apply	71
Division 4—Leave and other entitlements	71
2.4.24 Leave of absence and pay in lieu	71
2.4.25 Long service leave	72
2.4.26 Payment instead of long service leave	75
2.4.27 Work of a higher or lower class or grade	76
2.4.28 Gratuity	76
2.4.29 Rent charged to employees	76
2.4.30 Restriction on employees doing other work	77
2.4.31 Saving of rights of persons holding Government office	77
2.4.32 Retirement through ill-health—long service leave	78
2.4.33 Retirement	78
2.4.34 Absence from duty	78
2.4.35 Fines to be stopped from salary	79
2.4.36 No claim for compensation	79
Division 5—Transfers between teaching service and public service	79
2.4.37 Transfer etc. from teaching service to public service	79
2.4.38 Transfer etc. from public service to teaching service	80
2.4.39 Rights in the public service preserved	80
2.4.40 Rights under this Act preserved	80
Division 6—Transfers and promotions within the teaching service	81
2.4.41 Transfer or promotion of an on-going employee	81
2.4.42 Term of employment	82
2.4.43 Employment of members of the Principal Class or the Executive Class	83
Division 7—Appeals	83
2.4.44 Merit Protection Boards	83
2.4.45 Membership of Boards	84
2.4.46 Terms and conditions of appointment	84
2.4.47 Acting appointments	85
2.4.48 Allocation of work amongst the Boards	85
2.4.49 Oath of office	85
2.4.50 Decisions of Board	85
2.4.51 Reviews	86
2.4.52 Determination of Board	87
2.4.53 Review of Secretary's decision not to appoint	88
2.4.54 Review of appointment of principal	88
2.4.55 Relevant criteria	90

<i>Section</i>	<i>Page</i>
Division 8—Termination due to incapacity	90
2.4.56 Termination due to physical or mental incapacity	90
2.4.57 Appeal to Merit Protection Board	92
Division 9—Dismissal and suspension	93
2.4.58 Dismissal of disqualified and unregistered teachers	93
2.4.59 Suspension and dismissal of unregistered teachers	93
Division 9A—Unsatisfactory performance	95
2.4.59A Definitions	95
2.4.59B Secretary to establish procedures for the purposes of this Division	96
2.4.59C Defects in procedures will not invalidate determinations	97
2.4.59D Secretary's options on receiving a report	97
2.4.59E Notice to employee relating to determination	97
2.4.59F Determination of Secretary	98
2.4.59G Notice of determination	99
2.4.59H Conduct dealt with under this Division cannot form basis for Division 10 action	99
Division 10—Misconduct	99
2.4.60 Grounds for action	99
2.4.61 Action against employee	100
2.4.62 Procedures for investigation and determination of allegations	101
2.4.63 Quashing etc. of conviction or finding of guilt	101
2.4.64 Suspension from duty	102
2.4.65 Investigation	103
2.4.66 Employee may make submissions	104
2.4.67 Secretary need not hold oral hearing	104
Division 10A—Appeals against determinations under Divisions 9A and 10	105
2.4.68 Appeal	105
2.4.69 Reinstatement and payments after allowance of appeal against termination	106
2.4.70 Address for service	107
Division 11—Disciplinary Appeals Boards	107
2.4.71 Senior chairperson	107
2.4.72 Establishment of Disciplinary Appeals Boards	108
2.4.73 Membership of Boards	108
2.4.74 Terms and conditions of appointment of members	109
2.4.75 Resignation and removal from office	109
2.4.76 Allocation of work	109
2.4.77 Oath of office	109

<i>Section</i>	<i>Page</i>
2.4.78 Member unable to perform duties	110
2.4.79 Decisions of Board	110
2.4.80 Conduct of proceedings	110
Division 12—General	111
2.4.81 Medical examination	111
2.4.82 Immunity	111
2.4.83 Publication requirements	111
PART 2.5—VICTORIAN CURRICULUM AND ASSESSMENT AUTHORITY	113
Division 1—Preliminary	113
2.5.1 Definitions	113
Division 2—Victorian Curriculum and Assessment Authority	114
2.5.2 Establishment of Authority	114
2.5.3 Functions of Authority	115
2.5.4 Cancellation or alteration of statements	119
2.5.5 Powers of Authority	120
2.5.6 Membership of Authority	121
2.5.7 Establishment of committees	122
2.5.8 Schedule 2	123
2.5.9 Delegation of Authority's power	123
2.5.10 Victorian Curriculum and Assessment Authority Fund	123
Division 3—Assessments and assessment reviews	124
2.5.11 Special provision in assessments	124
2.5.12 Authority may investigate certain matters	126
2.5.13 Decision on report	127
2.5.14 Assessment may be withheld pending decision	127
2.5.15 Notice of hearing	128
2.5.16 Procedure of review committee	128
2.5.17 Cross-examination of witnesses	128
2.5.18 Legal representation	129
2.5.19 Decision of review committee	129
2.5.20 Notification of decision	130
2.5.21 Student may appeal against school decisions etc.	131
2.5.21A Review of reprimand by nominated appeals committee member	133
2.5.22 Review by appeals committee	134
2.5.23 Appointment of appeals committee	135
2.5.24 Notification of alteration of record of student assessment	136

<i>Section</i>	<i>Page</i>
PART 2.6—VICTORIAN INSTITUTE OF TEACHING	138
Division 1—Preliminary	138
2.6.1 Definitions	138
Division 2—Victorian Institute of Teaching	139
2.6.2 Continuation of existing Institute	139
2.6.3 Functions of Institute	139
2.6.4 Powers of Institute	141
2.6.5 Ministerial advice	142
2.6.6 Membership of the Council	142
Division 3—Registration of teachers	146
2.6.7 Application for registration	146
2.6.8 Qualification for registration as a teacher	147
2.6.9 Registration	147
2.6.10 Provisional registration	149
2.6.11 Non-practising registration	150
2.6.12 Interim registration	150
Division 4—Permission to teach	151
2.6.13 Application for permission to teach	151
2.6.14 Permission to teach	151
Division 5—General provisions	152
2.6.15 Entitlement of applicant to make submissions	152
2.6.16 Notification of outcome of application	152
2.6.17 Duration and renewal of registration	153
2.6.18 Application for renewal of registration	154
2.6.19 Refusal to renew registration	155
2.6.20 Registration obtained by fraud	155
2.6.21 Annual fees	156
Division 6—Criminal record checks	156
2.6.22 Criminal record checks	156
2.6.22A Routine criminal record check	157
2.6.23 Employer to disclose whether criminal record check conducted	157
Division 7—The Register	158
2.6.24 The Register	158
2.6.25 Publication of Register	158
2.6.26 Use of certificate as evidence	158
Division 7A—Details of teachers in schools	159
2.6.26A Institute may request details of teachers in schools	159

<i>Section</i>	<i>Page</i>
Division 8—Discipline—Suspension without inquiry	159
2.6.27 Institute may suspend registration or permission to teach	159
2.6.28 Effect of suspension of registration	162
Division 9—Discipline—Cancellation of registration	162
2.6.29 Cancellation of registration or permission to teach without inquiry	162
Division 10—Powers of discipline inquiry	163
2.6.30 Powers of inquiry	163
2.6.31 Employer to notify Institute of action against teacher	164
2.6.32 Inquiry into criminal conduct	165
Division 11—Discipline—Investigations	165
2.6.33 When matters are to be investigated	165
2.6.34 Outcome of investigation	166
2.6.35 Institute may determine to conduct a hearing	166
Division 12—Formal and informal disciplinary hearings	167
2.6.36 Establishment and notification of an informal hearing	167
2.6.37 Professional Practice and Conduct Committee to conduct informal hearing	167
2.6.38 Notice of an informal hearing	168
2.6.39 Conduct of an informal hearing	168
2.6.40 Findings and determinations of an informal hearing	169
2.6.41 Change of informal hearing to formal hearing during course of hearing	169
2.6.42 Establishment and notification of formal hearing	170
2.6.43 Constitution of a hearing panel for a formal hearing	170
2.6.44 Notice of a formal hearing	171
2.6.45 Conduct of a formal hearing	171
2.6.46 Findings and determinations of a formal hearing into conduct	172
Division 13—General provisions relating to discipline inquiries	174
2.6.47 Inquiry may continue even if person no longer registered	174
2.6.48 Procedure at formal and informal hearings	174
2.6.49 Determinations	174
2.6.50 Notice of cancellations and determinations of panel	175
2.6.51 Notifications	175
2.6.52 Offence to disclose information identifying complainant, witness or teacher	176
2.6.53 Enforcement of determination	177
2.6.54 Revocation of suspension	177

<i>Section</i>	<i>Page</i>
Division 14—Review by VCAT	178
2.6.55 Review by VCAT	178
Division 15—Offences	179
2.6.56 Unregistered teachers	179
2.6.57 Provision of information by teachers	179
2.6.58 False representation	180
2.6.59 Return of document	180
2.6.60 Proceedings	180
Division 16—The Council—Administration	181
2.6.61 Schedule 2	181
2.6.62 Resignation and removal	181
2.6.63 Elected members	181
2.6.64 Acting members	182
2.6.65 Institute staff	183
2.6.66 Establishment of committees or bodies to act as delegates of Council	183
2.6.67 Delegation	184
2.6.68 Accreditation Committee	184
2.6.69 Professional Practice and Conduct Committee	185
2.6.70 Membership of committees and bodies	186
2.6.71 Terms of office	186
2.6.72 Resignation and removal	186
2.6.73 Payment of members	187
2.6.74 Procedure of committee, panel or body	187
2.6.75 Effect of vacancy or defect	188
2.6.76 Immunity	188
Division 17—The Council—Finances	189
2.6.77 Fees	189
2.6.78 Victorian Institute of Teaching Fund	189
Division 18—Colleges	190
2.6.79 Establishment of Colleges	190
CHAPTER 3—POST SCHOOL EDUCATION AND TRAINING	192
PART 3.1—VOCATIONAL EDUCATION AND TRAINING	192
Division 1—Co-ordination of State training system	192
3.1.1 Victorian Skills Commission	192
3.1.2 Functions of the Commission	193
3.1.3 Functions of the Commission as State Training Authority	194
3.1.4 Performance agreements and financial powers	195
3.1.5 Powers of the Commission	196
3.1.6 Accountability	196

<i>Section</i>	<i>Page</i>	
3.1.7	Members	197
3.1.8	Schedule 2	198
3.1.9	Delegations	198
3.1.10	Power of further delegation	199
Division 2—TAFE institutes		200
3.1.11	TAFE institutes	200
3.1.12	Incorporation of TAFE institute boards	201
3.1.13	Functions of TAFE institute boards	203
3.1.14	Powers of TAFE institute boards	204
3.1.15	Accountability of TAFE institute boards	205
3.1.16	Board directorship	206
3.1.17	Schedule 2	207
3.1.18	Removal of directors	207
3.1.19	Reserve powers of Minister	207
3.1.20	Notice of proposal	209
3.1.21	Appointment of administrator	210
3.1.22	Saving of acts of board	211
3.1.23	Employment of staff	211
3.1.24	Minister may object to appointment of chief executive officer	211
3.1.25	Schedule 3	212
3.1.26	Chief executive officer	212
Division 3—Industry training boards		213
3.1.27	Establishment or declaration of industry training boards	213
3.1.28	Orders establishing industry training boards	213
3.1.29	Revocation of orders	214
3.1.30	Functions of industry training boards	215
3.1.31	Powers of industry training boards	216
3.1.32	Members	216
3.1.33	Terms and conditions of office of members	216
3.1.34	Proceedings of boards	217
PART 3.2—HIGHER EDUCATION		218
Division 1—Student fees, subscriptions and charges		218
3.2.1	Definition	218
3.2.2	Application of Division	218
3.2.3	Provision for declining automatic membership of a student organisation	219
3.2.4	Students who do not join student organisation	219
3.2.5	Limitation on powers to spend funds from compulsory non-academic fees etc.	220
3.2.6	Voluntary fees held on trust	221
3.2.7	Offence	221
3.2.8	Statement about compulsory fees etc.	222

<i>Section</i>	<i>Page</i>
Division 2—Incorporation of Councils	222
3.2.9 Application	222
3.2.10 Post-secondary education institutions	223
3.2.11 Incorporation of Councils	223
3.2.12 Award of degrees or diplomas	225
PART 3.3—ADULT, COMMUNITY AND FURTHER EDUCATION	227
Division 1—Preliminary	227
3.3.1 Definitions	227
Division 2—Adult, Community and Further Education Board	227
3.3.2 The Adult, Community and Further Education Board	227
3.3.3 Functions of the Board	228
3.3.4 Powers of the Board	230
3.3.5 Board to consult	231
3.3.6 Financial powers	232
3.3.7 Performance agreements	233
3.3.8 Adult, community and further education plan	233
3.3.9 Implementation of the plan	234
3.3.10 Membership of the Board	234
3.3.11 Schedule 2	235
3.3.12 Committees of the Board	235
3.3.13 Staff	235
Division 3—Delegations	236
3.3.14 Delegations by the Board	236
3.3.15 Delegations by the General Manager	236
Division 4—Regions of adult, community and further education	237
3.3.16 Regions	237
3.3.17 Regional Councils	237
3.3.18 Functions of Regional Councils	237
3.3.19 Powers of Regional Councils	239
3.3.20 Accountability	239
3.3.21 Membership of Regional Councils	240
3.3.22 Terms and conditions of office of members	241
3.3.23 Meetings of Councils	242
3.3.24 Incorporation of Regional Councils	242
3.3.25 Employment of staff	243
Division 5—Adult education institutions	243
3.3.26 Adult Multicultural Education Services	243
3.3.27 Centre for Adult Education	244
3.3.28 Adult education institutions	244
3.3.29 Incorporation of governing boards	245

<i>Section</i>	<i>Page</i>	
3.3.30	Functions of governing boards	247
3.3.31	Powers of governing boards	249
3.3.32	Accountability of governing boards	250
3.3.33	Board membership	250
3.3.34	Removal from office of members	251
3.3.35	Reserve powers of Minister	252
3.3.36	Notice of proposal	253
3.3.37	Appointment of administrator	254
3.3.38	Saving of acts of board	255
3.3.39	Schedule 2	255
3.3.40	Employment of staff	256
3.3.41	Minister may object to chief executive officer appointment	256
3.3.42	Staff conditions	257
3.3.43	Chief executive officers	257
CHAPTER 4—VICTORIAN REGISTRATION AND QUALIFICATIONS AUTHORITY	258	
PART 4.1—PRELIMINARY	258	
4.1.1	Interpretation	258
PART 4.2—VICTORIAN REGISTRATION AND QUALIFICATIONS AUTHORITY	265	
4.2.1	Establishment of Authority	265
4.2.2	Functions of Authority	265
4.2.3	Powers of Authority	268
4.2.4	Membership of Authority	269
4.2.5	Schedule 2	270
4.2.6	Director's responsibilities	270
4.2.7	Delegation of Authority's power	270
4.2.7A	Delegation of Authority's functions to TVET	272
4.2.7B	Authority may enter into arrangements or agreements with TVET	274
4.2.8	Victorian Registration and Qualifications Authority Fund	274
PART 4.3—REGISTRATION OF STUDENTS AND PROVIDERS	275	
Division 1—Schools	275	
4.3.1	Requirements for registration	275
4.3.2	Compliance with standards for registration	277
4.3.3	Review of operations of schools by Authority	277
4.3.4	Action after review	278
4.3.5	Reports from registered schools	280
4.3.6	Notice of registration to be displayed	280
4.3.7	Attendance register in registered schools	280
4.3.8	Register of schools	281

<i>Section</i>	<i>Page</i>
Division 2—Registration of students for home schooling	281
4.3.9 Authority to register students for home schooling	281
Division 3—School sector and VET	282
4.3.10 Registration of education and training organisations	282
4.3.11 Criteria for registration	283
4.3.12 Terms of registration	285
Division 4—National registration	285
4.3.13 Application of Division	285
4.3.14 Registration and national effect of registration	286
4.3.15 Applying in Victoria for registration	286
4.3.16 Decision about registration	287
4.3.17 Registration conditions	289
4.3.18 Term of registration	290
4.3.19 Amending registration on application by registered education and training organisation	291
4.3.20 Removal of registered details	291
4.3.21 Amending, suspending or cancelling registration without application	292
4.3.22 Cancelling registration on change of business operations	294
4.3.23 Effect of suspension of registration of RTO	294
4.3.24 Registering body to register amendment, suspension or cancellation	295
4.3.25 Audit of RTO registered by the Authority	295
4.3.26 Audit of RTO registered by another registering body	296
4.3.27 Conduct of audit	296
4.3.28 Powers not limited by compliance audit provisions	297
4.3.29 Function or power may be used to support national scheme	297
Division 5—Higher education	298
4.3.30 Approval of Universities	298
4.3.31 Revocation or suspension of approval of University	299
4.3.32 Disallowance of notices	300
4.3.33 Authorisation to conduct higher education courses	300
4.3.34 Suspension or cancellation of authorisation	301
4.3.35 Review of operations of universities, institutions	302
Division 6—Approval to exercise delegated powers	304
4.3.36 Approvals to enable delegation of powers	304
4.3.37 Approval by Authority of training organisations to be managed by TVET	305

<i>Section</i>	<i>Page</i>
PART 4.4—ACCREDITATION AND QUALIFICATIONS	308
Division 1—Investigation and accreditation	308
4.4.1 Investigation of a course or part of a course by Authority	308
4.4.2 Accreditation of a course or part of a course	309
4.4.3 Cancellation or suspension of accreditation	311
4.4.4 Review of higher education courses	312
Division 2—Qualifications	312
4.4.5 Who can issue qualifications?	312
PART 4.5—OVERSEAS STUDENTS	314
4.5.1 Approval to provide courses for overseas students	314
4.5.2 Process for approval	315
4.5.3 Suspension or cancellation of approval	315
4.5.4 Review of operations of institutions and courses	316
PART 4.5A—OVERSEAS EXCHANGE STUDENTS	318
4.5A.1 Approval of overseas secondary student exchange organisations	318
4.5A.2 Conditions of approval	319
4.5A.3 Application for approval	319
4.5A.4 Duration and renewal of approval	319
4.5A.5 Application for renewal of approval	320
4.5A.6 Suspension or cancellation of approval	320
PART 4.6—STATE REGISTER	321
4.6.1 State Register	321
4.6.2 Division of education and training organisations	322
4.6.3 Division of Higher Education	322
4.6.4 National registration	323
PART 4.7—OFFENCES	324
4.7.1 Unregistered schools	324
4.7.2 Offences by unregistered persons	324
4.7.3 Offence in relation to accredited courses	325
4.7.4 Offences in relation to courses and qualifications	325
4.7.5 Offence to falsely claim to be an RTO	326
4.7.6 Only approved universities to operate in Victoria	327
4.7.7 Accreditation and authorisation of courses required	327
4.7.8 Offence to falsely claim to provide an accredited course	329
4.7.9 Offence in relation to qualifications	329

<i>Section</i>	<i>Page</i>
PART 4.8—REVIEW BY VCAT	330
4.8.1 Review by VCAT	330
PART 4.9—INFORMATION AND EVIDENCE	332
4.9.1 Publication of registers	332
4.9.2 Certificate prima facie evidence	332
4.9.3 False representation	332
4.9.4 Information may be made available	332
CHAPTER 5—GENERAL	334
PART 5.1—ADMINISTRATION	334
5.1.1 Department	334
5.1.2 Supply of information	334
PART 5.2—MINISTER'S POWERS	335
5.2.1 Minister's general powers	335
5.2.2 Minister's powers about multi-sector arrangements	337
5.2.3 Minister's powers to acquire land	338
5.2.4 Minister's power to take land on lease	338
5.2.5 Minister's power over reserved Crown lands	339
5.2.6 Vesting of land in Minister administering this Act	339
5.2.7 Agreements and arrangements concerning use of property	340
5.2.8 Minister's powers for off shore education services	341
5.2.9 Delegations by Minister	342
5.2.10 Establishment of bodies to advise Minister	343
5.2.11 Minister's powers to require financial agreements	343
5.2.12 Minister's powers to make orders	344
5.2.13 Minister's powers to fix fees	344
PART 5.3—SECRETARY'S FUNCTIONS AND POWERS	346
5.3.1 Secretary's powers of employment	346
5.3.2 Secretary's other functions and powers	346
5.3.3 Delegation of Secretary's powers	346
5.3.4 Secretary may request criminal record check	347
5.3.5 Effectiveness and efficiency review	348
PART 5.3A—VICTORIAN STUDENT NUMBERS AND STUDENT REGISTER	350
Division 1—Introductory	350
5.3A.1 Definitions	350
5.3A.2 Application of Part	350

<i>Section</i>	<i>Page</i>
Division 2—Victorian student numbers and the Student Register	351
5.3A.3 Requirements for allocation or verification of Victorian student numbers	351
5.3A.4 Information to be provided to Secretary	351
5.3A.5 Secretary must allocate or verify Victorian student number	352
5.3A.6 Secretary to notify provider or Authority of Victorian student number	352
5.3A.7 Secretary must establish Student Register	353
5.3A.8 Secretary to maintain Student Register	353
Division 3—Access, use or disclosure of Victorian student numbers and related information	353
5.3A.9 Authorisations for use of Victorian student numbers or related information	353
5.3A.10 Authorised users must only act in accordance with authorisation	355
5.3A.11 Student, parent or guardian may access Student Register information	355
5.3A.12 Secretary to provide copy of information to students, parents or guardians	356
5.3A.13 Student may use or disclose his or her Victorian student number	356
5.3A.14 Prohibition on Secretary's use or disclosure	356
5.3A.15 False representation	356
Division 4—Implementation of allocation of Victorian student numbers	357
5.3A.16 Definition	357
5.3A.17 Secretary to allocate current students with Victorian student numbers	357
5.3A.18 Secretary may request information relating to students	358
5.3A.19 Appointed days for application of section 5.3A.3 to providers	359
PART 5.4—WORKPLACE LEARNING	360
Division 1—Work experience and structured workplace learning arrangements	360
5.4.1 Definitions	360
5.4.2 Application	361
5.4.3 Work experience arrangements	361
5.4.4 Orders about work experience arrangements	362
5.4.5 Structured workplace learning arrangements	363
5.4.6 Orders about structured workplace learning	364

<i>Section</i>	<i>Page</i>	
5.4.7	Conditions of employment under work experience arrangements	365
5.4.8	Conditions of employment under structured workplace learning arrangements	367
5.4.9	Payment	368
5.4.10	Duty of care	370
5.4.11	Application of certain laws if employment is for work experience	370
5.4.12	Arrangements for students from interstate	372
Division 2—Practical placement		373
5.4.13	Definitions	373
5.4.14	Practical placement agreements	374
5.4.15	Determination about the placement of post-secondary students	375
5.4.16	Payment	375
5.4.17	Suspension of conditions for students	376
5.4.18	Duty of care	376
5.4.19	Application of certain laws where employment is to gain work experience or training	376
Division 3—Minimum terms and conditions for students		377
5.4.20	Orders about non-payment for work	377
PART 5.5—APPRENTICES		378
Division 1—Preliminary		378
5.5.1	Definitions	378
Division 2—Training schemes		378
5.5.2	Training schemes	378
5.5.3	Certain provisions do not apply to certain vocations	379
Division 3—State training and employment provisions		380
5.5.4	State training and employment provisions	380
5.5.5	Training and employment agreements to accord with Schedule 4	380
Division 4—Training contracts		381
5.5.6	Employer must have Commission's approval to enter into a training contract with an apprentice	381
5.5.7	Procedure for approval	381
5.5.8	Employer's obligations under a training contract	382
5.5.9	Apprentice's obligations under a training contract	383
5.5.10	Approval of training contracts	383
5.5.11	Parties to training contract	383

<i>Section</i>	<i>Page</i>
5.5.12 Execution of training contract	384
5.5.13 Apprentice to be enrolled in training	385
5.5.14 Term of a training contract	385
5.5.15 Cancellation, suspension or variation of a training contract	386
5.5.16 Suspension or cancellation of a training contract if insufficient employment available	386
5.5.17 Commission to determine grievances in certain circumstances	387
5.5.18 Associations of employers may employ apprentices	388
5.5.19 Partnerships	389
Division 5—Approved training agents	389
5.5.20 Approved training agents	389
5.5.21 Delegations to approved training agents	389
5.5.22 Review of decisions of approved training agents	390
Division 6—General	390
5.5.23 Register of apprentices	390
5.5.24 Subsidies	391
5.5.25 Fees for certificates	391
PART 5.6—VOLUNTEER WORKERS COMPENSATION	392
5.6.1 Definitions	392
5.6.2 Compensation for personal injuries	394
5.6.2A Cessation of benefits	396
5.6.3 Compensation for damage to property	396
5.6.4 Jurisdiction	397
5.6.5 Authority to represent Crown	398
5.6.6 Payments	398
5.6.7 Recovery from third parties	399
5.6.8 Compensation for property damage and expenses to be paid from Consolidated Fund	399
5.6.9 Offence	399
PART 5.7—SCHOLARSHIPS	400
5.7.1 Scholarships at Government schools	400
5.7.2 Minister's powers to grant scholarships	401
PART 5.8—ENFORCEMENT	402
5.8.1 Authorised officers	402
5.8.2 Identification	402
5.8.3 Powers of authorised officers	403
5.8.4 Exercise of powers by authorised officers	406
5.8.5 Authority to provide information to school attendance officers	406
5.8.6 Proceedings for offences	407

<i>Section</i>	<i>Page</i>
5.8.7 Offences by corporations etc.	407
5.8.8 Evidentiary	408
5.8.9 Evidence	410
PART 5.9—GENERAL	411
5.9.1 Delegation	411
5.9.2 Disposal of land of non-vested schools	411
5.9.3 Supreme Court—limitation of jurisdiction	411
PART 5.10—DELEGATED LEGISLATION	412
Division 1—Regulations	412
5.10.1 Regulations	412
5.10.2 Scope of regulations	412
Division 2—Orders in Council	414
5.10.3 Orders in Council	414
Division 3—Ministerial orders	415
5.10.4 Ministerial orders—general provisions	415
5.10.5 Ministerial Orders—special provisions	417
5.10.6 Ministerial Orders—disallowance	417
CHAPTER 6—REPEALS, AMENDMENTS, SAVINGS AND TRANSITIONALS	418
6.1.1, 6.1.2 <i>Repealed</i>	418
6.1.3 Transitional and saving provisions	418
6.1.4 Transitional provision—Teaching Service Act	418
6.1.5 Transitional provision—Government teaching service	419
6.1.6 Transitional provision—directors of TAFE institute boards	419
6.1.7 Transitional provision—operators of student exchange programs	419
6.1.8 Transitional provision—overseas exchange students	420
6.1.9 Transitional provisions— Education and Training Reform Further Amendment Act 2008	420
6.1.10 Transitional provision— Education and Training Reform Further Amendment Act 2008	421
6.1.11 Transitional provision— Education and Training Reform Further Amendment Act 2008	422

<i>Section</i>	<i>Page</i>
SCHEDULES	424
SCHEDULE 1—Learning Areas Subject to Free Instruction	424
SCHEDULE 2—General Provisions for Authorities	425
1 Definitions	425
2 Terms and conditions of appointment of members	425
3 Payment of members	426
4 Acting appointments	427
5 Meetings of authority	428
6 Member's interests	429
7 Resolutions without meetings	429
8 Approved methods of communication for authority	430
9 Chief Executive's responsibilities	431
10 Establishment of committees	431
11 Delegation of Authority's power	431
12 Effect of vacancy or defect	431
13 Authority Funds	432
14 Investment powers	432
SCHEDULE 3—Employment of Staff	433
PART 1—GENERAL	433
1 Superannuation	433
PART 2—EXECUTIVE OFFICERS	433
2 Contracts for executive officers	433
3 Contracts to be in writing	434
4 Superannuation	434
SCHEDULE 4—State Training and Employment Provisions	435
1 Definitions	435
2 Application	435
3 Objective	435
4 Training conditions	436
5 Employment conditions	436
6 Wages	437
SCHEDULE 5—Regulations	438
1 Government schools	438
2 Age requirements for attending Government schools	439
3 School councils	439
4 Teaching service	441
5 Registration of teachers in schools	441
6 Council of VIT	441
7 Higher education fees	441

<i>Section</i>	<i>Page</i>
8 Scholarships	442
8A Victorian student numbers	442
9 Principles	442
10 General	442
SCHEDULE 6—Ministerial Orders	444
1 Work experience arrangements	444
2 Structured workplace learning	444
3 Fees payable under this Act	444
4 Discipline in Government schools	444
5 Councils of Government schools	444
6 Government school plans	445
7 Annual reports of school councils	445
8 Employment in the teaching service	445
9 TAFE teaching staff	446
10 Training agents	446
11 Anaphylaxis management policy	447
SCHEDULE 7—<i>Repealed</i>	447
SCHEDULE 8—Transitional and Saving Provisions	448
1.1 Definitions	448
1.2 General transitional provisions	448
1.3 Savings and transitional regulations	449
1.4 Registered teachers	449
1.5 Registered schools	449
1.6 Higher education	450
1.7 Overseas students	452
1.8 State Register	453
1.9 VRQA	453
1.10 Victorian Skills Commission	455
1.11 Registered Schools Board	455
1.12 Continued bodies	456
1.13 Instruments	458
SCHEDULE 9—Names of registered proprietors of land acquired for education purposes	460
<hr style="border-top: 3px double #000;"/>	
ENDNOTES	461
1. General Information	461
2. Table of Amendments	462
3. Explanatory Details	464

Version No. 014
Education and Training Reform Act 2006
No. 24 of 2006

Version incorporating amendments as at 29 January 2009

The Parliament of Victoria enacts as follows:

CHAPTER 1—GENERAL

PART 1.1—PRELIMINARY

1.1.1 Purpose

- (1) The main purpose of this Act is to reform the law relating to education and training in Victoria by providing for a high standard of education and training for all Victorians.
- (2) In particular this Act makes provision for or with respect to—
 - (a) the years of compulsory schooling and the options available;
 - (b) vocational education and training, technical and further education, adult community and further education, and other post-compulsory education and training;
 - (c) the establishment and regulation of Government schools and the regulation of non-Government schools and home schooling;
 - (d) the establishment and regulation of post-compulsory education institutions and providers;

-
- (e) the development and accreditation of courses and the issuing of qualifications;
 - (f) the recognition, regulation and promotion of the teaching profession;
 - (g) the employment in the teaching service of Government school teachers and other persons;
 - (h) the monitoring, planning and development of the provision of education and training;
 - (i) the repeal and re-enactment of various Acts relating to education and training.

1.1.2 Commencement

- (1) This section and sections 1.1.1 and 6.1.3(2) and (3) come into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in subsection (2) does not come into operation before 31 December 2007, it comes into operation on that day.

1.1.3 Definitions

- (1) In this Act—

accredited means—

- (a) in relation to a vocational education and training or further education course, registered on the State Register and National Register;
- (b) in relation to any other course, registered as accredited on the State Register as being suitable for the purposes of a qualification;

adult, community and further education

means—

- (a) further education; or
- (b) secondary education for adults; or
- (c) that part of education and training which is directed towards the development of skills and knowledge in relation to work when it is provided by an adult education institution established by or under this Act or a community based organisation which is not a TAFE institute, a commercial provider or an industry provider;

adult education institution means AMES or the Centre for Adult Education or an adult education institution established under Part 3.3;

AMES means the adult education institution known as Adult Multicultural Education Services established under Part 3.3;

apprentice means a person whom an employer has undertaken to train under a training contract;

AQF means the framework known as the "Australian Qualifications Framework" endorsed by the Ministerial Council on Education, Employment, Training and Youth Affairs to commence on 1 January 1995, as amended from time to time by that Ministerial Council;

Authority means the Victorian Registration and Qualifications Authority established under Chapter 4;

autonomous college means a post-secondary education institution established under Part 3.2;

s. 1.1.3

Centre for Adult Education means the adult education institution known as the Centre for Adult Education established under Part 3.3;

Commission means the Victorian Skills Commission renamed and continued in operation under Part 3.1;

compulsory school age means not less than 6 nor more than 16 years of age;

Department means the Department of Education;

S. 1.1.3(1)
def. of
Department
amended by
No. 28/2007
s. 3(Sch.
item 19.1).

early childhood means the period of childhood up to 6 years of age;

S. 1.1.3(1)
def. of *early
childhood*
inserted by
No. 19/2008
s. 4.

further education means those education programs that lead to the development of knowledge and skills that are not specific to any particular occupation and are not provided or offered by a university (other than in the TAFE division of a university) or an autonomous college;

Government school means a school established by the Minister and conducted under Part 2.2;

S. 1.1.3(1)
def. of
*higher
education
award*
substituted by
No. 58/2007
s. 4.

higher education award means a qualification described as a higher education award in the AQF but does not include a graduate certificate if the course of study relating to that certificate is an accredited vocational education and training course included in the State Register;

industry training board means an industry training board established or declared by the Minister under Part 3.1;

Institute means the Victorian Institute of Teaching continued in operation under Part 2.6;

learning outcome, in relation to a course, means a written statement of what a student will know and be able to do as a result of successfully undertaking the course;

Ministerial Order means an Order made by the Minister under this Act;

national standards means standards agreed to from time to time by the governments of the Commonwealth, States and Territories;

non-Government school means a school, other than a Government school, that is registered or required to be registered under Part 4.3;

overseas student means a person holding a visa under the Migration Act 1958 of the Commonwealth which allows the person, whether expressly or otherwise, to study in Victoria;

parent, in relation to a child, includes a guardian and every person who has parental responsibility for the child including parental responsibility under the Family Law Act of the Commonwealth and any person with whom a child normally or regularly resides;

post-compulsory education means education of persons 16 years of age or over;

post-secondary education means education of persons—

- (a) who are beyond the age of compulsory school attendance; and

(b) who are not undergoing a course of secondary education at a registered school;

post-secondary education institution means an institution which is supported directly or indirectly by Government funds providing post-secondary education including but not limited to a TAFE institute, an autonomous college and a university;

post-secondary education provider means a post-secondary education institution or other institution or person or body providing or offering to provide post-secondary education;

principal means a person appointed to a designated position as principal of a registered school or a person in charge of a registered school;

Regional Council means a Regional Council of Adult, Community and Further Education established under Part 3.3;

registered education and training organisation means a person or body registered under Part 4.3 to deliver an accredited course or award or issue a registered qualification;

registered qualification means a qualification that is registered on the State Register;

registered school means a school registered under Part 4.3;

registered teacher means a person registered under Part 2.6 as a teacher or a person who is granted permission to teach under Part 2.6;

registration includes permission to teach under Part 2.6;

school means a place at or from which education is provided to children of compulsory school age during normal school hours, but does not include—

- (a) a place at which registered home schooling takes place;
- (b) a University;
- (c) a TAFE institute;
- (d) an education service exempted by Ministerial Order;
- (e) any other body exempted by the regulations;

school attendance officer means a person appointed by the Minister to be a school attendance officer under Part 2.1;

school council means the council of a Government school or group of schools that is constituted under Part 2.3;

school day means day on which a school is open;

Secretary means Secretary to the Department;

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

s. 1.1.3

-
- (c) an offence against section 46(1) (sexual penetration of child aged between 10 and 16) (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
 - (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);

State Register means the State Register maintained under Part 4.6;

Student Register means the Student Register established under Part 5.3A;

TAFE means technical and further education;

TAFE institute means an institution created under section 3.1.11 and includes the TAFE division of a university with a TAFE division;

technical and further education means post-secondary education wherever provided or offered which is not directed towards—

S. 1.1.3(1)
def. of
Student Register
inserted by
No. 19/2008
s. 4.

-
- (a) the award of a degree or diploma at an autonomous college or university; or
 - (b) a higher education award;

training means training whether by way of course, instruction or practical training in the knowledge and skills required for a vocation;

training contract means an apprenticeship training contract or a traineeship training contract;

university means a University established by an Act of the Parliament of Victoria or the Australian Catholic University Limited;

university with a TAFE division means the University of Ballarat, Royal Melbourne Institute of Technology, Swinburne University of Technology or Victoria University;

VCAL means the Victorian Certificate of Applied Learning;

VCE means the Victorian Certificate of Education;

Victorian student number means the number allocated to a student by the Secretary under Part 5.3A;

S. 1.1.3(1)
def. of
**Victorian
student
number**
inserted by
No. 19/2008
s. 4.

vocational education and training means—

- (a) the education and training and qualifications and statements of attainment under the vocational education and training provisions under the AQF; and

s. 1.1.4

S. 1.1.3(2)
amended by
No. 28/2007
s. 3(Sch.
item 19.2).

- (b) that part of education and training which is directed towards the development of skills and knowledge in relation to work when it is provided by an adult education institution or a community based organisation which is not a TAFE institute, a commercial provider or industry provider.
- (2) If under the **Public Administration Act 2004** the name of the Department of Education is changed, a reference in the definition of *Department* in subsection (1) to that Department must, from the date when the name is changed, be treated as a reference to the Department by its new name.
- (3) Unless the context otherwise requires, a reference in this Act to a Part by a number must be construed as a reference to the Part, designated by that number, of this Act.

1.1.4 Binding of Crown

This Act binds the Crown, not only in right of the State of Victoria but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

1.1.5 Extra-territorial operation of this Act

- (1) This Act operates both within and outside Victoria.
- (2) This Act operates outside Victoria to the extent that the legislative power of the Parliament permits.

PART 1.2—PRINCIPLES

1.2.1 Principles underlying the enactment of this Act

Parliament has had regard to the following principles in enacting this Act—

- (a) all providers of education and training, both Government and non-Government, must ensure that their programs and teaching are delivered in a manner that supports and promotes the principles and practice of Australian democracy, including a commitment to—
 - (i) elected Government;
 - (ii) the rule of law;
 - (iii) equal rights for all before the law;
 - (iv) freedom of religion;
 - (v) freedom of speech and association;
 - (vi) the values of openness and tolerance;
- (b) all Victorians, irrespective of the education and training institution they attend, where they live or their social or economic status, should have access to a high quality education that—
 - (i) realises their learning potential and maximises their education and training achievement;
 - (ii) promotes enthusiasm for lifelong learning;
 - (iii) allows parents to take an active part in their child's education and training;
- (c) information concerning the performance of education and training providers should be publicly available;

- (d) parents have the right to choose an appropriate education for their child;
- (e) a school community has a right to information concerning the performance of its school;
- (f) a parent of a student and the student has a right to access information about the student's achievement.

1.2.2 Principles underlying the Government education and training system

- (1) The State provides universal access to education and training through the establishment and maintenance of a Government education and training system.
- (2) All persons employed or engaged in the provision of Government education and training by the State or in the administration of Government education and training by the State must apply or have regard to the following principles—
 - (a) Government schools—
 - (i) will provide a secular education and will not promote any particular religious practice, denomination or sect; and
 - (ii) are open to adherents of any philosophy, religion or faith;
 - (b) instruction in the learning areas in Schedule 1 is to be provided free of charge for all students (except overseas students) attending a Government school to the completion of year 12 if the student is under 20 years of age on 1 January in the year that the person undertakes instruction;

-
- (c) every student has the right to attend a designated neighbourhood Government school with the exception of selective Government schools that are determined by the Minister;
 - (d) a student has a guaranteed place at a TAFE institute or other public training provider to the completion of year 12 of schooling or its equivalent if the student is under 20 years of age on 1 January in the year that the person undertakes study at the TAFE institute or other public training provider.

1.2.3 Principles not to give rise to civil cause of action

Nothing in sections 1.2.1 or 1.2.2 gives rise to, or can be taken into account in, any civil cause of action.

CHAPTER 2—SCHOOL EDUCATION

PART 2.1—COMPULSORY EDUCATION

Division 1—Attendance at school

2.1.1 Attendance at school

It is the duty of the parent of a child of not less than 6 nor more than 16 years of age—

- (a) to enrol the child at a registered school and to ensure the child attends the school at all times when the school is open for the child's instruction; or
- (b) to register the child for home schooling in accordance with the regulations and to ensure that the child receives instruction in accordance with the registration.

2.1.2 Offence for parent to fail to comply with duty

A parent of a child of compulsory school age must not without a reasonable excuse fail to comply with the duty set out in section 2.1.1.

Penalty: 1 penalty unit for each day on which the duty is not complied with.

2.1.3 What is a reasonable excuse?

Without limiting section 2.1.2, it is a reasonable excuse for the purposes of that section, in relation to a child if—

- (a) the child has been prevented from attending school or receiving instruction because of—
 - (i) illness, accident, an unforeseen event or an unavoidable cause; or

-
- (ii) a requirement to comply with another law; or
 - (iii) the child's absence from Victoria;
 - (b) there is no Government school within a prescribed distance of the child's residence and the child is receiving a distance education program through a registered school;
 - (c) the child is undertaking an educational program provided by a registered education and training organisation;
 - (d) the child has been suspended or expelled from a registered school and is undertaking other educational programs provided by the Department or another registered school;
 - (e) the absence from school or instruction was because of the child's disobedience and was not due to any fault of the parent;
 - (f) the child is attending or observing a religious event or obligation as a result of a genuinely held belief of the child or a parent of the child;
 - (g) the child is exempted from attendance at school by the Minister under section 2.1.5.

2.1.4 Parent to notify school of absence

- (1) The principal of, or a teacher at, a registered school at which a child of compulsory school age is enrolled may ask a parent of the child for an explanation of the reason for the child's failure to attend the school at a time when the school was open for the child's instruction.
- (2) The principal must ensure that record in writing is made of the reason (if any) given by the parent.

2.1.5 Exemption from attendance at school

The Minister, by Order generally or in a specific case, may exempt a child or children from attendance at school.

2.1.6 Obligations of parents

If a duty is imposed on the parent or parents of a child by this Division—

- (a) any parent of the child may perform or be required to perform the duty;
- (b) compliance with the duty with regard to the child by any parent is sufficient compliance with the duty imposed on the parent or parents.

Division 2—Enforcement of attendance

2.1.7 Appointment of school attendance officers

The Minister may in writing appoint a person employed under the **Public Administration Act 2004** as a school attendance officer for the purposes of this Act.

2.1.8 Identity card

- (1) The Minister must issue an identity card to each school attendance officer.
- (2) An identity card must contain a photograph of the school attendance officer to whom it is issued.

2.1.9 Production of identity card

A school attendance officer must produce his or her identity card for inspection—

- (a) before exercising a power under this Part; or
- (b) at any time during the exercise of a power under this Part, if asked to do so.

Penalty: 10 penalty units.

2.1.10 Powers of school attendance officers

- (1) If a school attendance officer has reasonable grounds to believe that a child who is apparently of compulsory school age does not attend a registered school during school hours on a school day, the school attendance officer may stop the child in the street or a public place and ask the child for his or her name and address.
- (2) A school attendance officer may during hours when a school is open inspect the attendance register of the school that is required to be kept under Part 4.3.

2.1.11 Offence to hinder or obstruct school attendance officer

A person must not wilfully obstruct, hinder or interfere with a school attendance officer in the performance or exercise of his or her duties under this Part.

Penalty: 60 penalty units.

2.1.12 Power to bring proceedings

A school attendance officer may bring proceedings for any offence under Division 1.

2.1.13 Certificate to be evidence as to attendance of child

A certificate purporting to be under the hand of the principal of a registered school stating that a child is or is not attending that school or stating the particulars of attendance of a child at that school is evidence of the facts stated in the certificate.

2.1.14 Onus of proof

In any proceeding in relation to an offence under section 2.1.2 the burden of proving the grounds of an excuse lies on the defendant.

PART 2.2—GOVERNMENT SCHOOLS

Division 1—Establishment of government schools

2.2.1 Establishment of Government schools and educational services

- (1) The Minister may from time to time—
 - (a) establish and carry on Government schools;
 - (b) extend and maintain Government schools;
 - (c) declare or alter the educational level or classification of a Government school;
 - (d) discontinue a Government school.
- (2) The Minister may decide the kinds of Government schools to be established and the educational level or levels or classification for the schools.
- (3) The Minister may establish school related educational institutions and services.
- (4) The Minister may arrange for the provision of educational instruction and services in ways other than through Government schools.
- (5) A Government school may be established for students of one sex.

2.2.2 Discontinuation of Government schools—limitation of judicial review

- (1) A decision or purported decision of the Minister to discontinue or continue any Government school is not liable to be challenged, appealed against, reviewed, quashed or called in question on any account—
 - (a) in any court or tribunal; or

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- (b) before any person acting judicially (within the meaning of the **Evidence Act 1958**); or
 - (c) before the Ombudsman.
- (2) Without limiting subsection (1), proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief do not lie in respect of a decision or purported decision of the Minister to discontinue or continue any Government school.

2.2.3 Limitation on occupier's liability for discontinued Government schools

- (1) In this section *relevant person*, in relation to a Government school discontinued by the Minister, is a person who—
- (a) without the consent of the Minister operates, or assists in operating, education programs on the premises on which the discontinued school operated; or
 - (b) is on those premises to protest against, or in support of persons protesting against, the decision of the Minister to discontinue the school; or
 - (c) is on those premises as a student of education programs that are being operated on those premises without the consent of the Minister.
- (2) The Crown or its servants or agents, the State, the Minister or a school council do not owe a duty of care to any relevant person on the premises of a Government school—
- (a) that has been discontinued by the Minister; and
 - (b) to which the provisions of this section are expressly applied by the Minister by a notice published in the Government Gazette.
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- (3) Subsection (2) applies despite anything to the contrary—
- (a) in Part IIA of the **Wrongs Act 1958**; or
 - (b) in any rule of law with respect to the liability of an occupier to a person entering on the occupier's premises.

Division 2—Instruction in government schools

2.2.4 Instruction in specified learning areas to be free to students under 20

- (1) Instruction in the learning areas specified in Schedule 1 to (and including) year 12 of education or its equivalent is to be free for a student who is under the age of 20 years on 1 January in the year the student commences that year of schooling and who is attending a Government school.
- (2) This section does not apply to overseas students.
- (3) For the purposes of this section, instruction that is equivalent to year 12 of education is instruction for a certificate of education or other qualification determined by the Minister by Order to be so equivalent.

2.2.5 Students over 20 may be charged fees

A student enrolled in a Government school who is of or above 20 years of age on 1 January in the year of enrolment may be charged a fee in accordance with the regulations for the instruction and educational and other related services provided to the student by the school during that school year.

2.2.6 Parent not required to contribute to cost of additional support

A parent of a student with a disability or impairment is not required to contribute to the cost of the provision of additional support for the education in a Government school of that student.

2.2.7 Voluntary financial contributions

- (1) The school council of a Government school may ask the parents of a student enrolled at the school, or anyone else, to make a financial contribution to the school.
 - (2) A school council may use voluntary contributions for any purpose for any school in relation to which it is constituted unless the contribution is provided for a specified purpose.
 - (3) The following principles apply in relation to financial contributions—
 - (a) a school council should clearly explain how contributions will be spent when making a request for a contribution;
 - (b) each contribution is to be voluntary and obtained without coercion or harassment;
 - (c) a student at the school is not to be refused instruction in the learning areas specified in Schedule 1 because the student's parents do not make a contribution;
 - (d) a student is not to be approached, coerced or harassed for contributions;
 - (e) any record of contributions is confidential.
 - (4) If the school council asks the parents of a student enrolled at the school to make a financial contribution, the school council must tell the parents about the principles that apply in relation to financial contributions.
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2.2.8 Overseas students to be required to pay fees

- (1) An overseas student who applies to be enrolled at a Government school or his or her parent or guardian must, in accordance with any Order made by the Minister under section 2.2.9, pay an application fee and, if enrolled, a fee for the instruction and educational and other related services provided to the student by the school.
- (2) The principal of a Government school must expel from the school any overseas student in respect of whom any fee required to be paid under this section has not been paid by the due date.
- (3) The Minister may permit an overseas student who has been or is to be expelled from a Government school under subsection (2) to return to or remain at the school either unconditionally or on conditions agreed to by the student or his or her parent or guardian relating to the payment of the fee.

2.2.9 Overseas students fees Order

- (1) The Minister may make an Order for or with respect to any matter that relates to the payment of fees by overseas students applying to be enrolled or enrolled at Government schools including but not limited to—
 - (a) the amount of any fee payable under section 2.2.8;
 - (b) any period to which the fee relates;
 - (c) the date on which the fee is payable;
 - (d) the person to whom the fee is to be paid;
 - (e) the extent to which and the manner in which the fee is to be apportioned between the school and the Secretary.

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- (2) The principal of a Government school and the school council of that school must comply with any Order made under subsection (1) that applies to the school.

2.2.10 Education in Government schools to be secular

- (1) Except as provided in section 2.2.11, education in Government schools must be secular and not promote any particular religious practice, denomination or sect.
- (2) Subsection (1) does not prevent the inclusion of general religious education in the curriculum of a Government school.
- (3) A Government school teacher must not provide religious instruction other than the provision of general religious education in any Government school building.
- (4) In this section *general religious education* means education about the major forms of religious thought and expression characteristic of Australian society and other societies in the world.

2.2.11 Special religious instruction

- (1) Special religious instruction may be given in a Government school in accordance with this section.
- (2) If special religious instruction is given in a Government school during the hours set apart for the instruction of the students—
- (a) the persons providing the special religious instruction must be persons who are accredited representatives of churches or other religious groups and who are approved by the Minister for the purpose;

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- (b) the special religious instruction must be given on the basis of the normal class organisation of the school except in a school where the Minister authorises some other basis to be observed having regard to—
- (i) the particular circumstances of a school or schools; or
 - (ii) the preparation or conduct of a pageant, special event or celebration of a festival in a school or schools;
- (c) attendance for the special religious instruction is not to be compulsory for any student whose parents desire that he or she be excused from attending.
- (3) The Minister may give an authorisation under subsection (2) in respect of the preparation or conduct of a particular class of pageant, special event or celebration of a festival generally to all schools, to a class or classes of school or to a specific school.
- (4) Nothing in this section prevents any Government school building from being used for any purpose on days other than school days or at hours on school days other than the hours set apart for the instruction of the students.
- (5) In this section *special religious instruction* means instruction provided by churches and other religious groups and based on distinctive religious tenets and beliefs.

2.2.12 Ceremony in relation to being Australian citizens

- (1) In every Government school there must be observed in accordance with this section a ceremony at which the students acknowledge their role as citizens of Australia.

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- (2) The school council at each Government school must in accordance with the guidelines issued by the Minister determine—
 - (a) the form of any ceremony under subsection (1); and
 - (b) the intervals at which the ceremony must take place.
 - (3) The flag to be used at a ceremony under subsection (1) must be the Australian National Flag.

Division 3—Admission to government schools

2.2.13 Admission to designated neighbourhood Government school

- (1) A child of compulsory school age is entitled to be enrolled at his or her designated neighbourhood Government school.
- (2) Subsection (1) does not apply to—
 - (a) a special school or other school providing solely for students with disabilities;
 - (b) a school that provides education solely through distance education programs;
 - (c) a school for which the Minister has approved special criteria for entry to the school under section 2.2.16.

2.2.14 Admission to other Government school

A child of compulsory school age may be enrolled at a Government school that is not the child's designated neighbourhood Government school if there is sufficient accommodation for the child at that school.

2.2.15 Refusal of admission generally

A person may be refused admission to a Government school—

- (a) if the person is not entitled to be enrolled at that school under section 2.2.13; or
- (b) in accordance with any other provision of this Act or any other Act.

2.2.16 Minister may approve admission criteria

The Minister may specify—

- (a) criteria for determining a designated neighbourhood Government school including different criteria for different areas;
- (b) entry criteria for a particular school.

2.2.17 Refusal of admission for safety reasons

- (1) A person may be refused admission to or continued enrolment in a Government school if, in the Minister's opinion, it is advisable to do so to ensure the safety of the student or other students at the school.
- (2) A child of compulsory school age who has been refused admission to or continued enrolment in a Government school under subsection (1) must, in accordance with any Order made by the Minister under subsection (3) be given an opportunity to continue his or her education while he or she is of compulsory school age.
- (3) The Minister may make an Order specifying the means by which a student who has been refused admission to or continued enrolment in a Government school is to be given an opportunity to continue his or her education while of compulsory school age.

2.2.18 Age requirements for enrolment at Government schools

The principal of a Government school may refuse—

- (a) to enrol a person at that school or in a program or course of study offered, conducted or provided by that school or to allow a person to continue to be so enrolled; or
- (b) to allow a person to attend that school or to attend or participate in any program or course of study offered by that school or to allow a person to continue to so attend or participate—

if the person is under, of or over an age specified in the regulations in relation to enrolment or attendance at a Government school or enrolment, attendance at or participation in any program or course of study offered, conducted or provided by a Government school.

Division 4—Discipline of students

2.2.19 Discipline of students

- (1) The principal of a Government school may, in accordance with any Ministerial Order, suspend or expel a student from that school.
- (2) A student expelled from a Government school under subsection (1) may, in accordance with any Ministerial Order, appeal to the Secretary against his or her expulsion.
- (3) Subject to any action taken by the Secretary under subsection (4), a student of compulsory school age who has been expelled from a Government school must, in accordance with any Ministerial Order, be given an opportunity to continue his or her

education while he or she is of compulsory school age.

- (4) The Secretary may, in accordance with any Ministerial Order, prohibit a student expelled from a Government school from attending any other Government school.
- (5) Despite any provision made by or under any other Act, the Secretary must cause all documents under his or her control relating to the expulsion of a student from a Government school to be destroyed within 12 months after the student is expelled or ceases to be of compulsory school age, whichever is the later.

Division 5—Assistance for students with special needs

2.2.20 Assistance for students with special needs

The Minister may provide or arrange special or additional assistance for students in Government schools with special needs, including the provision of meals to students who are disadvantaged by their socio-economic background.

PART 2.3—GOVERNMENT SCHOOL COUNCILS

Division 1—Definitions

2.3.1 Definitions

In this Part—

preschool program means a preschool program provided for any child who is of or over the age of 3 years and under the age of 6 years on 30 April in the year that the child takes part in the preschool program;

school means a Government school and includes, if a school council is to be or is constituted in relation to a school, a proposed school;

teacher, unless the contrary intention appears, includes student teacher, teacher on a special staff, student in training and every person employed to assist teachers in the class room or who forms part of the educational staff of a school;

teaching staff means any person required to be registered under Part 2.6 to undertake duties as a teacher within the meaning of that Part.

Division 2—Constitution of school councils

2.3.2 Minister may constitute school council by Order

- (1) The Minister may by Order constitute a council to exercise and discharge, in relation to a Government school or group of Government schools, powers, duties and functions that may from time to time be conferred or imposed on the council by or under this Act.

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- (2) The Minister, by Order, may—
- (a) constitute a council, by a name that is specified in the Order, as a body corporate to exercise and discharge any powers, duties or functions conferred or imposed upon the council by or under this Act in relation to the school or group of schools (as the case may be);
 - (b) make provision for or with respect to the membership of the council and may make provision for the election of members, that he or she thinks fit;
 - (c) confer or impose upon the council or any member of the council any powers, duties or functions in addition to those conferred or imposed upon the council or any member of the council by or under this Act; and
 - (d) make any other provision in relation to the constitution, powers, duties and functions of the council that is in his or her opinion necessary or expedient, including limiting or regulating the exercise by the council of any of those powers, duties or functions.
- (3) A notice stating that an Order has been made under subsection (1) must be published as soon as practicable in the Government Gazette.
- (4) On and from the date that an Order under subsection (1) was made or any later date specified in that Order, the council constituted by the Order becomes a body corporate by the name specified in the Order and is, subject to the Order, immediately capable of—
- (a) exercising all the functions of a body corporate; and
 - (b) suing and being sued; and
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- (c) holding land; and
 - (d) having perpetual succession; and
 - (e) having a common seal.
- (5) Any Order made under subsection (1) may provide for anything relating to the appointment or the election of members to be done or complied with in accordance with regulations made under this Act.
- (6) The Minister may by any subsequent Order—
- (a) dissolve the council; or
 - (b) change the name of the council; or
 - (c) make further provision with respect to any matter or thing that is authorised to be done under paragraphs (b), (c) and (d) of subsection (2); or
 - (d) amend or vary any provision of a previous Order with respect to any of the matters or things referred to in paragraphs (a) to (c).
- (7) An Order dissolving a council may give any directions concerning the disposal of any assets of the council that the Minister thinks fit.
- (8) A notice stating that an Order has been made under subsection (6) and specifying the general purpose of the Order must be published as soon as practicable in the Government Gazette.
- (9) Subsection (8) does not apply to an Order unless the purpose of the Order is—
- (a) to merge 2 or more councils; or
 - (b) to dissolve a council; or
 - (c) to confer or impose new powers, duties or functions on a council or to any of its members.
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- (10) A change of name of a council under this section does not affect the identity of the council or any rights or obligations of the council or render defective any legal proceedings by or against the council, and any legal proceedings that might have been continued or commenced by or against the council by its former name may be continued or commenced by or against it by its new name.
 - (11) A copy of any Order made under this section must be kept at the premises of any school to which it relates and must be made available for inspection by any person at any reasonable time during school hours.
 - (12) Nothing done or omitted to be done by a school council subjects the Crown, the State, a Minister of the State or the Secretary to any liability in respect of the thing done or omitted to be done except as provided in subsection (13) and section 2.3.32.
 - (13) Subsection (12) does not apply if otherwise agreed in writing between the school council and the Crown, the State, the Minister or the Secretary (as the case requires), expressly with reference to this section, and whether before or after the thing is done or omitted to be done.
 - (14) A member of a council constituted under this section is not to receive any payment for his or her services as a member.
 - (15) Subsection (14) does not prevent the council reimbursing a member for any reasonable expenses incurred in the performance of his or her duties as a member.
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2.3.3 Minister entitled to act if no school council

If there is no school council constituted in relation to a school, the Minister may exercise or discharge in respect of the school or any program (including a preschool program) offered by the school, any power, duty or function that would be conferred or imposed by or under this Act on any such council constituted in relation to that school.

Division 3—Objectives, functions and powers of school councils

2.3.4 Objectives of a school council

The objectives of a school council with regard to any school in relation to which it is constituted are—

- (a) to assist in the efficient governance of the school;
- (b) to ensure that its decisions affecting students of the school are made having regard, as a primary consideration, to the best interest of the students;
- (c) to enhance the educational opportunities of students at the school;
- (d) to ensure the school and the council complies with any requirements of this Act, the regulations, a Ministerial Order or a direction, guideline or policy issued under this Act.

2.3.5 Functions of a school council

The functions of a school council with regard to any school in relation to which it is constituted are—

- (a) to establish the broad direction and vision of the school within the school's community;

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- (b) to arrange for the supply of goods, services, facilities, materials, equipment and other things or matters that are required for the conduct of the school including the provision of preschool programs;
 - (c) to raise funds for school related purposes;
 - (d) to regulate and facilitate the after hours use of the school premises and grounds;
 - (e) to exercise a general oversight of the school buildings and grounds and ensure that they are kept in good order and condition;
 - (f) to provide for the cleaning and sanitary services that are necessary for the school;
 - (g) to ensure that all money coming into the hands of the council is expended for proper purposes relating to the school;
 - (h) to provide meals and refreshments for the staff and students of the school and make charges for those meals or refreshments;
 - (i) to inform itself and take into account any views of the school community for the purpose of making decisions in regard to the school and the students at the school;
 - (j) to generally stimulate interest in the school in the wider community;
 - (k) to perform any other function or duty or to exercise any power conferred or imposed on the council—
 - (i) by or under this Act or the regulations;
or
 - (ii) by a Ministerial Order or direction issued by the Minister under this Act.
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2.3.6 Powers of a school council

- (1) For the purpose of meeting its objectives or performing its functions or duties a school council may—
 - (a) enter into contracts, agreements or arrangements;
 - (b) establish trusts and act as trustee of them;
 - (c) subject to section 2.2.4 and in accordance with any Ministerial Order, charge fees to parents for goods, services or other things provided by the school to a child of the parent;
 - (d) do any other thing that is necessary or convenient to be done for, or in connection with, meeting its objectives or performing its functions or duties.
- (2) In addition to the powers under subsection (1), a council has any other powers conferred on it by or under this Act, the regulations or a Ministerial Order.
- (3) A school council does not have the power to do any of the following—
 - (a) employ a teacher with no date fixed for the termination of that employment;
 - (b) purchase or acquire for consideration any land or building;
 - (c) unless authorised by or under this Act, the regulations or a Ministerial Order—
 - (i) licence or grant any interest in land, including school lands or buildings;
 - (ii) enter into hire purchase agreements;
 - (iii) obtain loan or credit facilities;

- (iv) form or become a member of a corporation;
- (v) provide for any matter or thing outside of Victoria unless it is related to an excursion by students from a school in relation to which the council is constituted or the professional development of staff of that school;
- (vi) purchase a motor vehicle, boat or a plane.

2.3.7 Accountability

- (1) A school council is accountable to the Minister in respect of the performance by the council of its functions in accordance with any Order made by the Minister.
- (2) The principal of a school is the executive officer of the school council and must ensure that—
 - (a) adequate and appropriate advice is provided to the school council on educational and other matters;
 - (b) the decisions of the school council are implemented;
 - (c) adequate support and resources are provided for the conduct of school council meetings.
- (3) The Secretary must ensure that an effective quality assurance regime is in place over the financial and operational activities of school councils.

Division 4—Employment of staff

2.3.8 Employment or engagement of teachers and other staff in schools

- (1) A school council, in accordance with this Act, may—
 - (a) employ—
 - (i) teachers for a fixed period not exceeding one year or on a casual basis;
or
 - (ii) teacher aides; or
 - (iii) any other staff—
for the purpose of performing its functions and duties;
 - (b) employ any person to enable the council to do anything it is authorised to do by section 2.3.11 or Division 6.
- (2) A school council which employs a person under subsection (1) may do so on behalf of a group of school councils, and the group of school councils may decide from time to time in a manner determined by agreement amongst themselves the time which the person is to spend on each school.
- (3) Sections 5.10.4 and 5.10.5 and clause 8 of Schedule 6 apply to and in relation to the determination of salaries and allowances to be paid to and to the terms and conditions of employment of staff employed by school councils as if those employees were employees of the teaching service.

S. 2.3.8(3)
amended by
No. 58/2007
s. 5.

2.3.9 Eligibility of person to be employed as a teacher

- (1) A person who has, at any time, in Victoria or elsewhere, been convicted or found guilty of a sexual offence is not eligible to be employed by a school council as a teacher.
- (2) A person is not eligible to be employed by a school council as a teacher within the meaning of Part 2.6 unless the person is registered or permitted to teach under this Act.

2.3.10 Dismissal, suspension and termination of employment

- (1) A school council must dismiss or remove a person who is employed or engaged by the council as a teacher and who has, at any time, in Victoria or elsewhere, been convicted or found guilty of a sexual offence.
 - (2) If a person who is employed or engaged by a school council as a teacher within the meaning of Part 2.6 is refused registration or permission to teach under this Act or has had his or her registration or permission to teach cancelled or suspended under this Act, the council may—
 - (a) suspend the person without pay from duty as a teacher for the period that the person's registration or permission to teach is refused, cancelled or suspended; or
 - (b) without limiting any of the council's other powers, dismiss or remove the person.
 - (3) If a person employed or engaged by a school council as a teacher within the meaning of Part 2.6—
 - (a) is refused registration or permission to teach under this Act or has his or her registration or permission to teach cancelled or suspended under this Act; and
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(b) remains unregistered or without permission to teach for a continuous period of 12 months—

the employment or engagement of that person ceases, by virtue of this subsection, at the end of that period of 12 months.

- (4) For the purposes of subsection (3)(b), any period during which a person remains unregistered or without permission to teach does not include any period during which the person is on leave approved by the school council.
- (5) The school council must notify in writing a person whose employment or engagement has ceased under subsection (3).

Division 5—Further powers of school councils

2.3.11 Use of school buildings and grounds for activities

- (1) A school council may—
- (a) conduct programs in or use; or
 - (b) subject to any conditions imposed by the council, join with any other person or body to conduct programs in or use; or
 - (c) subject to any conditions imposed by the council, allow any other person or body to conduct programs in or use—

any buildings or grounds of any school in relation to which the council is constituted for the purposes of educational, recreational, sporting or cultural activities for students, the local community or young persons.

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- (2) A school council may only allow buildings and grounds of a school to be used under subsection (1) when the buildings or grounds are not required for ordinary school purposes.
 - (3) This section applies despite anything to the contrary in the **Crown Land (Reserves) Act 1978**.

2.3.12 School council may carry out works

- (1) A school council may, in regard to any school in relation to which it is constituted, with the approval of the Minister given either generally or in any particular case—
 - (a) construct, or carry out any improvements to any building structure on the school grounds, or carry out any improvements in or to the school grounds; or
 - (b) enter into a contract with any person for or in relation to the construction or carrying out by that person of any such building structure or improvements or of any other work which the council is authorised or required by or under this Act to carry out; or
 - (c) construct or carry out any improvements to any building structure, or carry out any improvements, on, in or to the school grounds or any other land that the Minister has acquired an estate or interest in to provide preschool programs.
- (2) Despite anything to the contrary in any Act, a school council may obtain and accept offers or tenders for any work approved by the Minister under this section that it proposes to carry out.

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- (3) If a school council is required by directions issued under Part 4 of the **Project Development and Construction Management Act 1994** to publicly invite tenders for the work—
- (a) the council must invite tenders as required by those directions by an advertisement published in a newspaper circulating generally in Victoria and in at least one newspaper circulating in the neighbourhood of the school where the proposed work is to be carried out; and
 - (b) the work must be carried out under any supervision that the Minister directs.
- (4) The provisions of subsection (3) do not apply if—
- (a) the work in question is that of an architect, engineer or other professional adviser or consultant employed by the council with the consent of the Minister in connection with any proposed work; or
 - (b) the Minister has in relation to any particular work given a written exemption to the school council from complying with the provisions of that subsection; or
 - (c) the school council arranges for the work to be undertaken by any municipal council or any public statutory body.
- (5) If a school council enters into a contract for any work and the council is not required by a direction issued under Part 4 of the **Project Development and Construction Management Act 1994** to publicly invite tenders for the work, the council may supervise the carrying out of that work, unless the Minister either generally or in any particular case directs, or the regulations made under this Act provide, that the work must be supervised otherwise.
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2.3.13 Public bodies authorised to perform works for school council

Despite anything in any Act, a municipal council and any public statutory corporation and any school council if so authorised by the Minister is authorised and empowered to—

- (a) enter into contracts with a school council for or in connection with—
 - (i) the construction of buildings or structures or the carrying out of improvements on, in or to the grounds of the school in relation to which the council is constituted; or
 - (ii) any other work which the school council is authorised or required by or under this Act to carry out; and
- (b) do or comply with anything necessary or expedient for carrying the contract into effect.

2.3.14 School council may form sub-committee

Subject to this Act and the regulations, a school council may form a sub-committee, consisting of at least one member of the council and any other persons, to assist the council.

2.3.15 School council may delegate powers, duties or functions

Subject to this Act and the regulations, a school council may by instrument delegate all or any of the powers, duties or functions conferred or imposed on the council by or under this Act, the regulations, a Ministerial Order or a direction issued by the Minister under this Act except this power of delegation to another person or body.

2.3.16 School council may form committees to manage joint facilities

If a school council enters into an agreement under its powers under this Act for the use of any real or personal property by other persons or bodies, the school council may agree with the other parties to the agreement to form a committee for the management of the property.

2.3.17 School council may delegate powers, duties or functions to members of committee

A school council that agrees to form a committee to manage property under section 2.3.16 may, with the approval of the Minister, delegate by instrument to members of the committee all or any of the council's powers, duties or functions conferred or imposed on the council by or under this Act in relation to that property except this power of delegation.

2.3.18 School council may sell property

- (1) A school council may sell equipment, goods or other similar personal property acquired for use in any school in relation to which it is constituted.
- (2) If the proceeds from the sale of property under subsection (1) are less than the amount determined by the Minister, the school council may keep those proceeds.
- (3) If the proceeds from the sale of property under subsection (1) are equal to or more than the amount determined by the Minister, the school council may keep those proceeds, if the person appointed by the Secretary has given approval to the school council to do so.

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- (4) For the purposes of subsections (2) and (3), a determination of the Minister—
 - (a) must be in writing; and
 - (b) may be varied or revoked by the Minister in writing.
 - (5) The Secretary may appoint a person to give approvals under subsection (3).
 - (6) An approval—
 - (a) must be in writing; and
 - (b) must be given before the property is sold.

Division 6—Preschool programs

2.3.19 Application of Division

- (1) A child who takes part in a preschool program conducted under this Division is not, for the purposes of this Act or any other Act relating to the care or education of preschool children, to be taken to be a student enrolled at a Government school.
- (2) The powers of a school council under this Division are in addition to and do not limit the powers of a school council under any other provision of this Act.

2.3.20 School councils may provide for preschool programs

- (1) The school council of a school that provides primary education and in relation to which the council is constituted may—
 - (a) provide preschool programs on the premises of that school or on any other land or premises under the control of the Minister; or

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- (b) enter into an agreement or arrangement with any other school council or other person or body for that council, person or body to use part of the premises of that school or other premises under the control of the Minister to provide a preschool program on those premises; or
 - (c) enter into an agreement or arrangement with any other school council or other person or body to jointly provide a preschool program.
- (2) A school council that provides a preschool program or enters into an arrangement or agreement to provide a preschool program must ensure that, in any records kept by the school or the school council, the preschool children using the program are accounted for separately from students enrolled at the school in school programs.

2.3.21 Council may grant lease or licence over preschool land

- (1) A council of any school in relation to which it is constituted may, if authorised in writing by the Minister, either generally or in any specified circumstances, grant a leasehold interest in, or a licence over, land of the school to be used to operate a preschool program or programs for children.
- (2) This section applies despite anything to the contrary in the **Crown Land (Reserves) Act 1978**.

2.3.22 Fees for preschool programs

A council of any school in relation to which it is constituted, or any other person or body authorised by the council under section 2.3.20, may require the payment of fees for the provision of preschool programs and other related services.

2.3.23 Application of, and accounting for, money received

A school council that provides or makes agreements or arrangements for the provision of preschool programs under this Division must ensure—

- (a) that any fees or other money received by the council in the course of that provision or those agreements or arrangements is applied to the provision of preschool programs unless directed otherwise by a direction or guideline issued by the Minister; and
- (b) that separate accounts and financial records are maintained in relation to the provision of those programs.

Division 7—Reporting and accountability requirements

2.3.24 School plan

- (1) A school council must, in accordance with any Ministerial Order, prepare a school plan that sets out the school's goals and targets for the next 4 years and the strategies for achieving those goals and targets.
- (2) A school plan prepared under subsection (1) must be signed by both the president of the school council and the principal and must be submitted to the Secretary for approval within the period specified in a Ministerial Order.
- (3) The Secretary may direct the school council to make specified variations to a school plan and to resubmit the plan to the Secretary.
- (4) The Secretary or his or her nominee must sign any school plan approved by the Secretary.

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- (5) A school plan comes into force immediately on being signed by the Secretary or his or her nominee and remains in force for a period of 4 years after that date or any other period that is specified in a Ministerial Order.

2.3.25 Status of school plan

A school plan—

- (a) does not create any contractual relationship between any persons; and
- (b) does not give rise to any rights or entitlements, or impose any duties, that are capable of being enforced in a legal proceeding.

2.3.26 Termination of school plan

The Secretary may, by notice served on a school council, terminate the operation of the whole or a specified part of a school plan prepared by that council with effect from a date specified in the notice that is not less than 14 days after the date of service of the notice on the council.

2.3.27 School council to prepare annual report

- (1) A school council must prepare a report (to be called an annual report) relating to—
- (a) financial activities including any matters required by a Ministerial Order as at a date fixed by Ministerial Order; and
 - (b) the school plan; and
 - (c) any other matters that are determined by the Minister.

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- (2) A council must ensure that—
- (a) the annual report is prepared by the date fixed by Ministerial Order; and
 - (b) the report is prepared in accordance with any Ministerial Order and any standards and guidelines issued by the Minister; and
 - (c) a copy of the annual report—
 - (i) is published and made available to the local community of the school or group of schools in relation to which the council is constituted; and
 - (ii) is given, upon request, to the Secretary or any other person.

2.3.28 Powers of Auditor-General regarding council accounts

The Auditor-General and any person assisting the Auditor-General has, in respect of the accounts kept by a school council in relation to money coming into the council's hands, all the powers conferred on the Auditor-General by any law in force now or in the future relating to the audit of the public accounts.

2.3.29 Use of funds by school council

A school council may use, for any purpose for any school in relation to which it is constituted, any funding provided to the school that is not provided for a specified purpose.

2.3.30 Annual reports

- (1) The Secretary must ensure that the financial statements of the Department prepared in accordance with section 45 of the **Financial Management Act 1994** include—
 - (a) a consolidation of the information provided by school councils in their annual report prepared under section 2.3.27; and
 - (b) any other information in respect of school councils required by the Minister responsible for administering the **Financial Management Act 1994**.
- (2) The Minister must ensure that the report of operations of the Department prepared in accordance with section 45 of the **Financial Management Act 1994** includes—
 - (a) a summary of the information provided by school councils in their annual report prepared under section 2.3.27; and
 - (b) any other information in respect of school councils required by the Minister responsible for administering the **Financial Management Act 1994**.

Division 8—General

2.3.31 Limitation on commencement of legal proceedings

A school council must not, without the written consent of the Minister, commence in any court or tribunal or before any person acting judicially (within the meaning of the **Evidence Act 1958**) a legal proceeding (including a proceeding for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief) against any of the following—

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- (a) the Crown in right of the State;
 - (b) the State;
 - (c) any Minister of the Crown in right of the State;
 - (d) any officer or employee of the Crown in right of the State in respect of any duties performed in his or her official capacity;
 - (e) an authority or public body within the meaning of the **Financial Management Act 1994**.

2.3.32 Indemnity for school council members

The Crown must indemnify a person who is or has been a member of a school council constituted under this Division or section 13 of the **Education Act 1958** as in force immediately before the commencement of this section against any liability in respect of any loss or damage suffered by the council or any other person in respect of anything necessarily or reasonably done or omitted to be done by the member or former member in good faith—

- (a) in the exercise of a power or the performance of a function of a member; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function of a member.
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PART 2.4—GOVERNMENT TEACHING SERVICE

Division 1—Preliminary

2.4.1 Definitions

In this Part—

classification includes the division, class, subdivision or grade in which an employee or work is placed and the title (if any) by which a position is designated;

employee means an on-going employee or a temporary employee in the teaching service;

executive means a person employed in the teaching service as an executive;

S. 2.4.1 def. of *executive* inserted by No. 70/2008 s. 4(1).

member of the Executive Class means a member of the teaching service who holds a position which has been classified to be a position in the Executive Class by the Secretary;

S. 2.4.1 def. of *member of the Executive Class* inserted by No. 70/2008 s. 4(1).

member of the Principal Class means a member of the teaching service who is an on-going employee who holds a position which has been classified to be a position in the Principal Class by the Secretary;

S. 2.4.1 def. of *member of the Principal Class* amended by No. 70/2008 s. 4(2).

Merit Protection Board means a Merit Protection Board established under Division 7;

on-going employee means a person who is employed in the teaching service with no date fixed for the termination of that employment;

registered, in relation to a person employed in the teaching service, means registered under Part 2.6 and includes permitted to teach under Part 2.6 but does not include a person who holds non-practising registration under that Part;

relevant criteria means the criteria specified by Ministerial Order;

teacher means a person employed in the teaching service for teaching in a Government school but does not include a teacher's aide or assistant teacher;

temporary employee means a person engaged in—

- (a) a casual position in the teaching service; or
- (b) a fixed term position with no entitlement to on-going employment at the end of the fixed term.

Division 2—Employment in teaching service

2.4.2 Application of Federal awards and agreements

Employment in the teaching service under this Part is subject to any relevant award or agreement under, or continued in force by, a law of the Commonwealth.

2.4.3 Employment of teachers, principals and other staff

- (1) For the purposes of this Act, there shall be employed by the Secretary on behalf of the Crown in the teaching service—
 - (a) teachers; and
 - (b) principals and assistant principals; and

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- (ba) executives to perform duties in or outside a school; and
- (c) persons engaged or employed as teacher aides, assistant teachers or to perform professional, administrative, clerical or computing or technical duties in schools; and
- (d) any person in any other category of staff declared by Ministerial Order to be staff in schools who may be employed by the Secretary; and
- (e) any other persons who are necessary for the purposes of this Act.
- (2) The Secretary, on behalf of the Crown, has all the rights, powers, authorities and duties of an employer in respect of employees in the teaching service.
- (3) Without limiting subsection (2), the Secretary may—
- (a) create, abolish or otherwise deal with any position in the teaching service;
- (b) employ as many persons as are required for the exercise of the functions of the teaching service;
- (c) employ those persons as on-going employees or temporary employees;
- (d) assign work to employees;
- (e) issue lawful instructions that must be observed by employees;
- (f) subject to section 2.4.3A, determine the remuneration (including an increase or reduction in remuneration) and other terms and conditions of employment of any individual employee;

S. 2.4.3(1)(ba)
inserted by
No. 70/2008
s. 5(1).

S. 2.4.3(3)(f)
amended by
No. 70/2008
s. 5(2).

s. 2.4.3A

- (g) pay allowances, bonuses or gratuities to employees;
- (h) transfer employees to other duties in the teaching service;
- (i) suspend employees from duty with pay;
- (j) terminate the employment of employees;
- (k) second employees to other bodies or take persons on secondment from other bodies;
- (l) authorise periods of leave of absence for employees or make payments to employees or their legal personal representative in lieu of leave;
- (m) do anything else authorised by this Part.

S. 2.4.3A
inserted by
No. 70/2008
s. 6.

2.4.3A Remuneration range for executives

- (1) The Minister, by Order, may fix a range of remuneration for executives, including a different range for each grade or class of executive.
- (2) The remuneration of an executive determined by the Secretary under section 2.4.3(3)(f) must fall within the range fixed by the Minister under this section for the grade or class of that executive.

2.4.4 Filling of vacant positions

- (1) If a position is vacant or is about to become vacant, the Secretary may—
 - (a) take steps to employ, transfer or promote a person to fill the vacancy under this Part; or
 - (b) assign for a specified period a qualified person to fill the vacancy.
- (2) In the selection of a person to fill a vacant position, the Secretary must have regard to any relevant criteria.

2.4.5 Public notices

- (1) The Secretary must not employ a person in an on-going position in the teaching service under this Part unless public notice of the vacancy in the position or proposed position has been published at least once.
- (2) Subsection (1) does not apply—
 - (a) to employment as an on-going employee without a position; or
 - (b) if public notice is not required by any relevant award or agreement under, or continued in force by, a law of the Commonwealth; or
 - (c) to assignments for specific periods; or
 - (d) to administrative transfers; or
 - (e) to transfers pending disciplinary action under this Act; or
 - (f) if, in the opinion of the Secretary, it is not in the public interest or efficient to publish a notice.

2.4.6 Secretary to consider recommendation of school council

- (1) In the case of a vacancy in the position of principal in a school, the Secretary must, in accordance with any Ministerial Order, take into account the recommendation of the school council of the school or, if there is no school council, the recommendation of a committee approved by the Minister as representing the local community, when deciding on a person to employ to fill the vacancy.

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- (2) In making a recommendation for the purposes of subsection (1), the school council or committee (as the case may be) must proceed in the manner determined by Ministerial Order.

2.4.7 Eligibility for employment

- (1) A person is not eligible for employment in any position of the teaching service unless the person satisfies the eligibility criteria set out in a Ministerial Order.
- (2) A person who has, at any time, in Victoria or elsewhere, been convicted or found guilty of a sexual offence is not eligible for employment in any position in the teaching service.
- (3) A person is not eligible for employment as a teacher in the teaching service unless the person is registered under Part 2.6.
- (4) A Ministerial Order may specify the qualifications or experience necessary for appointment to any position or class or grade of position.
- (5) A person who is not a member of the teaching service may apply to a Merit Protection Board for a review of the Secretary's decision if the Secretary has refused to employ the person in the teaching service on the grounds that he or she does not possess the qualifications or experience required by a Ministerial Order necessary for employment to an on-going position in the teaching service.

2.4.8 Employment to be on probation

- (1) A person may be employed in a position in the teaching service on probation in accordance with a Ministerial Order.

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- (2) A person employed in the teaching service on probation remains a probationer until his or her employment is confirmed or annulled in accordance with the Ministerial Order.
 - (3) The Secretary may annul the employment of a person at any time while he or she is a probationer.

2.4.9 Term of employment

- (1) A person may be employed as an employee in the teaching service in an on-going position or in a fixed term position for a specified term not exceeding 5 years.
- (2) An employee employed in a fixed term position ceases to be employed at the end of the term unless the person becomes an on-going employee without a position in accordance with section 2.4.42 or is employed in another position.

2.4.10 Reclassification of a position

- (1) If an on-going position in the teaching service is reclassified—
 - (a) the position becomes vacant; and
 - (b) the holder of the position immediately before the reclassification becomes an on-going employee without a position.
- (2) Subsection (1) does not apply if—
 - (a) the Minister certifies that there is no other position having the same classification and designation as the position to be reclassified; or
 - (b) the reclassification is certified by the Minister to be a result of a general reclassification of on-going positions of that class.

2.4.11 Progression of salary or wages

- (1) If a Ministerial Order makes provision for the progression of salary or wages for an employee the Secretary may grant to the employee the salary or wages progression.
- (2) An employee who feels aggrieved by the failure or refusal of the Secretary to grant a salary or wages progression may appeal as prescribed against that failure or refusal to a Merit Protection Board.
- (3) A Merit Protection Board may grant or refuse to grant the employee the salary or wages progression.

Division 3—The Principal Class

2.4.12 Definitions

- (1) In this Division—

approved means approved or authorised by or in accordance with a Ministerial Order either generally or in relation to any member of the Principal Class or class of member of the Principal Class;

contract of employment means a contract of employment under this Division between a member of the Principal Class and the Secretary;

employment benefit means—

- (a) contributions payable by the Crown to a superannuation scheme or fund established by or under an Act or approved for the purposes of this definition in respect of a member of the Principal Class including any liability of the Crown to make any such

contributions or to pay approved costs associated with that scheme or fund; or

- (b) the entitlement of a member of the Principal Class to approved leave with pay; or
- (c) any other approved benefit of a private nature provided to a member of the Principal Class at the cost of the Crown;

monetary remuneration includes allowances paid in money but does not include—

- (a) travelling or subsistence allowances; or
- (b) allowances in relation to relocation expenses; or
- (c) any other allowances in relation to expenses incurred in the discharge of the duties of a member of the Principal Class;

remuneration package means the remuneration package for a member of the Principal Class or a class of member of the Principal Class determined in accordance with a Ministerial Order.

- (2) In this Division, a reference to the remuneration package for a member of the Principal Class is a reference to—
 - (a) the amount set out in the contract of employment; or
 - (b) in any other case, the minimum amount within the range of remuneration packages.

2.4.13 Classification of positions in the Principal Class

There is established within the teaching service a Principal Class consisting of members of the teaching service who hold positions which have been declared by Ministerial Order to be positions in the Principal Class.

2.4.14 Contract of employment

- (1) Subject to this Act, the employment of a member of the Principal Class must be governed by a contract of employment between the member and the Secretary.
 - (2) The contract must be in writing and be signed by or on behalf of the Secretary and by the member.
 - (3) A contract of employment must specify the date on which it expires which must not be more than 5 years after the date on which it came into force.
 - (4) Subject to this Act, a member of the Principal Class—
 - (a) holds a position in the Principal Class while a contract of employment to which he or she is a party remains in force for that position; and
 - (b) continues to hold that position if a subsequent contract of employment is entered into for that office by him or her and the Secretary.
 - (5) A contract of employment may be varied at any time by a further contract between the parties.
 - (6) The term of the contract may not be increased beyond 5 years.
 - (7) A contract of employment may not vary or exclude a provision of the **Public Administration Act 2004** or this Part except sections 2.4.24 to 2.4.27.
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2.4.15 Matters regulated by a contract of employment

- (1) A contract of employment between a member of the Principal Class and the Secretary may contain provisions concerning some or all of the terms and conditions of employment including—
- (a) the duties of the member's position (including performance criteria for the purpose of reviews of the member's performance);
 - (b) accountability requirements, including specifying any person to whom the member is responsible in respect of specified matters;
 - (c) the monetary remuneration and employment benefits for the member (including the nomination of the amount of the remuneration package, if a range of amounts has been specified by Ministerial Order for the remuneration package);
 - (d) the date on which it expires;
 - (e) payment of any performance-related incentive allowance;
 - (f) hours of duty;
 - (g) transfer to any other on-going position in the teaching service including a position of a lesser class or grade if the member's contract of employment is terminated;
 - (h) termination of the contract upon notice by the member;
 - (i) the procedures to be followed to prevent or settle claims, disputes or grievances that arise during the currency of the contract.

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- (2) A contract of employment may provide for any matter to be determined—
- (a) by further agreement between the parties; or
 - (b) by further agreement between the member and some other person specified in the contract; or
 - (c) by the Minister or some other person or body specified in the contract.

2.4.16 Monetary remuneration and employment benefits

- (1) A member of the Principal Class is entitled to monetary remuneration at the rate and to the employment benefits of the kinds provided in his or her contract of employment.
- (2) The total amount of—
- (a) the annual rate of monetary remuneration; and
 - (b) the annual cost to the Crown of employment benefits—
- for a member of the Principal Class under his or her contract of employment must be equal to the amount of the remuneration package for that member.
- (3) The cost of an employment benefit is the approved amount or an amount calculated in the approved manner.
- (4) This section does not affect—
- (a) any performance related incentive payment made to a member of the Principal Class in accordance with his or her contract of employment; or

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- (b) any remuneration or benefits to which a member of the Principal Class is entitled by law in addition to those arising under the contract of employment.
 - (5) During any period when the monetary remuneration and employment benefits for a member of the Principal Class cannot be determined under subsection (1), the member is entitled to monetary remuneration at the rate of the amount of remuneration package for the member, subject to any subsequent adjustment of payments in accordance with the contract of employment of the member.
 - (6) If the remuneration package for a member of the Principal Class is varied, the member is entitled to monetary remuneration and employment benefits in accordance with the contract of employment of the member, pending any necessary variation of the contract and subsequent adjustment of payments in accordance with the contract as varied.

2.4.17 Travelling and subsistence allowances etc.

A member of the Principal Class is entitled to be paid—

- (a) any travelling or subsistence allowances; and
- (b) any allowances in relation to relocation expenses; and
- (c) any other allowances in relation to expenses incurred in the discharge of his or her duties—

in accordance with a Ministerial Order.

2.4.18 Performance review of a member of the Principal Class

- (1) The Secretary may review the performance of a member of the Principal Class.
- (2) The review must—
 - (a) be conducted in accordance with the principles (if any) determined under subsection (3); and
 - (b) have regard to any performance criteria contained in the member's contract of employment.
- (3) The Secretary may determine principles to govern the conduct of any review under this section.
- (4) The Secretary must ensure that any principles determined under subsection (3) are published.
- (5) Nothing in this section prevents an inquiry into a member's performance being conducted at any time if required for the purposes of Division 8 or 10.

2.4.19 Termination of a contract of employment

- (1) A contract of employment may be terminated—
 - (a) in accordance with the terms of the contract; or
 - (b) if the member's position is abolished or the member is dismissed or removed from the position or the member's employment is terminated or the member is reduced to a lower division, class, subdivision or grade or the member retires or resigns or has his or her services dispensed with in accordance with this Act or the **Public Administration Act 2004**; or
 - (c) if the member ceases to be a member of the teaching service; or
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- (d) in the absence of anything to the contrary in the contract, by either party to the contract giving 12 weeks notice of termination to the other party.
- (2) If a contract of employment of a member of the Principal Class expires or is terminated and the member does not enter into a further contract of employment, the member ceases to hold the position as a member of the Principal Class on the expiry or termination of the contract and becomes an on-going employee of the teaching service without a position unless the member is no longer a member of the teaching service or the Secretary makes a direction under subsection (4).
- (3) If a member becomes an on-going employee under subsection (2)—
- (a) the Secretary may direct the employee to carry out any of the duties of a position in the Principal Class or may transfer the employee to any other position in the teaching service (including a position with terms and conditions of employment less favourable to the employee) that the Secretary considers appropriate; or
- (b) if the employee's contract of employment makes provision about transfer to a position in the teaching service upon becoming an on-going employee without a position, the Secretary must act in accordance with that provision—
- and the terms and conditions of employment applicable to that position apply to the employee.
- (4) If the contract of employment of a member of the Principal Class is terminated or expires, the Secretary may direct the member to carry out any of the duties of a position in the Principal Class

S. 2.4.19(3)(a)
amended by
No. 70/2008
s. 7(a).

S. 2.4.19(3)(b)
amended by
No. 70/2008
s. 7(a).

S. 2.4.19(4)
amended by
No. 70/2008
s. 7(b).

without the member entering into a subsequent contract of employment for any period determined by the Secretary not exceeding 12 months.

- (5) If no contract has been entered into at the end of that period the member becomes an on-going employee without a position and subsection (3) applies to that member.
- (6) If a direction is given under subsection (4), the member is entitled to receive the remuneration package that applied to the member's former position for the period determined by the Secretary under subsection (4).
- (7) A person is not entitled to any compensation for termination of a contract of employment under subsection (1).
- (8) A person who becomes an on-going employee under subsection (2) or (4) is not entitled to any compensation for ceasing to hold a position as a member of the Principal Class.

2.4.20 Vacancy of Principal Class position

- (1) The position of a member of the Principal Class becomes vacant if—
 - (a) the employment to that position expires or is terminated or the member's contract of employment expires or is terminated, without a subsequent contract having been entered into for that position; or
 - (b) the member is removed from that position or is dismissed from the teaching service or has his or her services dispensed with under this Act or the **Public Administration Act 2004**; or
 - (c) the member retires or resigns in writing addressed to the Secretary.

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- (2) This section does not affect any other provision by or under which a member of the Principal Class vacates his or her position.

2.4.21 Contracts prevail in certain circumstances

If a member of the Principal Class enters into a contract of employment, the contract prevails to the extent of any inconsistency between—

- (a) the contract and sections 2.4.24 to 2.4.27;
- (b) the contract and any Ministerial Order except a Ministerial Order specifying remuneration packages.

2.4.22 Certain legal proceedings excluded

- (1) Proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief do not lie in respect of the employment of, or failure to employ, a person to a position in the Principal Class, the entitlement or non-entitlement of a person to be so employed or the validity or invalidity of any such employment.
- (2) This section does not prevent a person applying to a court for review of a decision relating to the employment of a member of the Principal Class other than in relation to a matter referred to in subsection (1).

2.4.23 Division 5 of Part 3 of Public Administration Act 2004 not to apply

Nothing in Division 5 of Part 3 of the **Public Administration Act 2004** applies to a position in the Principal Class declared under this Act or to a member of the Principal Class.

s. 2.4.23A

Pt 2.4 Div. 3A
(Heading and
ss 2.4.23A–
2.4.23I)
inserted by
No. 70/2008
s. 8.

Division 3A—The Executive Class

S. 2.4.23A
inserted by
No. 70/2008
s. 8.

2.4.23A Definitions

In this Division *contract of employment* means a contract of employment under this Division between a member of the Executive Class and the Secretary.

S. 2.4.23B
inserted by
No. 70/2008
s. 8.

2.4.23B Classification of positions in the Executive Class

There is established within the teaching service an Executive Class consisting of members of the teaching service who hold positions which have been declared by Ministerial Order to be positions in the Executive Class.

S. 2.4.23C
inserted by
No. 70/2008
s. 8.

2.4.23C Contract of employment

- (1) Subject to this Act, the employment of a member of the Executive Class must be governed by a contract of employment between the member and the Secretary.
- (2) The contract must be in writing and be signed by or on behalf of the Secretary and by the member.
- (3) A contract of employment must specify the date on which it expires which must not be more than 5 years after the date on which it came into force.
- (4) Subject to this Act, a member of the Executive Class—
 - (a) holds a position in the Executive Class while a contract of employment to which he or she is a party remains in force for that position; and

- (b) continues to hold that position if a subsequent contract of employment is entered into for that position by him or her and the Secretary.
- (5) A contract of employment may be varied at any time by a further contract between the parties.
- (6) The term of the contract may not be increased beyond 5 years.

2.4.23D Matters regulated by a contract of employment

S. 2.4.23D
inserted by
No. 70/2008
s. 8.

A contract of employment between a member of the Executive Class and the Secretary may contain provisions concerning some or all of the terms and conditions of employment.

2.4.23E Travelling and subsistence allowances etc.

S. 2.4.23E
inserted by
No. 70/2008
s. 8.

A member of the Executive Class is entitled to be paid—

- (a) any travelling or subsistence allowances; and
- (b) any allowances in relation to relocation expenses; and
- (c) any other allowances in relation to expenses incurred in the discharge of his or her duties—

in accordance with a Ministerial Order.

2.4.23F Termination of a contract of employment

S. 2.4.23F
inserted by
No. 70/2008
s. 8.

- (1) A contract of employment of a member of the Executive Class may be terminated—
- (a) in accordance with the terms of the contract;
or
- (b) if the member's position is abolished or the member is dismissed or removed from the position or the member's employment is terminated or the member is reduced to a lower division, class, subdivision or grade or

s. 2.4.23G

- the member retires or resigns or has his or her services dispensed with in accordance with this Act or the **Public Administration Act 2004**; or
- (c) if the member ceases to be a member of the teaching service; or
 - (d) in the absence of anything to the contrary in the contract, by either party to the contract giving 12 weeks notice of termination to the other party.
- (2) If a contract of employment of a member of the Executive Class expires or is terminated and the member does not enter into a further contract of employment, the member ceases to hold the position as a member of the Executive Class on the expiry or termination of the contract.
 - (3) If a member of the Executive Class is an on-going employee, the Secretary may direct the employee to carry out any of the duties of a position in the Executive Class or may transfer the employee to any other position in the teaching service (including a position with terms and conditions of employment less favourable to the employee) that the Secretary considers appropriate and the terms and conditions of employment applicable to that position apply to the employee.
 - (4) A person is not entitled to any compensation for termination of a contract of employment under subsection (1).

S. 2.4.23G
inserted by
No. 70/2008
s. 8.

2.4.23G Vacancy of Executive Class position

- (1) The position of a member of the Executive Class becomes vacant if—
 - (a) the employment to that position expires or is terminated or the member's contract of employment expires or is terminated,

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- without a subsequent contract having been entered into for that position; or
- (b) the member is removed from that position or is dismissed from the teaching service or has his or her services dispensed with under this Act or the **Public Administration Act 2004**; or
 - (c) the member retires or resigns in writing addressed to the Secretary.
- (2) This section does not affect any other provision by or under which a member of the Executive Class vacates his or her position.

2.4.23H Contracts prevail in certain circumstances

S. 2.4.23H
inserted by
No. 70/2008
s. 8.

If a member of the Executive Class enters into a contract of employment, the contract prevails to the extent of any inconsistency between—

- (a) the contract and sections 2.4.24 to 2.4.27;
- (b) the contract and any Ministerial Order except a Ministerial Order specifying remuneration packages.

2.4.23I Division 5 of Part 3 of Public Administration Act 2004 not to apply

S. 2.4.23I
inserted by
No. 70/2008
s. 8.

Nothing in Division 5 of Part 3 of the **Public Administration Act 2004** applies to a position in the Executive Class declared under this Act or to a member of the Executive Class.

Division 4—Leave and other entitlements

2.4.24 Leave of absence and pay in lieu

- (1) An employee is entitled in accordance with a Ministerial Order to leave of absence authorised by Ministerial Order.

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- (2) The legal personal representative of an employee who dies is entitled to be paid any salary, wages or other emolument in accordance with a Ministerial Order in respect of any period of leave the deceased employee had become entitled to before death.

2.4.25 Long service leave

- (1) An employee in the teaching service who has served for 10 years is entitled in accordance with a Ministerial Order to be granted 3 months' long service leave with pay in respect of that period of 10 years' service and one and a half months long service leave with pay in respect of each additional period of 5 years of completed service.
- (2) Despite subsection (1), a Ministerial Order may provide that an employee who has served for any period less than 10 years is entitled to be granted the long service leave with pay specified by the Ministerial Order in respect of that period of service.
- (3) If an employee in the teaching service is entitled to a period of long service leave with pay, the Secretary may, at the request of the employee, allow the employee to take the whole or any part of the long service leave at half pay for a period equal to twice the whole or part, as the case may be, of the period to which the employee is so entitled.
- (4) If—
- (a) on account of age or ill-health an employee resigns, retires or has their services terminated; or

(b) an employee dies—

that employee is in accordance with a Ministerial Order entitled, or (in the case of death) is deemed to have been entitled, to be granted by the Secretary—

- (c) if the period of service is not less than 4 years but less than 10 years, then in respect of the period of service;
- (d) if the period of service is more than 10 years, then (in addition to any entitlement under subsection (1)) in respect of any part of the period of service which does not give rise to any entitlement under subsection (1)—

an amount of long service leave with pay that equals one-fortieth of the period of service.

- (5) The Secretary has discretion as to the time of granting any leave under this section so that the teaching service will not be unduly affected by the granting of the leave to numbers of employees at or about the same time.
- (6) If on account of age or ill-health an employee retires or has their services terminated that employee may, by notice in writing to the Secretary, elect to take pay in lieu of the whole or any part of the leave to which he or she is then entitled and the Secretary must grant the employee pay instead of leave accordingly.
- (7) If an employee entitled to long service leave or to pay in lieu of long service leave dies before or while taking the leave or (as the case may be) before the pay in lieu is paid the Secretary must to the extent that pay instead of leave has not already been paid to that employee grant pay instead of leave of the whole or part of the leave not taken or (as the case may be) grant the pay instead of leave

to the legal personal representative of the deceased employee.

- (8) For the purposes of this section and section 2.4.26 any person holding Government office or an office in the service of a prescribed public statutory body which upon a recommendation of the Minister is certified by Order of the Governor in Council to be an office substantially similar to a position in the teaching service is deemed to be an on-going employee in the teaching service.
- (9) A person may be deemed to be an employee in the teaching service under subsection (8) despite that by virtue of any enactment (whether passed before or after this subsection becomes law) he or she, as the holder of a Government office or office in the service of a public statutory body (as the case may be), is not subject to this Act.
- (10) The nature of the service and the computation of the period of service which entitled employees to be granted long service leave and the method of computing pay under this section is to be as specified in a Ministerial Order and, without affecting the generality of the foregoing, a Ministerial Order may provide that any service—
- (a) in any Government office (whether an office in the Government of Victoria or of another State or of the Commonwealth); or
 - (b) with any specified authority, institution or similar body, whether in Victoria or elsewhere—

is, or is in certain circumstances, to be taken into account, entirely or to a certain extent in computing the period of service.

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- (11) In the computation of the period of long service leave or pay in lieu of leave to which an employee is entitled under this section there shall be taken into account any long service leave or pay instead of leave already granted to the employee.
- (12) For the purposes of this section, the services of an employee are deemed to be terminated—
- (a) on account of age, if on or after attaining the age of 55 years he or she ceases to be an employee;
 - (b) on account of ill-health, if he or she produces to the Secretary satisfactory evidence that ceasing to be an employee is due to ill-health that is likely to be permanent.

2.4.26 Payment instead of long service leave

- (1) Despite anything in section 2.4.25 if—
- (a) an on-going employee with service amounting to not less than 10 years resigns or is dismissed or has his or her services dispensed with; or
 - (b) a temporary employee with service amounting to not less than 10 years resigns or for any reason other than age or ill-health has his or her service terminated—

the Secretary, on the written application of the employee must, in lieu of long service leave with pay, grant the payment to the employee of a sum calculated by the Secretary in accordance with a Ministerial Order.

- (2) If a Ministerial Order does not provide for a calculation for the purposes of this section, the Secretary must pay a sum calculated by the Secretary which shall not in such a case exceed a sum representing pay for service equal to one-fortieth of the period of service.

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- (3) No payment under subsection (1) is to be made for any part of the period of service in respect of which long service leave with pay or pay in lieu of leave has been taken by the employee.

2.4.27 Work of a higher or lower class or grade

- (1) An employee must not be assigned to act in a position of a class or grade higher than that which he or she holds for a period longer than 3 months unless the Secretary has consented to the assignment for a longer period.
- (2) If an employee is assigned in accordance with subsection (1) for a period longer than 5 working days the Secretary must grant to the employee an appropriate allowance as determined in accordance with a Ministerial Order in respect of the assignment.
- (3) If an employee is performing work in a lower class or grade than that corresponding to the employee's classification the Secretary must transfer the employee as soon as practicable to some other position corresponding with his or her classification.

2.4.28 Gratuity

The Secretary may certify that an employee in the teaching service is entitled in accordance with a Ministerial Order to a gratuity in respect of definite special work performed by that employee.

2.4.29 Rent charged to employees

If an employee is allowed to use for the purpose of residence any building belonging to the State, the Secretary may deduct a fair and reasonable rent that is fixed by Ministerial Order from the salary or wages of the employee.

2.4.30 Restriction on employees doing other work

- (1) Except with the express permission of the Secretary, a full time employee must not—
 - (a) engage in any other paid employment; or
 - (b) carry on any business, profession or trade.
- (2) A part-time employee must not engage in any other paid employment or carry on any business, profession or trade that, in the opinion of the Secretary, conflicts with the proper performance of the employee's duties.
- (3) Permission given to an employee under this section may be withdrawn by notice in writing given to the employee by the Secretary.
- (4) Nothing in this section prevents an employee from—
 - (a) holding shares, or an interest in shares, in a company (within the meaning of the Corporations Act); or
 - (b) becoming a member of an incorporated association within the meaning of the **Associations Incorporation Act 1981**.

2.4.31 Saving of rights of persons holding Government office

- (1) Subsection (2) applies to a person who ceases to hold an office of a type specified by Ministerial Order if that person—
 - (a) was immediately before his or her employment to that office, an employee; and
 - (b) has continuously held an office of a type specified by Ministerial Order since the person ceased to be an employee.

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- (2) A person referred to in subsection (1) under the age of 65 years, is entitled to be re-employed by the Secretary to an on-going position in the teaching service with a classification and emoluments corresponding with or higher than those the person enjoyed in the position in the teaching service which he or she last held as if that service in the office or offices has been service in the teaching service.
 - (3) Nothing in this or any other Act regulating or restricting the employment of persons to positions in the teaching service applies to employment by the Secretary under this section.

2.4.32 Retirement through ill-health—long service leave

- (1) The Secretary may, on application under subsection (2), direct that, for the purposes of section 2.4.25, an on-going employee who ceases to be an on-going employee on account of ill-health shall be deemed to have retired on account of ill-health.
- (2) An on-going employee may apply for a direction under subsection (1) by producing to the Secretary satisfactory evidence that the on-going employee ceasing to be an on-going employee is due to ill-health which is likely to be permanent.

2.4.33 Retirement

An employee who has attained the age of 55 years is entitled to retire from the teaching service.

2.4.34 Absence from duty

- (1) An on-going employee who is absent from duty for a period of 3 months (including school holidays) otherwise than on leave granted under this or any other Act ceases to be an employee in the teaching service.

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- (2) If a person ceases to be an employee under subsection (1), he or she may at any time after ceasing to be an employee apply in writing to the Secretary to be reinstated.
 - (3) If the Secretary directs in writing that the person be reinstated, he or she is to be treated as not having ceased to be an employee.

2.4.35 Fines to be stopped from salary

The Secretary on receiving notice of any pecuniary penalty imposed under the authority of this Act must deduct the amount from the salary of the employee incurring the penalty or from any payment made by the Secretary on account of salary to the employee incurring the penalty.

2.4.36 No claim for compensation

An employee is not entitled to any compensation as a result of—

- (a) the termination of his or her employment; or
- (b) his or her salary being reduced—

in accordance with this Act or a Ministerial Order.

Division 5—Transfers between teaching service and public service

2.4.37 Transfer etc. from teaching service to public service

For the purposes of a transfer or promotion to employment within the public service, an employee in the teaching service is to be treated as being an employee in the public service having the designation corresponding to employment in the public service as the State Services Authority determines to be appropriate to his or her duties.

2.4.38 Transfer etc. from public service to teaching service

For the purposes of a transfer or promotion to a position within the teaching service an employee in the public service is to be treated as being an employee in the teaching service having the designation corresponding to that of the position in the teaching service that the Secretary determines to be appropriate to his or her duties.

2.4.39 Rights in the public service preserved

If an employee who immediately before his or her employment under this Act, was an employee in the public service, is employed in a position in the teaching service, the rights under the **Public Administration Act 2004** which the employee preserves or retains are by this section declared to be rights in respect of—

- (a) leave on the ground of illness; and
- (b) long service leave or pay in lieu of leave (including pay to dependants on the death of the employee)—

to which from time to time he or she would be entitled if he or she had remained an employee in the public service and had not been employed in the teaching service under this Act.

2.4.40 Rights under this Act preserved

If an employee who immediately before his or her employment in the public service was an employee in the teaching service, is employed in the public service, the rights under this Act which the employee preserves or retains are by this section declared to be rights in respect of—

- (a) leave on the ground of illness; and

(b) long service leave or pay in lieu of leave
(including pay to dependants on the death of
the employee)—

to which from time to time he or she would be
entitled if he or she had remained an employee of
the teaching service and had not been employed in
the public service.

**Division 6—Transfers and promotions within the teaching
service**

2.4.41 Transfer or promotion of an on-going employee

- (1) If an on-going employee is transferred or promoted to a position which is about to become vacant, the transfer or promotion does not take effect unless the position becomes vacant by the date specified in the notice of the transfer or provisional promotion.
- (2) If the Secretary selects an on-going employee for promotion to a vacant position the employee is entitled to decline the promotion if he or she satisfies the Secretary that there are special circumstances which make it reasonable for the employee to decline the promotion.
- (3) If the Secretary refuses an on-going employee permission to decline a promotion the employee may appeal to the Merit Protection Board.
- (4) A transfer or promotion under this Division is provisional and must be notified at least once and is subject to appeal or review as provided in this Division or Division 7 and does not have effect pending confirmation of the transfer or promotion.
- (5) The Secretary may cancel a provisional promotion at any time before it has been confirmed if the Secretary is of the opinion that—
 - (a) the position is redundant; or

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- (b) the vacancy was not notified at least once; or
 - (c) there is an employee without a position available to fill the vacancy.
- (6) Despite anything in this Act, the Secretary may at any time cancel a promotion or transfer if satisfied that the person promoted or transferred does not possess the qualifications necessary for the position.
 - (7) If the Secretary has cancelled a promotion or transfer under subsection (6) the person concerned may in accordance with the regulations appeal to a Merit Protection Board.
 - (8) The Merit Protection Board must hear and determine the appeal and may allow or dismiss the appeal.
 - (9) The Secretary must give effect to a determination of the Merit Protection Board.

2.4.42 Term of employment

- (1) A person may be employed on an on-going basis and an on-going employee may be transferred or promoted under this Part to a position for a specified term not exceeding 5 years.
- (2) A term of employment under this section may be renewed for successive terms not exceeding 5 years each.
- (3) At the end of the term of employment under this section, the employee becomes an employee without a position unless the employment is renewed under subsection (2) or the employee is employed in another position.

2.4.43 Employment of members of the Principal Class or the Executive Class

S. 2.4.43
substituted by
No. 70/2008
s. 9.

Employment by transfer or promotion to a position in the Principal Class or the Executive Class must be made under a contract of employment under Division 3 or Division 3A respectively.

Division 7—Appeals

2.4.44 Merit Protection Boards

- (1) There are established one or more Boards to be known as Merit Protection Boards.
- (2) The functions of the Boards are—
 - (a) to advise the Minister about principles of merit and equity to be applied in the teaching service;
 - (b) to hear reviews and appeals in relation to decisions made under this Act (except Division 10) or any other Act;
 - (c) to advise the Minister or the Secretary about any matter referred to them by the Minister or the Secretary relating to merit and equity in the teaching service;
 - (d) to hear reviews and appeals in relation to any decision prescribed by the regulations or Ministerial Order to be a decision in respect of which there is a right of review by or appeal to a Merit Protection Board;
 - (e) to hear reviews and appeals in relation to any decision of the Secretary if the Secretary has delegated his or her function or power to hear reviews and appeals to a Merit Protection Board.

S. 2.4.45(1)
amended by
No. 58/2007
s. 6.

2.4.45 Membership of Boards

- (1) A Merit Protection Board consists of 3 members appointed by the Governor in Council of whom—
 - (a) one shall be the chairperson nominated by the Minister;
 - (b) one shall be a person nominated by the Secretary;
 - (c) one shall be nominated by the Minister after calling for expressions of interest from teachers employed in Government schools.
- (2) The Governor in Council shall appoint one of the chairpersons to be the senior chairperson of the Merit Protection Boards.
- (3) An appointment as member is for the term, not exceeding 3 years, specified in the instrument of appointment but a member is eligible for re-appointment.
- (4) A member may resign from office by sending to the Governor a signed letter of resignation.
- (5) The Governor in Council may at any time remove a member of the Board from office.

2.4.46 Terms and conditions of appointment

- (1) A member is appointed subject to any terms and conditions that are specified in the instrument of appointment and that are not inconsistent with this Act.
- (2) A member is entitled to the remuneration and allowances (if any) fixed in respect of him or her from time to time by the Minister.

2.4.47 Acting appointments

- (1) The Minister may appoint a person to act in the place of a member who is absent or who is, for any other reason, unable to perform the duties of the office.
- (2) A person appointed under subsection (1)—
 - (a) has all the powers and may perform all the functions and duties of the member for whom he or she is acting;
 - (b) is entitled to the remuneration and allowances (if any) to which the member for whom he or she is acting would have been entitled for performing those duties;
 - (c) subject to this section, is subject to the same terms and conditions of appointment as the member for whom he or she is acting.

2.4.48 Allocation of work amongst the Boards

The senior chairperson is to determine—

- (a) the allocation of business to the Boards; and
- (b) which Board is to hear a review or appeal.

2.4.49 Oath of office

Before first serving as a member of a Merit Protection Board, a member must take an oath or make an affirmation to the effect that the member will discharge the duties of office according to law and to the best of the member's knowledge and ability.

2.4.50 Decisions of Board

- (1) A decision of the majority of members of a Merit Protection Board in relation to an appeal or review is to be treated as the decision of the Board.

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- (2) A Merit Protection Board must not refuse to hear an appellant or applicant except by a unanimous decision.

2.4.51 Reviews

S. 2.4.51(1)
amended by
No. 70/2008
s. 10.

- (1) An on-going employee who considers that in accordance with this Division or any Ministerial Order that he or she has a better claim to be transferred or promoted to a vacant position in the teaching service (other than a position of principal or executive) than the employee provisionally transferred or promoted to that position may, subject to and in accordance with the regulations, apply for a review of that provisional transfer or promotion.
- (2) Subject to any Ministerial Order, the only grounds of review are that the procedures followed by the person or body in making a recommendation to the Secretary in relation to whom to appoint to fill the vacant position were not in accordance with the procedures decided by the Minister.
- (3) A Merit Protection Board must review the provisional transfer or promotion and may—
- (a) if it is satisfied that the grounds for review have been established, make an order requiring the person or body which made the recommendation to the Secretary to reconsider the provisional transfer or promotion; or
 - (b) make an order that the provisional transfer or promotion may be confirmed.
- (4) If, after an order under subsection (3)(a) has been complied with, the Secretary makes the same decision as to whom to appoint to the vacant position, a Merit Protection Board must further review the provisional transfer or promotion and may—
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- (a) if it is satisfied that the same or similar grounds for review continue to apply in respect of the provisional transfer or promotion, make an order requiring that the vacant position be advertised again; or
 - (b) make an order that the provisional transfer or promotion may be confirmed.

2.4.52 Determination of Board

- (1) A Merit Protection Board must, subject to and in accordance with the regulations, inquire into and determine the claims of an applicant under section 2.4.51 or 2.4.54 and those of the employee provisionally transferred or promoted.
- (2) If a Merit Protection Board makes an order that a provisional transfer or promotion may be confirmed the Secretary must confirm the provisional transfer or promotion.
- (3) If no application for review is lodged within 14 days after the publication of the provisional appointment the Secretary must confirm the provisional transfer or promotion.
- (4) An employee is not entitled to apply for a review of any provisional transfer or promotion to a position if he or she is not qualified for the position.
- (5) An employee is not entitled to apply for a review in respect of any provisional transfer or promotion to a position if—
 - (a) in the case where notice of the vacancy was given, he or she did not apply to be transferred or promoted to the vacant position; or

- (b) he or she did not lodge a notice of application for review in the prescribed manner or within the time specified in subsection (3)—

unless a Merit Protection Board determines that the failure should be excused in respect of that employee.

2.4.53 Review of Secretary's decision not to appoint

- (1) If a Merit Protection Board receives an application under section 2.4.7(5), it must subject to and in accordance with the regulations inquire into and determine the claim of the applicant.
- (2) If the Board is satisfied that the grounds for review are established, it may make an order requiring the Secretary to reconsider the decision not to appoint the applicant.

2.4.54 Review of appointment of principal

- (1) An on-going employee who—
- (a) is eligible for appointment as a principal in a school; and
- (b) considers that in accordance with this section or any Ministerial Order he or she has a better claim to be transferred or promoted to a vacant position of principal in a school (other than as an executive) than the employee provisionally transferred or promoted to that position—

may subject to and in accordance with the regulations apply to a Merit Protection Board for a review of that provisional transfer or promotion.

- (2) Subject to any Ministerial Order, the only grounds for review of a provisional transfer or promotion are—

S. 2.4.54(1)(b)
amended by
No. 70/2008
s. 11.

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- (a) that the procedures followed by the school council or committee representing the local community (as the case may be) in making a recommendation in relation to whom to employ to fill the vacant position or the manner in which the Secretary took that recommendation into account were not in accordance with the procedures or manner in a Ministerial Order referred to in section 2.4.6; or
- (b) that the provisional transfer or promotion is manifestly inconsistent with the evidence of the nature of the vacant position or the school in which the vacancy occurs or of the qualifications and experience of the applicant and the employee provisionally transferred or promoted.
- (3) A Merit Protection Board must review the provisional transfer or promotion and may—
- (a) if it is satisfied that the grounds for review have been established, make an order requiring the Secretary and if applicable the school council or committee (as the case may be) to reconsider the provisional transfer or promotion; or
- (b) make an order that the provisional transfer or promotion may be confirmed.
- (4) If, after an order under subsection (3)(a) has been complied with, the Secretary makes the same decision as to whom to employ to the vacant position, a Merit Protection Board must further review the provisional transfer or promotion and may—

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- (a) if it is satisfied that the same or similar grounds for review continue to apply in respect of the provisional transfer or promotion, make an order requiring the vacant office to be advertised again; or
 - (b) make an order that the provisional transfer or promotion may be confirmed.

2.4.55 Relevant criteria

Subject to this Act and any Ministerial Order and regulations, in determining any appeal regard shall be had to relevant criteria in relation to the employees.

Division 8—Termination due to incapacity

2.4.56 Termination due to physical or mental incapacity

- (1) If the Secretary is satisfied, on an inquiry under this section, that an employee is incapable of performing his or her duties on account of physical or mental incapacity, the Secretary may terminate the employment of the employee.
- (2) For the purposes of section 2.4.25, an employee whose employment is terminated under subsection (1) is deemed to have retired on account of ill-health.
- (3) The Secretary must establish procedures for the investigation and determination of an inquiry under this section.
- (4) The Secretary may—
 - (a) nominate a person; or
 - (b) constitute a Board of Review—to investigate and report to the Secretary in connection with an inquiry under this section.

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- (5) If it is alleged that an employee is incapable of performing his or her duties by reason of physical or mental incapacity, the Secretary or a person nominated under subsection (4)(a) or a Board of Review constituted under subsection (4)(b) must give to the employee—
- (a) notice in writing of the matters to be considered by the Secretary; and
 - (b) an opportunity to provide to the Secretary, nominated person or Board of Review, as the case may be, a response in writing to those matters.
- (6) The Secretary must give to an employee who is the subject of an inquiry under this section notice in writing that the employee may make a submission in writing to the Secretary addressing one or more of the following matters—
- (a) the grounds on which the employee is alleged to be incapable of performing his or her duties on account of physical or mental incapacity;
 - (b) whether termination of employment should occur.
- (7) A submission under subsection (6) must be received by the Secretary not later than 14 days after the date on which the officer or employee is given notice in writing of the right to make a submission or any longer period permitted by the Secretary.
- (8) The Secretary must consider any submission made in accordance with this section before determining the issue to which the submission, or that part of the submission, relates.
- (9) The Secretary may make a determination under this section without holding an oral hearing.
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- (10) The Secretary may hold an oral hearing or take the evidence orally, or permit cross-examination, of all or any witnesses if the Secretary considers it appropriate to do so, having regard to—
- (a) the seriousness of the allegation against the employee;
 - (b) any reasons submitted by the employee in support of a request for an oral hearing;
 - (c) whether the Secretary considers that an oral hearing would assist in evaluating the information submitted on the inquiry;
 - (d) any other matter that the Secretary considers relevant.
- (11) The Secretary must, by notice in writing, advise the employee of—
- (a) the determination of the Secretary on the inquiry; and
 - (b) if the Secretary takes action under subsection (1), the right to appeal to a Merit Protection Board.

2.4.57 Appeal to Merit Protection Board

- (1) If the Secretary makes a determination under section 2.4.56(1) that an employee is incapable of performing his or her duties on account of physical or mental incapacity, the employee may appeal to a Merit Protection Board against the determination.
- (2) A notice of appeal must be lodged with the senior chairperson of the Merit Protection Boards within 14 days after the date on which the employee is given notice in writing of the determination of the Secretary.

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- (3) A notice of appeal must—
 - (a) be in writing; and
 - (b) be in the prescribed form.
 - (4) A Merit Protection Board may permit an appeal to be instituted out of time if it considers that special circumstances exist.
 - (5) The Merit Protection Board must hear and determine the appeal and may—
 - (a) allow the appeal and order that the employee be re-instated in the teaching service; or
 - (b) dismiss the appeal.
 - (6) An employee who is re-instated in the teaching service must be treated as having had continuous service in the teaching service.
 - (7) Any period during which the employee was not performing the duties of his or her office due to having his or her employment terminated must be treated as leave without pay.

Division 9—Dismissal and suspension

2.4.58 Dismissal of disqualified and unregistered teachers

If an employee has, at any time, in Victoria or elsewhere, been convicted or found guilty of a sexual offence the Secretary must dismiss the employee from the teaching service.

2.4.59 Suspension and dismissal of unregistered teachers

- (1) This section only applies to employees in the teaching service who are required to be registered as a teacher under Part 2.6.
- (2) If an employee in the teaching service is refused registration under Part 2.6 or has had his or her registration suspended or cancelled under that Part, the Secretary may suspend the employee

without pay from duty in the teaching service for the period that the employee's registration is refused, suspended or cancelled.

- (3) A suspension under subsection (2) continues at the Secretary's discretion until—
 - (a) the employee is registered under Part 2.6; or
 - (b) the employee is dismissed or removed from the teaching service.
- (4) Without limiting the Secretary's powers under Division 2, the Secretary may dismiss or terminate the employment of a temporary employee if the person has been refused registration under Part 2.6 or has had his or her registration suspended or cancelled under that Part.
- (5) If an employee—
 - (a) is refused registration under Part 2.6 or has had his or her registration under that Part suspended or cancelled; and
 - (b) remains unregistered for a continuous period of 12 months—the employment of that person ceases, by virtue of this subsection, at the end of that period of 12 months.
- (6) For the purposes of subsection (5)(b), any period during which a person remains unregistered does not include any period during which the person is on leave approved by the Secretary.
- (7) The Secretary must notify in writing a person whose employment has ceased under subsection (5).

Division 9A—Unsatisfactory performance

Pt 2.4 Div. 9A
(Heading and
ss 2.4.59A–
2.4.59H)
inserted by
No. 70/2008
s. 12.

2.4.59A Definitions

S. 2.4.59A
inserted by
No. 70/2008
s. 12.

In this Division—

determination means a determination under section 2.4.59F;

procedures means the procedures established by the Secretary under section 2.4.59B;

report means a report prepared under the procedures;

unsatisfactory performance, in relation to an employee, means the repeated failure of the employee to discharge his or her duties in the manner expected of the employee at his or her level in his or her position as evidenced by one or more of the following—

- (a) the negligent, inefficient or incompetent discharge by the employee of his or her duties;
- (b) the failure by the employee—
 - (i) to exercise care and diligence in performing his or her duties; or
 - (ii) to perform any of his or her duties;
- (c) the employee engaging in unsatisfactory conduct that impacts on the discharge of his or her duties including, without reasonable excuse—

s. 2.4.59B

- (i) contravening or failing to comply with a lawful direction given to the employee by a person with authority to give the direction; or
- (ii) being absent from his or her duties without permission.

S. 2.4.59B
inserted by
No. 70/2008
s. 12.

2.4.59B Secretary to establish procedures for the purposes of this Division

- (1) The Secretary must establish procedures for—
 - (a) the improvement and management of alleged unsatisfactory performance by employees; and
 - (b) making determinations in respect of the unsatisfactory performance of employees and other related decisions under this Division.
- (2) The procedures must provide that a report may be prepared on any alleged unsatisfactory performance of an employee and for the report to be submitted to the Secretary for consideration under this Division.
- (3) The procedures established by the Secretary must comply with the principles of natural justice and must include or provide for—
 - (a) the right of an employee to be informed of the nature of any alleged unsatisfactory performance in a report; and
 - (b) the right of an employee to be heard in respect of his or her alleged unsatisfactory performance; and
 - (c) the right of an employee to be treated fairly; and
 - (d) fairness and good faith in decision making.

2.4.59C Defects in procedures will not invalidate determinations

S. 2.4.59C
inserted by
No. 70/2008
s. 12.

An inadvertent failure to comply with the procedures does not of itself affect any determination or action of the Secretary under this Division, unless that failure has resulted in an unfair or unjust determination.

2.4.59D Secretary's options on receiving a report

S. 2.4.59D
inserted by
No. 70/2008
s. 12.

- (1) The Secretary must consider any report received under the procedures and may make any of the following decisions—
 - (a) to defer a determination in respect of the employee until the Secretary receives a further report in relation to the employee;
 - (b) to make a determination in respect of the employee;
 - (c) to investigate any or all of the matters in the report under Division 10;
 - (d) to proceed no further with any of the matters in the report.
- (2) If the Secretary decides to investigate any or all of the matters in a report under Division 10, the Secretary must not proceed further under this Division in relation to any of those matters investigated under Division 10.

2.4.59E Notice to employee relating to determination

S. 2.4.59E
inserted by
No. 70/2008
s. 12.

- (1) Before making a determination the Secretary must give a notice to the employee in writing—
 - (a) advising the employee of the allegation of unsatisfactory performance; and
 - (b) advising the employee of the actions that may be taken by the Secretary under this Division; and

s. 2.4.59F

- (c) advising the employee that he or she may make a submission in writing addressing the matters in the report and the actions that may be taken by the Secretary; and
 - (d) which is accompanied by a copy of the report and any further report.
- (2) A submission by an employee relating to a report must be received by the Secretary no later than 14 days after the employee is given notice under this section or any longer period permitted by the Secretary.

S. 2.4.59F
inserted by
No. 70/2008
s. 12.

2.4.59F Determination of Secretary

- (1) After giving notice under section 2.4.59E, the Secretary may make a determination as to whether or not there has been unsatisfactory performance by an employee.
- (2) In making a determination, the Secretary must—
 - (a) take into account any report or further report received under section 2.4.59D; and
 - (b) take into account any submission by the employee made in accordance with section 2.4.59E; and
 - (c) comply with the procedures.
- (3) If the Secretary determines that there has been unsatisfactory performance by an employee, the Secretary may take any of the following actions against the employee—
 - (a) a reprimand;
 - (b) a reduction in the employee's classification;
 - (c) termination of the employee's employment.

2.4.59G Notice of determination

The Secretary must give notice in writing to an employee—

- (a) advising the employee of a determination made in respect of that employee including any action that the Secretary has taken against the employee; and
- (b) if the Secretary has taken any such action against the employee, advising the employee of his or her right of appeal to a Disciplinary Appeals Board.

S. 2.4.59G
inserted by
No. 70/2008
s. 12.

2.4.59H Conduct dealt with under this Division cannot form basis for Division 10 action

- (1) Any conduct of an employee dealt with by a determination must not form a ground for any action that may be taken by the Secretary under Division 10.
- (2) Nothing in this section prevents the Secretary from taking an action under Division 10 based on conduct that is related or connected to the conduct dealt with by a determination, but which was not expressly stated or referred to in the report specifying the conduct dealt with under the determination.

S. 2.4.59H
inserted by
No. 70/2008
s. 12.

Division 10—Misconduct

Pt 2.4 Div. 10
(Heading)
amended by
No. 70/2008
s. 13.

2.4.60 Grounds for action

- (1) The Secretary, after investigation, may take action under this Part against an employee who—
 - (a) conducts himself or herself in a disgraceful, improper or unbecoming manner in an official capacity or otherwise; or

s. 2.4.61

S. 2.4.60(1)(d)
amended by
No. 70/2008
s. 14.

- (b) commits an act of misconduct; or
 - (c) during his or her period of service is convicted or found guilty of a criminal offence punishable by imprisonment or a fine; or
 - (d) is negligent or incompetent in the discharge of his or her duties; or
 - (e) contravenes a provision of this Act or a Ministerial Order made for the purposes of this Chapter; or
 - (f) contravenes a requirement by or under any Act that corporal punishment not be administered to any Government school student; or
 - (g) without reasonable excuse, contravenes or fails to comply with a lawful direction given to the employee by a person with authority to give the direction; or
 - (h) without permission and without reasonable excuse, is absent from his or her duties; or
 - (i) is unfit on account of character or conduct to discharge his or her duties.
- (2) In considering the fitness of an employee to discharge his or her duties, consideration may be given to any relevant matters including his or her character and any conduct in which he or she has engaged (whether before or after becoming an employee).

2.4.61 Action against employee

- (1) If the Secretary is satisfied on an inquiry under this Part that there are one or more grounds under this Division for taking action against an employee, the Secretary may take one or more of the following actions against the employee—

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- (a) a reprimand;
 - (b) a fine not exceeding 50 penalty units;
 - (c) a reduction in classification;
 - (d) termination of employment.
- (2) The Secretary, by notice in writing, must advise the employee of—
- (a) the determination of the Secretary on the inquiry; and
 - (b) if the Secretary takes action under subsection (1), the right to appeal to a Disciplinary Appeals Board.

2.4.62 Procedures for investigation and determination of allegations

The Secretary must establish procedures for the investigation and determination of an inquiry under this Division.

2.4.63 Quashing etc. of conviction or finding of guilt

If the Secretary takes action against an employee on the ground referred to in section 2.4.60(1)(c) and the conviction or finding of guilt is subsequently quashed or the employee receives a pardon or the conviction or finding is otherwise nullified—

- (a) the action taken by the Secretary must be set aside; and
- (b) the employee must be re-instated in the teaching service at the same classification as the employee held before the Secretary took action; and
- (c) the employee must be treated as having had continuous service in the teaching service; and

- (d) any period during which the employee was not performing the duties of his or her position due to having been dismissed must be treated as leave without pay.

2.4.64 Suspension from duty

- (1) If—
- (a) the Secretary reasonably believes that there may be grounds under this Division for taking action against an employee; or
 - (b) an employee is charged with a criminal offence punishable by imprisonment or a fine—

the Secretary may suspend the employee from duty, with or without pay, by giving notice in writing to the employee.

- (2) A suspension under subsection (1) continues, at the discretion of the Secretary, until the Secretary has made a determination whether or not to take action under this Division against the employee.
- (3) If the Secretary takes action against an employee who then appeals to a Disciplinary Appeals Board or a court or tribunal, the Secretary may suspend the employee from duty, with or without pay, until the final determination of the appeal.
- (4) Before deciding whether to suspend an employee from duty without pay, the Secretary must give the employee an opportunity to make a submission in writing to the Secretary addressing whether suspension without pay should occur.
- (5) An employee who is suspended from duty without pay may engage in other employment if the employee first seeks the permission of the Secretary to do so.

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- (6) If an employee is suspended from duty under this Part and the employment of the employee is subsequently terminated, then unless the Secretary determines otherwise, the employee forfeits all salary or wages except any salary or wages due in respect of a period before the suspension.
 - (7) If grounds for action against an employee are not established, whether on appeal or otherwise, the Secretary must—
 - (a) immediately remove any suspension imposed in respect of those grounds; and
 - (b) ensure that the employee is paid any salary or wages due in respect of the period of suspension, together with any allowances that the Secretary thinks fit.
 - (8) The Secretary must not pay any allowances under subsection (7)(b) unless the employee has applied to the Secretary for the payment of those allowances.

2.4.65 Investigation

- (1) The Secretary may nominate a person to investigate and report to the Secretary in connection with an inquiry under this Division.
- (2) The Secretary or nominated investigator must give to an employee against whom it is alleged there are grounds under this Division for action—
 - (a) notice in writing of the alleged grounds; and
 - (b) written particulars of the alleged grounds; and
 - (c) an opportunity to provide to the Secretary or investigator, as the case may be, a response in writing to the alleged grounds.

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- (3) The Secretary may request the nominated investigator to conduct further investigation and provide a further report to the Secretary at any time during an inquiry under this Division.

2.4.66 Employee may make submissions

- (1) The Secretary must give to an employee against whom it is alleged there are grounds for action notice in writing that the employee may make a submission in writing to the Secretary addressing one or more of the following matters—
- (a) the alleged grounds;
 - (b) any action that may be taken by the Secretary under this Division.
- (2) A submission under subsection (1) must be received by the Secretary not later than 14 days after the date on which the employee is given notice in writing of the right to make a submission or any longer period permitted by the Secretary.
- (3) The Secretary must consider any submission made in accordance with this section before determining the issue to which the submission, or that part of the submission, relates.

2.4.67 Secretary need not hold oral hearing

- (1) The Secretary may determine, without holding an oral hearing—
- (a) whether there are grounds under this Division for taking action in respect of an employee; and
 - (b) if the Secretary decides that there are grounds for taking action, the action, if any, under this Division to be taken against the employee.

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- (2) The Secretary may hold an oral hearing or take the evidence orally, or permit cross-examination, of all or any witnesses if the Secretary considers it appropriate, having regard to—
- (a) the seriousness of the allegation against the employee;
 - (b) any reasons submitted by the employee in support of a request for an oral hearing;
 - (c) whether the Secretary considers that an oral hearing would assist in evaluating the information in support of the allegations;
 - (d) any other matter that the Secretary considers relevant.

Division 10A—Appeals against determinations under Divisions 9A and 10

Pt 2.4 Div. 10A
(Heading)
inserted by
No. 70/2008
s. 15.

2.4.68 Appeal

- (1) An employee may appeal to a Disciplinary Appeals Board against a determination of the Secretary to take action against the employee under Division 9A or 10.
- (2) A notice of appeal must be lodged with the senior chairperson of the Disciplinary Appeals Boards within 14 days after the date on which the employee is given notice in writing of the determination of the Secretary.
- (3) A notice of appeal must—
 - (a) be in writing; and
 - (b) be in the prescribed form.

S. 2.4.68(1)
amended by
No. 70/2008
s. 16.

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- (4) A Disciplinary Appeals Board may permit an appeal to be instituted out of time if it considers that special circumstances exist.
 - (5) An appeal must be conducted as a re-hearing.
 - (6) A Disciplinary Appeals Board must hear and determine the appeal and may—
 - (a) allow the appeal in whole or in part and vary the decision of the Secretary; or
 - (b) dismiss the appeal.

S. 2.4.69
substituted by
No. 70/2008
s. 17.

2.4.69 Reinstatement and payments after allowance of appeal against termination

- (1) If an appeal is allowed in respect of an employee whose employment in the teaching service has been terminated, the Disciplinary Appeals Board may—
 - (a) order that the employee be re-instated in the teaching service; and
 - (b) order that an employee who is re-instated under this section be paid an amount that the Board considers appropriate in the circumstances to compensate for any loss of salary as a result of the termination; and
 - (c) in the case of an employee who is not re-instated in the teaching service, order that the employee be paid an amount not exceeding the greater of—
 - (i) the remuneration received by the employee during the period of 6 months immediately before the termination; or
 - (ii) the remuneration to which the employee was entitled for the period of 6 months immediately before the termination.

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- (2) In deciding an amount that is appropriate under subsection (1)(b), the Board may have regard to any relevant circumstances including whether the employee had obtained other employment before being re-instated.
 - (3) An amount paid under subsection (1)(b) must not exceed the amount of remuneration that the employee would have been entitled to receive if he or she had not been terminated.
 - (4) An employee who is re-instated in the teaching service must be treated as having had continuous service in the teaching service.
 - (5) In the case of an employee who is re-instated in the teaching service, any period during which the employee was not performing the duties of his or her position due to having his or her employment terminated must be treated as leave without pay unless an order is made under subsection (1)(b) to compensate for the loss of salary during that period.

2.4.70 Address for service

If the current address of an employee is unknown, the Secretary must ensure that all notices, orders or communications relating to procedures under this Division are sent to the last known address of the employee.

Division 11—Disciplinary Appeals Boards

2.4.71 Senior chairperson

In this Division—

senior chairperson means the senior chairperson of the Merit Protection Boards.

2.4.72 Establishment of Disciplinary Appeals Boards

- (1) There are established one or more Boards to be known as Disciplinary Appeals Boards.
- (2) The function of the Boards is to hear and determine appeals in relation to decisions of the Secretary made under section 2.4.61.

2.4.73 Membership of Boards

- (1) A Disciplinary Appeals Board consists of 3 members of whom—
 - (a) one shall be the chairperson and shall be selected by the senior chairperson from the pool of persons referred to in subsection (2)(a); and
 - (b) one shall be selected by the senior chairperson from the pool of persons referred to in subsection (2)(b); and
 - (c) one shall be selected by the senior chairperson from the pool of persons referred to in subsection (2)(c).
 - (2) The Governor in Council may appoint to a pool—
 - (a) persons who have been admitted to legal practice in Victoria for not less than 5 years and have been nominated by the Secretary;
 - (b) persons who are on-going employees in the teaching service and have been nominated by the Minister after calling for expressions of interest;
 - (c) persons who have knowledge of or experience in education, education administration or public sector administration and have been nominated by the Secretary.
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2.4.74 Terms and conditions of appointment of members

- (1) A member of a pool referred to in section 2.4.73 holds office for the period, not exceeding 5 years, specified in his or her instrument of appointment and is eligible for re-appointment.
- (2) A member of a Disciplinary Appeals Board, other than a public servant or an employee is entitled to the remuneration and allowances (if any) fixed in respect of the member from time to time by the Minister.
- (3) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member of a pool or a member of a Disciplinary Appeals Board in respect of the office of member.

S. 2.4.74(3)
substituted by
No. 80/2006
s. 26(Sch.
item 30.1).

2.4.75 Resignation and removal from office

- (1) A member of a pool referred to in section 2.4.73 may resign from office by sending to the Governor a signed letter of resignation.
- (2) The Governor in Council may at any time remove a member of a pool from office.

2.4.76 Allocation of work

The senior chairperson is to determine—

- (a) the allocation of business to the Disciplinary Appeals Boards; and
- (b) which Board is to hear an appeal.

2.4.77 Oath of office

Before first serving as a member of a Disciplinary Appeals Board, a member must take an oath or make an affirmation to the effect that the member will discharge the duties of office according to law and to the best of the member's knowledge and ability.

2.4.78 Member unable to perform duties

- (1) If—
- (a) the hearing of an appeal before a Disciplinary Appeals Board has commenced but not concluded; and
 - (b) a member of the Board is absent or for any other reason is unable to perform the duties of office—

the remaining members of the Board may continue to hear and determine the appeal in the absence of that member.

- (2) The decision of the remaining members in relation to the appeal must be unanimous.

2.4.79 Decisions of Board

- (1) A decision of the majority of members of a Disciplinary Appeals Board in relation to an appeal is to be treated as the decision of the Board.
- (2) A Disciplinary Appeals Board must not refuse to hear an appellant except by a unanimous decision.

2.4.80 Conduct of proceedings

- (1) A Disciplinary Appeals Board may allow an employee to appear before the Board personally or by a legal or other representative.
- (2) All proceedings before a Disciplinary Appeals Board—
- (a) must be conducted without regard to legal formalities; and
 - (b) must be directed by the best evidence available, whether or not it is the best evidence that the law in other cases admits, requires or demands.

Division 12—General

2.4.81 Medical examination

- (1) For the purpose of ascertaining the fitness of an employee—
 - (a) to perform his or her duties; or
 - (b) to participate in any procedures under this Act relating to the employee—

the Secretary may direct the employee to submit to a medical examination by a qualified medical practitioner nominated by the Secretary.

- (2) An employee must comply with a direction made under subsection (1).

2.4.82 Immunity

- (1) A member of a Merit Protection Board or a Disciplinary Appeals Board is not personally liable for anything done or omitted to be done in good faith—
 - (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 subsection (1), attach to a member of the Board, attaches instead to the Crown.

2.4.83 Publication requirements

If there is a requirement under this Part to advertise or publish a notice or other matter, that requirement is to be construed, in the absence of a contrary intention, as a requirement to advertise or publish the notice or other matter generally

s. 2.4.83

throughout Government schools and offices of the
Department in Victoria.

**PART 2.5—VICTORIAN CURRICULUM AND ASSESSMENT
AUTHORITY**

Division 1—Preliminary

2.5.1 Definitions

In this Part—

Authority means the Victorian Curriculum and Assessment Authority continued in operation by this Part;

chairperson means chairperson of the Authority;

contravention, in relation to a rule, includes a failure to comply with the rule;

course means—

- (a) a course normally undertaken in, or designed to be undertaken in a school in the years from the preparatory year to year 12 including a course leading to the issue of the VCE or VCAL; or
- (b) a program of study or training leading to the award or issue of a particular qualification; or
- (c) a subject or other part of a program of study or training leading to the award or issue of a particular qualification; or
- (d) any other study or training notified by the Minister in the Government Gazette and generally through schools to be a course for the purposes of this Act;

curriculum means the course design including content, support materials and other learning resources in accordance with course accreditation;

member means member of the Authority and includes the chairperson;

qualification means the recognition, by the award or issue of a certificate or otherwise, that a student has achieved specified learning outcomes or competencies through the completion of a course;

review committee means a committee referred to in Division 3.

Division 2—Victorian Curriculum and Assessment Authority

2.5.2 Establishment of Authority

- (1) The Victorian Curriculum and Assessment Authority established under the **Victorian Curriculum and Assessment Authority Act 2000** continues in operation under and subject to this Act.
- (2) The Authority—
 - (a) is a body corporate with perpetual succession;
 - (b) has a common 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 common seal must be kept as directed by the Authority and must only be used as authorised by the Authority.

- (4) All courts must take judicial notice of the imprint of the common seal on a document and, until the contrary is proved, must presume that the document was properly sealed.

2.5.3 Functions of Authority

- (1) The Authority is responsible for—
- (a) developing high quality courses and curriculum and assessment products and services;
 - (b) carrying out functions as a body registered under Chapter 4;
 - (c) providing linkages that will facilitate movement between those courses and other courses.
- (2) The functions of the Authority are to—
- (a) develop policies, criteria and standards for curriculum, assessments and courses for school students, including courses leading to registered qualifications;
 - (ab) develop policies, criteria and standards for learning, development and assessments, which relate to early childhood;
 - (b) develop, evaluate and approve—
 - (i) courses normally undertaken in, or designed to be undertaken in the school years 11 and 12 which are accredited by the Victorian Registration and Qualifications Authority under Chapter 4 or which could be accredited under that Chapter and assessment procedures for those courses; and
 - (ii) courses for students at other school years;

S. 2.5.3(2)(ab)
inserted by
No. 19/2008
s. 5(1).

s. 2.5.3

- (c) oversee the delivery of, and conduct assessments for, the VCE, VCAL and any other qualification available to a student in a school except a qualification in vocational education and training, further education or higher education that is a registered qualification;
- (d) conduct assessments of students in years 11 and 12 undertaking accredited courses;
- (e) arrange with schools and other persons, bodies or agencies providing accredited courses to conduct, on behalf of the Authority, school-based assessments of students in those courses;
- (f) approve the establishment of examination centres for the conduct of examinations in accredited courses and to withdraw approval of examination centres;
- (g) set rules for the conduct of assessments, including examinations, referred to in paragraphs (d) and (e);
- (h) develop and maintain standards for measuring and reporting on student performance;
- (i) conduct assessments against those standards for measuring and reporting on student performance;
- (ia) conduct assessments against national standards for measuring and reporting on student performance;
- (ib) develop and maintain standards for measuring and reporting on early childhood learning and development;

S. 2.5.3(2)(ia)
inserted by
No. 19/2008
s. 5(2).

S. 2.5.3(2)(ib)
inserted by
No. 19/2008
s. 5(2).

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- (ic) arrange for other persons, bodies or agencies to conduct assessments against the standards for measuring and reporting on early childhood learning and development;
 - (j) do any of the following by arrangement with other persons, bodies or agencies—
 - (i) design, develop and evaluate a curriculum or course (whether leading to a registered qualification or not) and an assessment or assessment method for the course or any other course (whether leading to a registered qualification or not);
 - (ii) oversee the delivery of the course and conduct assessments of students undertaking the course;
 - (iii) design, develop and evaluate curriculum and assessment products and services;
 - (k) conduct investigations and hearings in accordance with Division 3 and, if necessary, amend or cancel assessments in accordance with that Division;
 - (l) monitor—
 - (i) patterns of participation by school students in courses; and
 - (ii) the quality of outcomes of courses for school students;
 - (m) advise the Victorian Registration and Qualifications Authority about patterns of participation and quality of outcomes referred to in paragraph (l) relating to courses in schools normally undertaken in years 11 to 12 including VET in Schools

S. 2.5.3(2)(ic)
inserted by
No. 19/2008
s. 5(2).

s. 2.5.3

courses and the qualifications relating to those courses;

- (n) give advice or make recommendations to the Minister about any educational policy or strategy relating to its objective or functions;
- (o) prepare and maintain records of student assessment and, on request, provide a copy of a student's record to the student or a person authorised by the student to receive it;
- (p) make available to the general public information collected by the Authority on—
 - (i) results of schooling as measured by assessments of student performance; and
 - (ii) early childhood learning and development; and
 - (iii) other statistical information relating to the Authority's functions;
- (q) commission or conduct research on matters related to its functions;
- (r) provide professional development activities related to its functions;
- (s) provide information services about its practices and functions;
- (t) report on student performance as measured by assessments conducted against standards (including national standards) to the Minister, the Secretary and relevant bodies;
- (ta) with the approval of the Minister, report on student performance as measured by assessments conducted against national standards to a body or person approved by the Minister;

S. 2.5.3(2)(p)
substituted by
No. 19/2008
s. 5(3).

S. 2.5.3(2)(t)
amended by
No. 19/2008
s. 5(4).

S. 2.5.3(2)(ta)
inserted by
No. 19/2008
s. 5(5).

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- (tb) report on the results of assessments relating to early childhood learning and development to the Minister, the Secretary and relevant bodies;
- (u) any other function conferred on or delegated to the Authority under this or any other Act.
- (3) The Authority may issue a qualification relating to—
- (a) a course undertaken by a school student in any year up to and including year 10;
- (b) an accredited course owned by the Authority.
- (4) The Authority may recognise the completion of an accredited course or part of an accredited course or the award or issue of a registered qualification by the issue of a written statement or otherwise.
- (5) Any information made available to the general public by the Authority in carrying out its function under subsection (2)(p) must not include any personal information relating to any individual student or child.

S. 2.5.3(2)(tb)
inserted by
No. 19/2008
s. 5(5).

S. 2.5.3(5)
inserted by
No. 19/2008
s. 5(6).

2.5.4 Cancellation or alteration of statements

- (1) The Authority may cancel or alter a statement provided under section 2.5.3(4) recognising the completion of an accredited course or part of an accredited course by a student or the award or issue of a registered qualification to a student if the Authority alters the records of the student's assessment and the alterations affect the recognition by the Authority of the completion of that accredited course or part of that accredited course by the student or the award or issue of a registered qualification to the student.
- (2) The Authority may issue a new statement or document in respect of a student referred to in subsection (1) recognising the completion of an

accredited course or part of an accredited course by a student or the award or issue of a registered qualification to a student on the basis of the records of the student's assessment that have been altered by the Authority.

2.5.5 Powers of Authority

- (1) For the purpose of performing its functions, the Authority may—
 - (a) enter into contracts, agreements or arrangements;
 - (b) charge fees (not exceeding any amount fixed for the purpose by an Order made by the Governor in Council and published in the Government Gazette) for services provided by it;
 - (c) publish and sell any information acquired by it;
 - (d) apply for, obtain and hold, whether on its own behalf or jointly with any other person, any intellectual property rights;
 - (e) enter into agreements or arrangements for the commercial exploitation of the rights referred to in paragraph (d), whether by assignment, licensing or otherwise;
 - (f) exercise its powers in Victoria and elsewhere;
 - (g) do any other thing that is necessary or convenient to be done for or in connection with, or as incidental to, the performance of its functions including any function delegated to it.
 - (2) The Authority may require schools and other persons, bodies or agencies providing accredited courses—
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- (a) to submit to the Authority school-based assessments of students in those courses;
 - (b) to provide to all students undertaking accredited courses—
 - (i) the Authority's rules for the conduct of assessments; and
 - (ii) any other information specified by the Authority.
 - (3) The Authority may license or permit a registered school or other body to provide an accredited course owned by the Authority or in which the Authority has a proprietary interest.
 - (4) This section does not limit any other power given to the Authority by any other provision of this Act or any other Act.

2.5.6 Membership of Authority

- (1) The Authority consists of not less than 8 and not more than 15 members of whom—
 - (a) one must be the Secretary to the Department or the person nominated from time to time by the Secretary;
 - (b) the remaining members must be appointed by the Governor in Council on the nomination of the Minister.
- (2) The Governor in Council must appoint as chairperson of the Authority, the member of the Authority nominated by the Minister to be chairperson of the Authority.
- (3) The Minister must have regard to a person's experience relevant to the functions of the Authority in nominating persons for appointment under subsection (1)(b).
- (4) The members hold office on a part-time basis.

s. 2.5.7

- (5) A member may resign from office by delivering to the Governor in Council a signed letter of resignation.
- (6) The Governor in Council may at any time remove a member from office.

2.5.7 Establishment of committees

- (1) The Authority must establish a committee to be known as the executive committee.
- (2) The executive committee consists of the chairperson of the Authority, the Chief Executive Officer of the Authority and 3 other members nominated by the Minister.
- (3) The Authority may, to facilitate its functioning, establish any other committee and appoint members to it including any person who is not a member of the Authority.
- (4) A committee or committees established to hear matters under Division 3, to be known as a review committee, must each consist of—
 - (a) a member of the Authority who is to be chairperson of the committee; and
 - (b) 2 other persons, who need not be members of the Authority.
- (5) A committee may exercise any power delegated to the members of the committee by the Authority.

S. 2.5.7(3)
substituted by
No. 58/2007
s. 7(1).

S. 2.5.7(4)(b)
substituted by
No. 58/2007
s. 7(2).

S. 2.5.7(6)
repealed by
No. 58/2007
s. 7(3).

S. 2.5.7(7)
amended by
No. 58/2007
s. 7(4).

* * * * *

- (7) A person appointed to a committee, other than a person referred to in subsection (8), is entitled to be paid—

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- (a) any remuneration that is fixed from time to time by the Governor in Council; and
 - (b) allowances for travelling and personal expenses at the rates and on the conditions applicable to employees of the public service.
- (8) Subsection (7) does not apply to a person who holds a full-time Government office or a full-time position in the public service, teaching service or with a statutory authority and whose travelling and personal expenses are met through that office or position.

2.5.8 Schedule 2

Schedule 2 has effect subject to any contrary intention in this Part.

2.5.9 Delegation of Authority's power

The Authority may, by instrument under its common seal, delegate to the members of a committee established under section 2.5.7, a member of the Authority, the chief executive officer, or to any other person employed in the Department in the administration or execution of this Act any power of the Authority, other than this power of delegation.

2.5.10 Victorian Curriculum and Assessment Authority Fund

- (1) The Authority must continue to maintain the Fund known as the Victorian Curriculum and Assessment Authority Fund.
- (2) There must be paid into the Fund—
 - (a) any investment income received by the Authority; and
 - (b) the proceeds of the sale of any investment made by the Authority; and

- (c) any fees or other money received by the Authority.
- (3) There must be paid out of the Fund any payment that is authorised by the Authority 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 Authority.

Division 3—Assessments and assessment reviews

2.5.11 Special provision in assessments

- (1) The Authority may—
 - (a) make, approve or grant special arrangements for students with special educational needs in consequence of chronic illness, impairment or personal circumstances for the conduct of assessments and examinations referred to in section 2.5.3(2)(d) and (e) including the modification of the requirements and rules for the conduct of assessments and examinations as and to the extent that the Authority considers appropriate;
 - (b) make, approve or grant special provision (including applying an alternative basis of assessment) for students unable because of illness, trauma, misadventure, impairment, personal circumstances or other serious cause to undertake an assessment or examination including treating the student as having undertaken the examination or other form of assessment, as and to the extent the Authority considers appropriate;
 - (c) make, approve or grant special provision (including applying an alternative basis of assessment) for students affected by examination or assessment irregularities which occur at or about examination or

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- assessment centres or in respect of assessments or examinations which materially interrupt or are likely to adversely affect a student's performance at an assessment or examination or the proper assessment of that performance and which are outside the student's control, as and to the extent the Authority considers appropriate.
- (2) In exercising functions and powers under subsection (1) the Authority may—
- (a) conclude that a student undertaking an accredited course was seriously affected by illness, trauma, misadventure, personal circumstances or other serious cause (including examination or assessment irregularities) from undertaking an assessment or examination or was seriously affected in the student's performance in that assessment or examination; and
 - (b) determine that the student is to be treated, for the purposes of this Act, as having obtained in the examination or other form of assessment a standard or result determined by the Authority.
- (3) In determining a standard or result for the purposes of subsection (2)(a) or (b), the Authority may have regard to any evidence that is available to it relating to the student's participation in the accredited course of study to which the examination or other form of assessment related.
- (4) For the purposes of this section, the Authority may require a student to—
- (a) apply to the Authority within the time and in the manner required by the Authority; and
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- (b) provide any evidence or information requested by the Authority to consider the application.

2.5.12 Authority may investigate certain matters

- (1) The Authority may conduct an investigation into—
 - (a) a suspected contravention of the examination rules of the Authority; or
 - (b) an allegation that a student's assessment by the Authority was obtained by fraudulent, illegal or unfair means.
- (2) In conducting an investigation under subsection (1), the Authority may nominate a person on its behalf to interview any student enrolled in an accredited course.
- (3) A person nominated to interview a student must give notice of the interview to the student not less than 24 hours before the interview.
- (4) Notice of an interview—
 - (a) need not be in writing; and
 - (b) may nominate a time and place for the interview; and
 - (c) must give particulars of the matter under investigation.
- (5) In addition to any other matter discussed at the interview, the student must be informed of possible further action by the Authority and possible consequences to the student.
- (6) The person who conducts an interview must submit a written report of the interview to the chief executive officer of the Authority as soon as practicable after the interview.

2.5.13 Decision on report

S. 2.5.13
(Heading)
substituted by
No. 19/2008
s. 6(1).

(1) The chief executive officer of the Authority, after considering a report submitted in accordance with section 2.5.12(6), may—

S. 2.5.13(1)
substituted by
No. 19/2008
s. 6(2).

- (a) if the report relates to a student's suspected contravention of the examination rules of the Authority, which the chief executive officer considers to be of a minor nature, issue a written reprimand to the student; or
- (b) make a request to the Authority that a review committee conduct a hearing into the matter under investigation.

(1A) If the chief executive officer of the Authority issues a written reprimand under subsection (1)(a), the chief executive officer must also provide in writing to the student his or her reasons for issuing the reprimand.

S. 2.5.13(1A)
inserted by
No. 19/2008
s. 6(2).

- (2) A person who has participated in the investigation of a matter is not entitled to be a member of the review committee hearing the matter.
- (3) A student who is required to attend a hearing before a review committee must have been interviewed in accordance with section 2.5.12.

2.5.14 Assessment may be withheld pending decision

The Authority may withhold the assessment of a student who is required to attend a hearing before a review committee until the later of—

- (a) the decision of the review committee and the expiry of the period referred to in section 2.5.21(2); or

- (b) if the student applies to an appeals committee for review of the decision, notification to the Authority by the appeals committee of its determination of the application.

2.5.15 Notice of hearing

The chief executive officer of the Authority must give a student who is required to attend a hearing before a review committee—

- (a) written notice of the hearing not less than 7 working days before the hearing is due to commence; and
- (b) copies of the information and documents on which the Authority intends to rely at the hearing not less than 5 working days before the hearing is due to commence.

2.5.16 Procedure of review committee

At a hearing—

- (a) subject to this Act, the procedure of a review committee 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) a review committee is not bound by rules of evidence but may inform itself in any way it thinks fit; and
- (d) a review committee is bound by the rules of natural justice.

2.5.17 Cross-examination of witnesses

- (1) The cross-examination of witnesses in a hearing before a review committee is in the discretion of the review committee.

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- (2) An exercise of the discretion under subsection (1) must be consistent with the rules of natural justice.

2.5.18 Legal representation

- (1) A student may be represented by a legal practitioner at a hearing before a review committee.
- (2) A review committee may be assisted by a person nominated by the Authority.
- (3) A person assisting a review committee under this section—
- (a) is entitled to be present during the whole of the proceedings; and
 - (b) must ensure that all relevant information is put before the review committee but must not act as prosecutor; and
 - (c) must advise the review committee on any matter on which it seeks to be advised but must not adjudicate on the matter before the review committee.

2.5.19 Decision of review committee

If a review committee is satisfied on the balance of probabilities that a student—

- (a) has contravened the examination rules of the Authority; or
- (b) has obtained an assessment by the Authority by fraudulent, illegal or unfair means—

the review committee may—

- (c) reprimand the student; or
- (d) amend or cancel the student's grade for the examination in which the contravention occurred; or

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- (e) both—
- (i) amend or cancel the student's grade for the examination in which the contravention occurred; and
 - (ii) amend or cancel any or all of the student's assessments in the same study, including cancellation of satisfactory completion of the study; or
- (f) amend or cancel the student's grades for examinations or other assessments in one or more other studies, including cancellation of satisfactory completion of a study; or
- (g) cancel all the student's grades for examinations and other assessments conducted by the Authority during the year in which the contravention occurred or the assessment was obtained, including cancellation of satisfactory completion of the course.

2.5.20 Notification of decision

- (1) A review committee must give its decision—
 - (a) orally at the hearing; and
 - (b) in writing to the student concerned not later than 7 days after the hearing.
 - (2) A review committee must set out in its written decision—
 - (a) the reasons for its decision; and
 - (b) the findings on material questions of fact that led to the decision.
 - (3) A review committee must notify the Authority without delay of its decision.
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2.5.21 Student may appeal against school decisions etc.

- (1) A student at a school may appeal to the Authority against a decision by the school, and any penalty imposed, in respect of a contravention of the assessment rules of the Authority relating to school-based assessments.
- (2) An appeal under subsection (1) must be made by notice in writing to the chief executive officer of the Authority not later than 14 days after the student receives written notice of the decision from the school.
- (3) On receipt of a notice of appeal, the chief executive officer of the Authority must nominate an employee of the Secretary to interview the parties to the appeal and attempt to resolve the matter.
- (4) Not later than 7 days after the interview, the school must, by notice in writing, advise the student and the Authority that in relation to the student—
 - (a) it has rescinded its decision and any penalty imposed; or
 - (b) it has rescinded the penalty imposed; or
 - (c) it has reduced the penalty imposed; or
 - (d) it confirms both the decision and the penalty imposed.
- (5) If the school rescinds its decision and any penalty imposed in relation to the student, the student's appeal is taken to have been withdrawn.

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- (6) On receipt of a notice under subsection (4)(b), (c) or (d), the Authority must request the student to elect either—
- (a) to withdraw the appeal; or
 - (b) to confirm that the appeal is to proceed.
- (7) If a student elects to proceed with an appeal, the chief executive officer of the Authority must refer the appeal to a review committee for hearing and determination.
- (8) An appeal under this section must be conducted as a re-hearing.
- (9) Sections 2.5.15, 2.5.16, 2.5.17, 2.5.18 and 2.5.20 apply to the hearing of an appeal under this section and in hearing the appeal the review committee has all the powers that it has in conducting other hearings under this Act.
- (10) If a review committee is satisfied on the balance of probabilities that the student has contravened the assessment rules of the Authority relating to school-based assessments, the review committee may—
- (a) reprimand the student; or
 - (b) if practicable, permit the student to re-submit to the school work required for—
 - (i) assessment in the study or the course; or
 - (ii) satisfactory completion of the study or the course; or
 - (c) refuse to accept part of the work and request the school to assess the student on the remainder of the work submitted; or
 - (d) amend the student's school-based assessment.
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2.5.21A Review of reprimand by nominated appeals committee member

S. 2.5.21A
inserted by
No. 19/2008
s. 7.

- (1) A student affected by a decision of the chief executive officer of the Authority under section 2.5.13(1)(a), may apply for review, by the nominated member, of the decision on one or both of the following grounds—
 - (a) the decision to issue the reprimand was unreasonable;
 - (b) the decision to issue the reprimand was too harsh.
- (2) An application under subsection (1) must be made by notice in writing to the chief executive officer of the Authority not later than 10 days after the day on which the affected student received the reprimand.
- (3) The chief executive officer of the Authority must refer an application under subsection (1) to the nominated member for determination.
- (4) A student may make a written submission to the nominated member but is not entitled to be heard in support of the written submission or to appear before the nominated member.
- (5) The nominated member must review the decision made by the chief executive officer of the Authority having regard to—
 - (a) all the documents before the chief executive officer of the Authority; and
 - (b) the written decision of the chief executive officer of the Authority; and
 - (c) any written submission made by the student.

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- (6) In determining an application for review of a decision made by the chief executive officer of the Authority under section 2.5.13(1)(a), the nominated member may—
 - (a) affirm the decision to issue the reprimand; or
 - (b) set aside the decision to issue the reprimand.
 - (7) The nominated member must notify the Authority without delay of his or her determination of an application for review under this section.
 - (8) The Minister may, by Order published in the Government Gazette, fix rules with respect to the procedure to be followed on applications for review under this section.
 - (9) In this section *nominated member* means the member of an appeals committee nominated by the Minister under section 2.5.23(7).

2.5.22 Review by appeals committee

- (1) A student affected by a decision of a review committee, other than a decision under section 2.5.21, may apply for review of the decision by an appeals committee on one or both of the following grounds—
 - (a) the decision was unreasonable;
 - (b) the penalty imposed was too harsh.
 - (2) An application under subsection (1) must be made by notice in writing to the chief executive officer of the Authority not later than 14 days after the day on which the review committee gave its decision orally at the hearing.
 - (3) The chief executive officer of the Authority must refer an application under subsection (1) to an appeals committee for determination.
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- (4) A student may make a written submission to the appeals committee but is not entitled to be heard in support of the written submission or to appear before the appeals committee.
 - (5) An appeals committee must review a decision made by a review committee having regard to all the documents before the review committee, the written decision of the review committee and any written submission made by the student.
 - (6) In determining an application for review of a decision made by a review committee, an appeals committee may—
 - (a) affirm the decision under review; or
 - (b) vary the decision under review; or
 - (c) set aside the decision under review.
 - (7) An appeals committee must notify the Authority without delay of its determination of an application for review under this section.
 - (8) The Minister may, by Order published in the Government Gazette, fix rules with respect to the procedure to be followed on applications for review under this section.

2.5.23 Appointment of appeals committee

- (1) An appeals committee consists of 3 members appointed by the Minister to determine applications for review under section 2.5.22.
- (2) The Minister may appoint more than one appeals committee at any time.
- (3) A member of an appeals committee must not be a member of the Authority, a member of a committee of the Authority or a person employed for the purposes of this Part.

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- (4) The members of an appeals committee must have between them—
- (a) knowledge of the assessment programs of the Authority; and
 - (b) knowledge of this Act; and
 - (c) knowledge of the field of secondary education.
- (5) A member of an appeals committee holds office for the term not exceeding 12 months that is specified in the instrument of appointment, and is eligible for re-appointment.
- (6) A member of an appeals committee, other than a person who holds a full-time Government office or a full-time position in the public service, teaching service or with a statutory authority and whose travelling and personal expenses are met through that office or position is entitled to be paid any remuneration and allowances that are specified in the instrument of appointment.
- (7) The Minister must nominate a member of an appeals committee for the purposes of section 2.5.21A.
- (8) The Minister must ensure that there is a member of an appeals committee nominated under subsection (7) at all times.

S. 2.5.23(7)
inserted by
No. 19/2008
s. 8.

S. 2.5.23(8)
inserted by
No. 19/2008
s. 8.

2.5.24 Notification of alteration of record of student assessment

If a student's assessment is amended or cancelled under this Part, the Authority—

- (a) must give written notice to the student concerned; and

(b) may give written notice to any other person to whom a copy of the student's record has previously been provided—
that the record of assessment has been so amended or cancelled, as the case requires.

PART 2.6—VICTORIAN INSTITUTE OF TEACHING

Division 1—Preliminary

2.6.1 Definitions

In this Part—

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

Council means the Council of the Victorian Institute of Teaching continued in operation by this Part;

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; and
- (c) does not include a teacher's aide, an assistant teacher or a student teacher;

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

Division 2—Victorian Institute of Teaching

2.6.2 Continuation of existing Institute

- (1) The Victorian Institute of Teaching established under the **Victorian Institute of Teaching Act 2001** continues in operation under and subject to this Act.
- (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.

2.6.3 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 subsection (1)(c).

2.6.4 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 subsection (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.

2.6.5 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.

2.6.6 Membership of the Council

- (1) The Institute is to be governed by the Council of the Victorian Institute of Teaching established under the **Victorian Institute of Teaching Act 2001** and continued in operation under and subject to this Act.
- (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 subsection (3)(a), (b), (c), (d), (e) and (f); and
 - (b) 10 are to be elected under subsection (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;

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- (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;
 - (d) one is to be the parent of a student in a school nominated 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 non-Government schools 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 registered teachers of whom—
 - (i) 2 are to be elected by and from registered teachers who are currently teaching in a primary school that is a Government school or are currently teaching at least one subject in such a primary school or the primary part of such a school;
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s. 2.6.6

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- (ii) one is to be elected by and from registered teachers who are currently teaching in a primary school that is a non-Government school operating under the auspices of the Catholic 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 Government 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 currently teaching in a secondary school that is a non-Government school 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 non-Government school (other than a school referred to in subparagraph (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 Government 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 Government school; and
 - (ii) one is to be a principal in a non-Government school.
- (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 non-Government school other than a school auspiced by the Catholic Education Commission;
 - (b) a teacher teaching in a non-Government school that is auspiced by the Catholic Education Commission;
 - (c) a Principal of a non-Government school other than a school auspiced by the Catholic Education Commission;
 - (d) a Principal of a non-Government school that is auspiced by the Catholic Education Commission;
 - (e) a representative of persons or bodies employing teachers in non-Government schools other than schools auspiced by the Catholic Education Commission;
 - (f) a representative of persons or bodies employing teachers in non-Government schools that are 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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Division 3—Registration of teachers

2.6.7 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 2.6.8; and
 - (ii) details of any information required by section 2.6.57; and
 - (iii) the fee fixed by the Minister.
- (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.

2.6.8 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.

2.6.9 Registration

- (1) The Institute may register an applicant as a teacher if—
 - (a) the applicant is qualified for registration under section 2.6.8; and
 - (b) there are no grounds under subsection (2) under which the Institute may refuse to grant registration to the applicant; and
 - (c) the applicant has satisfied the requirements of section 2.6.7;

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- (2) The Institute may refuse to grant registration to an applicant on any one or more of the following grounds—
- (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 (being the equivalent of registration as a teacher under this Act), or been employed as a teacher, in a school in another State or Territory or another country and that right or employment 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 been seriously incompetent in their teaching practice when employed as a teacher in a school in Victoria or in any other State or Territory or country;
 - (f) that the applicant has not produced evidence which satisfies the Institute of his or her fitness to teach.
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- (3) The Institute may impose any condition, limitation or restriction it thinks appropriate on the registration of a teacher under this section including a condition that the teacher provide information about criminal records within the period specified by the Institute.

2.6.10 Provisional registration

- (1) An applicant who is qualified in accordance with section 2.6.8 except that the applicant has not achieved to the satisfaction of the Institute the standard of professional practice required for registration under section 2.6.8 is eligible to be provisionally registered.
- (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 2.6.8.
- (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 2.6.8, whichever occurs first.
- (4) The Institute may impose any condition, limitation or restriction it thinks appropriate on the provisional registration of a teacher including a condition that the teacher provide information about criminal records within the period specified by the Institute.

s. 2.6.11

- (5) The Institute may, upon application by the registered teacher, amend, vary or revoke any condition, limitation or restriction imposed under subsection (4).

2.6.11 Non-practising registration

- (1) A person who is entitled to or eligible for registration under section 2.6.8(a) and (b) but who does not intend to undertake the duties of a teacher in a school may apply to be registered as a non-practising teacher under this section.
- (2) A person who is registered as a teacher under this Act and would be eligible for renewal of registration under section 2.6.18 except that the person does not satisfy the requirements of section 2.6.18(1)(b)(i) may apply to be registered as a non-practising teacher under this section if that person does not intend to undertake the duties of a teacher in a school.
- (3) The Institute may register a person as a non-practising teacher subject to any condition imposed by the Institute.
- (4) Registration under this section remains in force for the period fixed by the Institute not exceeding 5 years from the date of registration.

S. 2.6.11(2)
amended by
No. 58/2007
s. 8.

2.6.12 Interim registration

- (1) An applicant for registration or permission to teach may be granted interim approval to undertake the duties of a teacher in a school if the person is entitled to that registration or permission but it is not practicable to wait until the Institute can consider the application.
- (2) The person appointed to act as chief executive officer of the Institute may grant interim approval to an applicant to undertake the duties of a teacher in a school until the next meeting of the Institute.

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- (3) Interim approval granted under this section by the chief executive officer is to be treated during the period of approval as being registration or permission to teach (as the case requires) granted by the Institute under this Part.

Division 4—Permission to teach

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

2.6.14 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 2.6.8(b); and
 - (b) there are no grounds under section 2.6.9(2) that apply to the applicant; and
 - (c) the applicant has provided any information or material required under section 2.6.13; and
 - (d) the applicant has paid the fee fixed by the Minister.

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- (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;
 - (d) that the teacher provide information about criminal records within the period specified by the Institute.

Division 5—General provisions

2.6.15 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—

- (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.

2.6.16 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.

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- (2) A notice under subsection (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.

2.6.17 Duration and renewal of registration

- (1) The registration of a teacher, other than provisional registration under section 2.6.10, non-practising registration under section 2.6.11 or interim registration under section 2.6.12, continues in force until the fifth anniversary of the date of the grant of registration.
 - (2) The renewal of registration of a teacher, other than provisional registration under section 2.6.10, non-practising registration under section 2.6.11 or interim registration under section 2.6.12, 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 that there are special circumstances making it necessary to do so.
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2.6.18 Application for renewal of 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;
 - (ii) details of any information required by section 2.6.57;
 - (iii) the fee fixed by the Minister.
- (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 Minister which must not be more than 50% of the fee for renewal of registration.
- (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.

2.6.19 Refusal to renew registration

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.

2.6.20 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.
- (3) The provisions applying to the conduct of a formal hearing under Division 12 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 Division 12.

2.6.21 Annual fees

- (1) A registered teacher must pay an annual registration fee fixed by the Minister to the Institute on the date fixed by the Institute and notified to that teacher by the Institute.
- (2) If a registered teacher fails to pay the annual registration fee without reasonable excuse by the date fixed by the Institute and notified to the teacher, 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 by the Minister.

Division 6—Criminal record checks

2.6.22 Criminal record checks

- (1) The chief executive officer of the Institute may, at any time, request the Chief Commissioner of Police to give to the chief executive officer information concerning the criminal record, if any, of a registered teacher and, for that purpose, may disclose to the Chief Commissioner the information concerning the registered teacher that is necessary to conduct the criminal record check.
- (2) The chief executive officer may make a request under subsection (1) without the consent of the registered teacher named in the request but must give notice of the request to that teacher.
- (3) The Chief Commissioner of Police must, not more than 14 days after receiving a request under subsection (1), enquire into and report to the chief executive officer on the criminal record, if any, of the registered teacher named in the request.

2.6.22A Routine criminal record check

S. 2.6.22A
inserted by
No. 58/2007
s. 9.

- (1) Without limiting section 2.6.22, the Institute must ensure that a criminal record check is carried out under that section in respect of each registered teacher before the end of the 5 years after the last criminal record check carried out in respect of that teacher under this Part or any corresponding previous enactment.
- (2) The Institute may recover from a registered teacher the fee for a criminal record check that has been, or is to be, carried out in compliance with this section in respect of that teacher.
- (3) The registered teacher must pay the fee for the criminal record check at the request of the Institute by the date fixed by the Institute and notified to the teacher.
- (4) If a registered teacher fails to pay the fee for a criminal record check without reasonable excuse by the date fixed by the Institute and notified to the teacher, the Institute may suspend the registration of the teacher or their permission to teach.
- (5) The Institute may revoke a suspension under subsection (4) if the person concerned gives a satisfactory explanation of the failure and pays the criminal record check fee together with any additional fee fixed by the Minister.

2.6.23 Employer to disclose whether criminal record check conducted

On request by the chief executive officer of the Institute, the employer of a registered teacher must disclose to the chief executive officer whether to the knowledge of the employer the registered teacher has undergone a criminal record check at any time.

Division 7—The Register

2.6.24 The Register

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

- (a) the teacher's name;
- (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.

2.6.25 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.

2.6.26 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 Part; or
- (b) a teacher did or did not at any specified date have the permission of the Institute to teach under this Part—

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

Division 7A—Details of teachers in schools

Pt 2.6 Div. 7A
(Heading and
s. 2.6.26A)
inserted by
No. 58/2007
s. 10.

2.6.26A Institute may request details of teachers in schools

S. 2.6.26A
inserted by
No. 58/2007
s. 10.

- (1) The Institute may in writing request a person or body who employs teachers in a school to provide (within 28 days of the request) details of the name, registration number and date of birth of all or any of those teachers in respect of the date or dates and in the manner determined by the Institute.
- (2) A person or body to whom a request is made under subsection (1) must comply with that request.

Penalty: 60 penalty units for a natural person
and 300 penalty units for a body
corporate.

Division 8—Discipline—Suspension without inquiry

2.6.27 Institute may suspend registration or permission to teach

- (1) The Institute may decide that it intends to suspend the registration held by, or the permission to teach granted to, a person under this Part if that person is, in Victoria or elsewhere, charged with a sexual offence.
- (2) The Institute must serve a notice in accordance with subsection (3) on a person of the Institute's intention to suspend the registration held by, or the permission to teach granted to, that person.

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- (3) A notice served under subsection (2) must be in writing and set out the following—
- (a) that the Institute intends to suspend the registration or permission to teach (as the case may be);
 - (b) the ground for suspension (the nature of the sexual offence charge);
 - (c) that the person may make written submissions to the Institute regarding the intended suspension;
 - (d) that the person must lodge any submissions with the Institute within 10 days after being served with the notice;
 - (e) any requirements relating to the form and content of submissions that may be made to the Institute.
- (4) A copy of a notice served under subsection (2) must also be served on any person employing the person subject to the intended suspension as a teacher.
- (5) In deciding whether to suspend a person under this section, the Institute must take into account any submissions made in accordance with the notice served under subsection (2) by that person.
- (6) If the Institute decides to suspend a person under this section it must serve a written notice on the person containing the following—
- (a) that the person is suspended;
 - (b) the date that the suspension takes effect (which must be no earlier than the date that the notice is served);
 - (c) the period that the suspension may remain in force under subsection (10).
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- (7) A copy of a notice served under subsection (6) must also be served on any person employing the person subject to the suspension as a teacher.
- (8) A suspension under this section takes effect on the date specified by the Institute in the notice served under subsection (6).
- (9) The validity of a suspension under this section is not affected by any failure to serve a copy of a notice under subsection (4) or (7).
- (10) A suspension under this section remains in force until the earlier of the following occurs—
- (a) the Institute revokes the suspension; or
 - (b) the charge that forms the ground for the suspension is finally dealt with in any of the following ways—
 - (i) the charge is withdrawn or a nolle prosequi is entered in relation to the charge;
 - (ii) the person dies without the charge having been determined;
 - (iii) the charge is dismissed by a court;
 - (iv) the person is discharged by a court following a committal hearing;
 - (v) the person is acquitted of the offence by a court;
 - (vi) the person is de-registered because of being found guilty of the offence by a court.
- (11) If more than one charge forms the ground for the suspension, subsection (10)(b) does not apply until each of the charges is finally dealt with in accordance with that paragraph.
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- (12) If the Institute revokes a suspension under this section it must immediately notify the person subject to that suspension and any employer served with a copy of a notice under subsection (7) of the revocation.

2.6.28 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.

Division 9—Discipline—Cancellation of registration

2.6.29 Cancellation of registration or permission to teach without inquiry

- (1) A person who is registered as a teacher under this Part 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 subsections (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 subsections.

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- (5) If a finding or conviction in relation to a person referred to in subsection (1), (2) or (3) is quashed on appeal the relevant subsection 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.
 - (7) This section applies to any conviction or finding of guilt of a sexual offence whether occurring before, on or after the commencement of this Chapter.

Division 10—Powers of discipline inquiry

2.6.30 Powers of inquiry

- (1) The Institute may in accordance with this Part—
 - (a) inquire into any information it receives under section 2.6.31 or 2.6.32; or
 - (b) inquire into any complaint that provides evidence—
 - (i) of the serious incompetence of a registered teacher;
 - (ii) of the serious misconduct of a registered teacher;
 - (iii) that a registered teacher is unfit to be a teacher;
 - (c) conduct an inquiry into whether—
 - (i) a registered teacher has failed to comply with any condition, limitation or restriction imposed on their registration;

- (ii) a registered teacher has contravened or failed to comply with a provision of this Chapter.
- (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.

2.6.31 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.
- (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.
- (3) 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.
- (4) 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, or found guilty of—

S. 2.6.31(4)
substituted by
No. 58/2007
s. 11.

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- (a) a sexual offence; or
 - (b) an offence specified in clause 2 of Schedule 1 to the **Sentencing Act 1991**; or
 - (c) an offence specified in clause 4 of Schedule 1 to the **Sentencing Act 1991**; or
 - (d) an offence against section 71AB or 71B of the **Drugs, Poisons and Controlled Substances Act 1981**.

2.6.32 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 11—Discipline—Investigations

2.6.33 When matters are to be investigated

- (1) The Institute must investigate—
 - (a) a complaint of serious incompetence or serious misconduct;
 - (b) a complaint involving the continued fitness to teach of a registered teacher;
 - (c) if the Institute is informed that a registered teacher has been convicted or found guilty of an indictable offence other than a sexual offence;
 - (d) if the Institute is informed by the employer of a registered teacher that the employer has taken any action against the registered teacher.

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- (2) In order to determine whether or not to conduct a formal or informal hearing into a matter, the Institute may conduct an investigation into the matter or request the employer of the teacher who is the subject of the inquiry to conduct the investigation.
 - (3) The Institute may, in writing, delegate to any of the following its power to conduct an investigation, other than its power to make determinations upon an investigation—
 - (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 or a nominee of the employer of the teacher who is the subject of the inquiry.

2.6.34 Outcome of investigation

- (1) Upon completing an investigation, the person or persons conducting the investigation may make one of the following recommendations—
 - (a) that no further action should be taken; 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 investigation.

2.6.35 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 an investigation.

Division 12—Formal and informal disciplinary hearings

2.6.36 Establishment and notification of an informal hearing

If the Institute has determined under section 2.6.34 or 2.6.35 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 post, serve a notice on the registered teacher under section 2.6.38; and
- (d) serve notice on any complainant by post which complies with section 2.6.38(a) and (b).

2.6.37 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

- (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.

2.6.38 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.

2.6.39 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.

2.6.40 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.

2.6.41 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.

2.6.42 Establishment and notification of formal hearing

If—

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

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 post which complies with section 2.6.44; and
- (f) serve a notice on any complainant by post which complies with section 2.6.44(a) and (b).

2.6.43 Constitution of a hearing panel for a formal hearing

- (1) A panel appointed to hold a formal hearing 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 an 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.

2.6.44 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.

2.6.45 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.

2.6.46 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 contravened or failed to comply with any provision of this Chapter; or
 - (e) the teacher has contravened or failed to comply with any condition, limitation or restriction imposed on his or her registration; or
 - (f) 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
 - (g) 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—

- (h) impose conditions, limitations or restrictions on the registration of the teacher;
 - (i) suspend the registration of the teacher for the period and subject to the conditions, limitations and restrictions, if any, specified in the determination;
 - (j) cancel the registration of the teacher.
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Division 13—General provisions relating to discipline inquiries

2.6.47 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.

2.6.48 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.

2.6.49 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.

2.6.50 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 suspended or cancelled under this Part of that suspension or cancellation.

2.6.51 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
 - (g) to the Secretary of the Department of Justice;
and
 - (h) 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 subsection (1) must be given as soon as practicable after the determination has been made.
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- (3) If the registration of a teacher is cancelled by virtue of section 2.6.29 the Institute must give notice of that cancellation in accordance with paragraphs (d), (e), (f), (g) and (h) of subsection (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.

2.6.52 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—

- (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.

2.6.53 Enforcement of determination

- (1) The Institute must take all action necessary to give effect to a cancellation of registration under section 2.6.29 or a determination made on an inquiry under this Part.
- (2) Action under subsection (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 2.6.46 is guilty of serious misconduct.

2.6.54 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.

Division 14—Review by VCAT

2.6.55 Review by VCAT

- (1) A person may apply to the VCAT for review of—
 - (a) a determination refusing the person's application for registration or renewal of registration; or
 - (b) a determination made under Divisions 12 and 13 cancelling or suspending the person's registration; or
 - (c) a determination made under Divisions 12 and 13 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.
- (3) Subsection (1)(a) does not apply to a determination of the Institute to refuse the person's registration or permission to teach on the grounds that the person has been convicted or found guilty of a sexual offence.

Division 15—Offences

2.6.56 Unregistered teachers

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

Penalty: 120 penalty units.

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

Penalty: 120 penalty units.

- (3) For the purposes of this section, a person who is registered as a non-practising teacher is not to be treated as being registered under this Part.

2.6.57 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: 60 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.

2.6.58 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.

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

Penalty: 120 penalty units.

2.6.59 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: 60 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.

2.6.60 Proceedings

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

Division 16—The Council—Administration

2.6.61 Schedule 2

Schedule 2 has effect subject to any contrary intention in this Part.

2.6.62 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 Chairperson on the recommendation of the Council may remove or suspend an acting member from office.

2.6.63 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.
- (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.

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- (5) A person appointed under subsection (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.

2.6.64 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.
- (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

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- (b) if the person does not hold a full-time government office or a full-time position 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 this Act.
- (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.

2.6.65 Institute staff

- (1) A Registrar, a chief executive officer and any other employees that are necessary for the purposes of this Part 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.

2.6.66 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.

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- (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.

2.6.67 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 this Part; or
- (c) a member of a committee or body established under this Part; or
- (d) the members of the governing board of a college established under this Part—

its powers under this Act, other than—

- (e) the power to refuse to grant 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
- (g) this power to delegate.

2.6.68 Accreditation Committee

- (1) The Council must establish a committee to be called the Accreditation Committee.

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- (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.

2.6.69 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;
 - (b) to conduct informal hearings under Division 12 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.

2.6.70 Membership of committees and bodies

Any committee or body established under this Division 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) any other persons that are appointed by the Institute with expertise appropriate to carry out the functions of the committee or body.

2.6.71 Terms of office

- (1) A member of a committee, hearing panel or body established under this Part holds office for the period determined by the Council.
- (2) A member of a committee, hearing panel or body is eligible for re-appointment.
- (3) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member in respect of the office of member.

S. 2.6.71(3)
substituted by
No. 80/2006
s. 26(Sch.
item 30.2).

2.6.72 Resignation and removal

- (1) A member of a committee, hearing panel or body established under this Part 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 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.

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- (4) A member appointed under subsection (3) holds office for the rest of the term of appointment of the member whose place he or she fills.

2.6.73 Payment of members

- (1) A member or acting member of a committee, hearing panel or body established under this Part, other than a member who holds a full-time Government office, or a full-time position 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) A 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 for that member.

2.6.74 Procedure of committee, panel or body

- (1) The Chairperson must preside at a meeting of a committee, hearing panel or body established under this Part 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.

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- (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 Division 12, 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 this Part may regulate its own proceedings.

2.6.75 Effect of vacancy or defect

An act or decision of a committee, hearing panel or body established under this Part 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.

2.6.76 Immunity

- (1) A member of the Council or a hearing panel established for a formal hearing or a person responsible for keeping the register is not personally liable for anything done or omitted to be done in good faith—
- (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 subsection (1), attach to a member of the Council or panel or the person responsible for keeping the register, attaches instead to the Institute.

Division 17—The Council—Finances

2.6.77 Fees

- (1) The Minister, after calling for and considering recommendations from the Institute, may, by Order, fix any fee that is required or permitted to be fixed under this Part.
- (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.

2.6.78 Victorian Institute of Teaching Fund

- (1) The Institute must continue to maintain the Fund 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.

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- (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.

Division 18—Colleges

2.6.79 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 subsection (1).
 - (3) The Order under subsection (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 the members of the governing board of the College;
 - (f) the reporting and operational relationship between the College and the Institute;
 - (g) the terms of office of the governing board of the College.
- (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.
- (5) Despite subsection (1), the Institute must not establish a College for promoting the practice of Principals except with the written approval of the Minister.
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CHAPTER 3—POST SCHOOL EDUCATION AND TRAINING

PART 3.1—VOCATIONAL EDUCATION AND TRAINING

Division 1—Co-ordination of State training system

3.1.1 Victorian Skills Commission

- (1) The Victorian Learning and Employment Skills Commission established under the **Vocational Education and Training Act 1990** continues in operation under and subject to this Act.
 - (2) On the commencement of this section, the Victorian Learning and Employment Skills Commission is to be called the Victorian Skills Commission.
 - (3) The Commission—
 - (a) is a body corporate with perpetual succession; and
 - (b) has a common seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) is capable of acquiring, holding, dealing with or disposing of property for the purpose of performing its functions and exercising its powers; and
 - (e) is capable of doing and suffering anything that a body corporate may by law do and suffer, and that is necessary or expedient for performing its functions and exercising its powers.
 - (4) The common seal must be kept as directed by the Commission and must only be used as authorised by the Commission.
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- (5) All courts must take judicial notice of the imprint of the common seal on a document and, until the contrary is proved, must presume that the document was properly sealed.

3.1.2 Functions of the Commission

- (1) The functions of the Commission are—
- (a) to advise the Minister about—
 - (i) the development and implementation of policy for post-compulsory education and training;
 - (ii) state wide planning for post-compulsory education and training including emerging requirements of Government, industry, the community and individuals;
 - (iii) vocational education and training strategies to complement State and national economic and social development;
 - (iv) the effective spending of money made available for vocational education and training;
 - (v) the provision of adult, community and further education in TAFE institutes;
 - (vi) any other matter that the Minister refers to the Commission;
 - (b) to provide for the delivery of vocational education and training in Victoria by registered education and training organisations and the provision of further education in TAFE institutes;
 - (c) to support local learning and employment networks of providers and stakeholders in post-compulsory education and training;
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s. 3.1.3

- (d) to promote research in relation to post-compulsory education and training;
 - (e) to monitor the outcomes of post-compulsory education and training;
 - (f) to act as the State Training Authority under the Skilling Australia's Workforce Act 2005 of the Commonwealth;
 - (g) to carry out any other function that is conferred on the Commission by this or any other Act.
- (2) The Commission, in carrying out its functions must—
- (aa) have regard to the functions conferred on the boards of TAFE institutes by or under this Act; and
 - (a) establish systems to achieve co-operation between the Commission and the Adult, Community and Further Education Board and to ensure that the Commission's actions are consistent with arrangements for the provision of adult, community and further education in Victoria; and
 - (b) liaise, as it considers appropriate, with the Authority and the Victorian Curriculum and Assessment Authority; and
 - (c) consult, as it considers appropriate, with Government, industry and the community.

S. 3.1.2(2)(aa)
inserted by
No. 58/2007
s. 12.

3.1.3 Functions of the Commission as State Training Authority

- (1) The Minister may, by notice published in the Government Gazette, nominate the Commission as the State Training Authority for Victoria under the Skilling Australia's Workforce Act 2005 of the Commonwealth.

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- (2) The Commission as the State Training Authority has the functions for the purposes of the Skilling Australia's Workforce Act 2005 of the Commonwealth that the Minister specifies by notice published in the Government Gazette.

3.1.4 Performance agreements and financial powers

- (1) The Commission may enter into a performance agreement with the board of a TAFE institute with respect to the provision by the institute of vocational education and training or adult, community and further education.
- (2) A performance agreement under subsection (1) may contain, with the consent of the Minister and subject to any conditions imposed by the Minister, additional provisions with respect to the provision by the TAFE institute of education other than vocational education and training or adult, community and further education.
- (3) The Commission may enter into a performance agreement with an industry training board with respect to the board's functions under this Act.
- (4) The Commission may—
- (a) apply money for or towards the costs of or incidental to the performance of its functions and exercise of its powers under this Act; and
 - (b) make payments to the board of a TAFE institute in accordance with a performance agreement with the board; and
 - (c) make payments to an industry training board in accordance with a performance agreement with the board; and

S. 3.1.4(4)(b)
amended by
No. 58/2007
s. 13(a).

s. 3.1.5

S. 3.1.4(4)(d)
substituted by
No. 58/2007
s. 13(b).

- (d) make payments to a local learning and employment network in accordance with a performance management agreement with the committee of management of the network; and
 - (e) make payments by way of grants, subsidies or loans in relation to vocational education and training to any person, organisation or institution, whether public or private, on any terms or conditions that the Commission thinks fit.
- (5) The Commission must cause to be kept proper accounts and records of all money applied or paid under subsection (4).
 - (6) The accounts and records are to be kept in the form required by the Auditor-General.
 - (7) The accounts of the Commission kept under this section must be audited at least once a year by the Auditor-General, who has in respect of the accounts all the powers conferred on the Auditor-General by any law relating to the audit of public accounts.

3.1.5 Powers of the Commission

The Commission has power to do everything that is necessary or convenient for it to do for or in connection with the performance of its functions including any function specified by the Minister or delegated to it.

3.1.6 Accountability

- (1) The Commission must perform its functions and exercise its powers subject to—
 - (a) any economic and social objectives and public sector management policy established from time to time by the Government of Victoria; and

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- (b) the general control of the Minister and any other requirements of this Act.
 - (2) The Commission must publish any written direction given to it during a financial year in its annual report for that year.

3.1.7 Members

- (1) The Commission consists of—
 - (a) a person appointed by the Governor in Council on the nomination of the Minister as Chairperson;
 - (b) the Chairperson of the Victorian Registration and Qualifications Authority or his or her nominee;
 - (c) the Chairperson of the Adult, Community and Further Education Board or his or her nominee;
 - (d) the Secretary or his or her nominee;
 - (e) not more than 7 other members appointed by the Governor in Council on the nomination of the Minister.
 - (2) The Minister must nominate a person to be Chairperson who, in the Minister's opinion, is experienced in industry or government.
 - (3) In nominating other members, the Minister must have regard to ensuring that—
 - (a) the membership of the Commission includes at least 5 persons with knowledge of or experience in industry;
 - (b) if the number of members appointed under subsection (1)(e) exceeds 5, at least 2 of those members have direct industry experience or experience in the training system.
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s. 3.1.8

- (c) the membership of the Commission includes persons who have backgrounds in vocational education and training and community development;
 - (d) the composition of the Commission is a fair and balanced reflection of the diversity of the community;
 - (e) the composition of the Commission reflects both metropolitan and rural and regional interests;
 - (f) there is sufficient financial and management expertise on the Commission.
- (4) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member in respect of the office of member.

S. 3.1.7(4)
substituted by
No. 80/2006
s. 26(Sch.
item 30.3).

3.1.8 Schedule 2

Schedule 2 has effect subject to any contrary intention in this Part.

3.1.9 Delegations

- (1) The Commission may, by instrument under its common seal, delegate to—
- (a) a member of the Commission; or
 - (b) the board of a TAFE institute or the council of a university with a TAFE division; or
 - (c) an industry training board; or
 - (d) the Secretary or an employee employed for the purposes of this Act; or
 - (e) the Adult, Community and Further Education Board or the General Manager of that Board—
- any power or function of the Commission.

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- (2) A delegation to an industry training board must not be made without the Minister's consent and must be published in the Government Gazette.

3.1.10 Power of further delegation

- (1) If a power or function has been delegated to the board of a TAFE institute or the members of the council of a university with a TAFE division under section 3.1.9, that board or the members of that council may delegate the power or function to—
- (a) any other person or body to whom that power or function may be delegated directly; and
 - (b) in the case of the board of a TAFE institute, any person employed by the board under this Part; and
 - (c) in the case of a university with a TAFE division, any person employed on the staff of the university—

if the original instrument of delegation of that power or function authorised the making of a further delegation.

- (2) An original instrument of delegation may specify any terms, conditions, limitations or restrictions on the making of a further delegation.
- (3) Sections 42 and 42A of the **Interpretation of Legislation Act 1984** apply to a sub-delegation authorised by this section in the same way as they apply to a delegation.

Division 2—TAFE institutes

3.1.11 TAFE institutes

- (1) The Governor in Council may, on the recommendation of the Minister, by Order published in the Government Gazette—
 - (a) create a TAFE institute; or
 - (b) abolish a TAFE institute; or
 - (c) amalgamate one or more TAFE institutes; or
 - (d) if the council of a university with a TAFE division approves, merge a TAFE institute with the university; or
 - (e) change the name of a TAFE institute.
 - (2) The Minister must not make a recommendation under subsection (1) unless—
 - (a) the board or the governing body (if any) of any institute or proposed institute concerned has made a request for the proposed order or has been consulted about the proposed order; and
 - (b) the Minister has consulted the Commission about the proposed order.
 - (3) If an Order in Council changes the name of an institute pursuant to subsection (1)—
 - (a) the institute continues in existence under the new name so that its identity is not affected; and
 - (b) in an Act, in a subordinate instrument made under an Act or in any other document a reference to an institute under the former name shall, except in relation to matters that occurred before the change of name, be construed as a reference to the institute under the new name.
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3.1.12 Incorporation of TAFE institute boards

- (1) The Governor in Council may, on the recommendation of the Minister by Order—
- (a) establish a board to oversee and govern a TAFE institute; or
 - (b) amalgamate a board with another board; or
 - (c) abolish a board; or
 - (d) change the name of a board; or
 - (e) make provision or further provision for or with respect to the constitution, management structure, membership, objectives, powers, duties or functions of a board, the manner of appointment or the terms and conditions of appointment of directors of a board; or
 - (f) make provision for the board to make rules for the governance of the institute; or
 - (g) make provision for the board to delegate any of its powers and functions under this Act (except any powers delegated to it under this Act) to a person employed at the institute or to a committee established by or under an Order in Council relating to the board; or
 - (h) amend any provision of a previous order relating to a board; or
 - (i) make provision for or with respect to anything that is consequential upon the making of an order including the rights and obligations or the assignment of any property (subject to any trusts) of any board referred to in the Order.

S. 3.1.12(f)
amended by
No. 58/2007
s. 14.

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- (2) Without limiting the powers of the Governor in Council under subsection (1), the Minister may also make Orders for the purposes of subsection (1)(e), (f), (g), (h) or (i).
 - (3) The Minister must not make a recommendation under subsection (1) or an Order under subsection (2) unless—
 - (a) the board of any institute concerned has made a request for the proposed Order or has been consulted about the proposed Order; and
 - (b) the Minister has consulted the Commission about the proposed order.
 - (4) A board established under subsection (1)—
 - (a) is a body corporate with perpetual succession; and
 - (b) has a common seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) is capable of acquiring, holding, dealing with or disposing of property for the purpose of performing its functions and exercising its powers; and
 - (e) is capable of doing and suffering anything that a body corporate may by law do and suffer and that is necessary or expedient for performing its functions and exercising its powers.
 - (5) If two or more boards are amalgamated under an Order under subsection (1), any legal proceedings that might have been commenced or continued by or against any of the boards may be commenced or continued by or against the single board formed by the amalgamation.
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- (6) A change of name under an Order under subsection (1) does not affect the identity of the board or any rights or obligations of the board or render defective any legal proceedings by or against the board, and any legal proceedings that might have been continued or commenced by or against it by its former name may be continued by or against it by its new name.

3.1.13 Functions of TAFE institute boards

- (1) The functions of the board of an institute are—
- (a) to oversee and govern the institute efficiently and effectively and to prepare periodic strategic and operational business plans for the institute; and
 - (b) to provide the population of the area served by the institute with efficient and effective technical and further education programs and services responsive to the needs of industry, students and the general community; and
 - (c) to provide the population of the area served by the institute with efficient and effective adult, community and further education programs and services which are responsive to the needs of the community and to consult with the relevant Regional Councils about the provision of these programs and services; and
 - (d) to offer and conduct a course of study leading to the conferral of a higher education award in accordance with this Act; and
 - (e) to confer a higher education award in accordance with this Act; and
 - (f) to make adequate arrangements for persons and groups which have not had or do not have adequate access to technical and further education programs and services; and

S. 3.1.13(1)(a)
amended by
No. 58/2007
s. 15(1).

s. 3.1.14

S. 3.1.13(2)(b)
substituted by
No. 58/2007
s. 15(2).

- (g) to carry out any other function conferred on the board by or under this Act or any Order made under section 3.1.12.
- (2) Without limiting the generality of subsection (1) the board may carry out all or any of the following functions—
- (a) provide facilities or services for study, research or education;
 - (b) undertake research, development, education, training delivery or other services on a commercial basis for other organisations;
 - (c) aid or engage in the development or promotion of institute research or the application or use of the results of that research;
 - (d) prepare, publish or distribute or license the use of literary or artistic work, audio or audio-visual material or computer software;
 - (e) seek or encourage gifts to the institute or for institute purposes;
 - (f) promote or assist drama, music or the visual arts.

3.1.14 Powers of TAFE institute boards

- (1) A board has power to do all things that are necessary or convenient to be done for or in connection with or, as incidental to, the performance of its functions including any function delegated to it.
- (2) Without limiting the generality of subsection (1) a board, for the purpose of carrying out its functions under section 3.1.13(2), may—
- (a) be a member of a company, association trust or partnership;

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- (b) form or participate in the formation of a company, association, trust or partnership;
 - (c) enter into a joint venture with another person or persons.
- (3) A board, in the performance of its functions, may exercise its powers in Victoria and elsewhere.

3.1.15 Accountability of TAFE institute boards

- (1) A board must perform its functions and exercise its powers subject to—
- (a) a performance agreement; and
 - (b) any economic and social objectives established from time to time by the Government of Victoria; and
 - (c) an Order made under section 3.1.12; and
 - (d) any other requirements of this Act.
- (2) The board of a TAFE institute is accountable to the Minister for the effective and efficient governance of the institute including the discharge of its statutory functions and for the educational and financial performance of the institute.
- (3) A board must establish and keep full and complete books and accounts of all money received and paid by the board and must arrange for a continuous audit of the income and expenditure to be made at any intervals not exceeding one month that the Minister directs.
- (4) The books and accounts referred to in subsection (3) must be kept in the form and manner approved by the Auditor-General.

3.1.16 Board directorship

- (1) An Order under section 3.1.12 must provide for a board consisting of not less than 9 and not more than 15 persons of whom—
 - (a) more than one half must be appointed by the Minister;
 - (b) one must be a staff member of the institute elected by staff of the institute;
 - (c) one must be a student of the institute elected by students of the institute;
 - (d) one must be the chief executive officer of the institute;
 - (e) the remaining directors must be persons with knowledge of or experience in the community or any industry served by the institute or in adult, community and further education or with special skills or knowledge relevant to the board appointed by the board by co-option.
- (2) In appointing directors to a board, the Minister must have regard to the total membership reflecting the diversity of the community and to having equal numbers of men and women as directors of the board and the criteria in subsection (1)(e).
- (3) At least half the directors referred to in subsection (1)(a) must be persons with knowledge of, or experience in, any industry in which the TAFE institute provides training appointed by the Minister after considering the advice of the directors of the board who have been appointed.
- (4) A person who is a member of Parliament must not be appointed or elected to be a director of a board.

S. 3.1.16(3)
amended by
No. 58/2007
s. 16.

3.1.17 Schedule 2

Schedule 2 has effect subject to any contrary intention in this Part.

3.1.18 Removal of directors

- (1) The Governor in Council may remove a director appointed by the Minister under section 3.1.16(1)(a) from office at any time.
- (2) The Governor in Council may remove a director elected or appointed to the board under section 3.1.16(1)(b), (c) or (e)—
 - (a) on the recommendation of two thirds of the directors for the time being of the board; or
 - (b) on the recommendation of the Commission.
- (3) The Commission must not make a recommendation under subsection (2)(b) unless—
 - (a) the Commission has requested the board to recommend the removal of a director and the board has not made a recommendation within 30 days of the request; and
 - (b) the Commission is satisfied that the director failed to comply with any requirement of clause 2(4) of Schedule 2; and
 - (c) the Commission has given the director an opportunity to submit an explanation in relation to the alleged failure.

3.1.19 Reserve powers of Minister

- (1) If the Minister is satisfied that the board of an institute—
 - (a) is inefficiently or incompetently governing the institute; or

S. 3.1.19(1)(a)
amended by
No. 58/2007
s. 17(1).

s. 3.1.19

- (b) is failing to comply with its performance agreement; or
- (c) has failed to comply with any provision of this Act, a guideline issued by the Minister or any directions given to the board by the Minister under this Act or an Order establishing the board—

the Minister may do any one or more of the following—

- (d) issue written directions to the board about—
 - (i) action to be taken to remedy inefficient or incompetent governance, which may include the dismissal of the chief executive officer of the institute; or
 - (ii) compliance with a performance agreement; or
 - (iii) compliance with the Act, guidelines, directions or an Order; or
- (e) censure the board; or
- (f) recommend that the Governor in Council dismiss the directors of the board and appoint new directors of the board and make arrangements for the elections for elected directors of the board; or
- (g) recommend to the Governor in Council that an administrator of the institute be appointed in accordance with this Division.

- (2) If the Minister is satisfied that a board has failed to comply with a direction given under subsection (1)(d) the Minister may do any one or more of the things specified in subsection (1)(e), (f) and (g).

S. 3.1.19(1)(d)(i)
amended by
No. 58/2007
s. 17(2).

3.1.20 Notice of proposal

- (1) If the Minister proposes to exercise his or her powers under section 3.1.19, the Minister—
 - (a) must give the board notice in writing of the proposal and the reasons for the proposal; and
 - (b) must consider any submissions whether oral or in writing made to the Minister by the board within 7 days after the giving of the notice or any further time specified in the notice; and
 - (c) may consider any other submissions and any matters the Minister considers appropriate—
before deciding whether or not to exercise the power.
- (2) If the Minister decides to censure or dismiss a board or recommend the appointment of an administrator to the board, the Minister must—
 - (a) give notice in writing of the censure, dismissal or appointment to the board; and
 - (b) cause to be tabled in each House of Parliament within 7 sitting days of the House after the notice is given to the board—
 - (i) a copy of the notice; and
 - (ii) a report of the circumstances leading to the action; and
 - (iii) a copy of any written submission made by the board.

3.1.21 Appointment of administrator

- (1) If the Minister decides to recommend the appointment of an administrator, the Governor in Council, on the recommendation of the Minister, may appoint an administrator of the institute for the period and subject to the terms and conditions that are specified in the appointment.
 - (2) An administrator of an institute appointed under this section has and may exercise all the powers and is subject to all the duties of the board of the institute and the chief executive officer of the institute.
 - (3) On the appointment of an administrator, the directors of the board of the institute cease to hold office.
 - (4) The Minister must review the appointment of an administrator within 12 months after the appointment.
 - (5) If the Minister recommends to the Governor in Council that the appointment of the administrator should be revoked, the Governor in Council may by notice published in the Government Gazette declare that the appointment is revoked on the date specified in the notice, being a date not less than 28 days after the publication of the notice.
 - (6) If a notice is published under subsection (5) in relation to an institute—
 - (a) directors of the board of the institute shall be elected or appointed in accordance with this Part; and
 - (b) on the date specified in the notice—
 - (i) the appointment of the administrator is revoked; and
 - (ii) the board of the institute is re-established.
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3.1.22 Saving of acts of board

Nothing done by a board is in any way abated or affected by the dismissal of the board or the appointment of an administrator.

3.1.23 Employment of staff

- (1) Subject to any direction given by the Minister, a board—
 - (a) must employ a chief executive officer of the institute; and
 - (b) may employ such other staff as is necessary to enable the board to perform its functions and exercise its powers.
- (2) A board, in employing persons under this section, does not represent the Crown.
- (3) A board may, by instrument under its common seal, delegate to the chief executive officer of the institute any power of the board under this section, other than this power of delegation.

3.1.24 Minister may object to appointment of chief executive officer

- (1) Before appointing a person as the chief executive officer of the institute a board must notify the Minister in writing of the proposal to make the appointment.
- (2) The Minister may, within 10 days after receiving that notification and after considering the board's proposal, give to the board notice in writing of his or her objection to the proposed appointment.
- (3) A board must not appoint a person as the chief executive officer of the institute if the Minister has objected to the appointment in accordance with subsection (2).

3.1.25 Schedule 3

- (1) Schedule 3 applies to the employment of staff at a TAFE institute or in the TAFE division of a university with a TAFE division.
- (2) A board may determine terms and conditions of employment of persons employed under section 3.1.23 to the extent that those terms and conditions are not determined or agreed in accordance with Schedule 3.
- (3) A provision determined under subsection (2) is of no effect to the extent that it provides a term and condition of employment that is less favourable to an employee than a term or condition to which he or she was entitled under section 19, 20 or 21 of the **Vocational Education and Training (College Employment) Act 1993**.

3.1.26 Chief executive officer

The chief executive officer of the institute—

- (a) is the chief executive officer of the board;
and
- (b) is responsible for the day to day administration and management of the institute in accordance with any policies or directions of the board of the institute and with the requirements of this Act; and
- (c) must satisfy the board that—
 - (i) funds are spent; and
 - (ii) staff are carrying out functions; and
 - (iii) the institute is generally managed and administered—

in accordance with the requirements of this Act.

Division 3—Industry training boards

3.1.27 Establishment or declaration of industry training boards

- (1) The Minister may by Order published in the Government Gazette—
- (a) establish an industry training board; or
 - (b) declare any association incorporated under the **Associations Incorporation Act 1981** or any company within the meaning of the Corporations Act that is taken to be registered in Victoria to be an industry training board—

in respect of the industry specified in the Order.

- (2) In determining whether to make a declaration of an association or a company the Minister must consult with the Commission and consider—
- (a) whether the functions, objects, purposes or powers of the association or company are similar to the functions set out in section 3.1.30 and the powers set out in section 3.1.31; and
 - (b) whether the membership of the governing body of the association or company includes persons with experience in the various aspects of the industry specified in the order including backgrounds as employers and as employees.

3.1.28 Orders establishing industry training boards

- (1) An Order under section 3.1.27(1)(a) may make provision for or with respect to the constitution, management structure, membership or objectives of a board or the manner of appointment or the terms and conditions of appointment of members of a board.

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- (2) An industry training board established under section 3.1.27(1)(a)—
- (a) is a body corporate with perpetual succession; and
 - (b) has a common seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) is capable of acquiring, holding, dealing with or disposing of property for the purpose of performing its functions or exercising its powers; and
 - (e) is capable of doing and suffering anything that a body corporate may by law do and suffer and that is necessary or expedient for performing its functions and exercising its powers.
- (3) The common seal of an industry training board established under section 3.1.27(1)(a) must be kept as directed by that board and must only be used as authorised by that board.
- (4) All courts must take judicial notice of the imprint of the common seal on a document and, until the contrary is proved, must presume that the document was properly sealed.

3.1.29 Revocation of orders

- (1) The Minister may by Order published in the Government Gazette—
- (a) abolish an industry training board established under section 3.1.27(1)(a); or
 - (b) revoke any declaration under section 3.1.27(1)(b) in respect of an industry training board; or

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- (c) make any provision for any matter consequential upon the making of an order under paragraph (a) or (b).
 - (2) Without limiting the generality of subsection (1)(c) an Order abolishing a board may provide for the distribution of the assets of the abolished board to another board established under section 3.1.27(1)(a).

3.1.30 Functions of industry training boards

- (1) The functions of an industry training board established under section 3.1.27(1)(a) are—
 - (a) within the national and State strategic framework, to prepare quality training plans detailing industry skill requirements, the quantity and types of training needed by industry and training arrangements;
 - (b) to promote training within the industry;
 - (c) to liaise with or participate on national industry training advisory bodies;
 - (d) to participate in accreditation and recognition processes.
- (2) An Order under section 3.1.27(1)(a) may confer any additional functions on the industry training board established by the Order.
- (3) The Minister may at any time by Order published in the Government Gazette confer any additional functions on an industry training board or amend any of the functions conferred on the board by Order.

3.1.31 Powers of industry training boards

An industry training board established under section 3.1.27(1)(a) has power to do everything that is necessary or convenient for it to do for or in connection with the performance of the functions of the board including any function delegated to it.

3.1.32 Members

- (1) An industry training board established under section 3.1.27(1)(a) consists of the number of members that is fixed by the Order establishing the board.
- (2) Members of a board established under section 3.1.27(1)(a) are to be appointed by the Minister.
- (3) The Minister must, in appointing members to a board established under section 3.1.27(1)(a), endeavour to ensure that the board has a membership of persons with experience in the various aspects of the industry specified in the order including backgrounds as employers and employees.

3.1.33 Terms and conditions of office of members

- (1) A member of a board established under section 3.1.27(1)(a) holds office for a term not exceeding 3 years and is eligible for re-appointment.
- (2) The office of a member of a board established under section 3.1.27(1)(a) 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 member is absent from 3 consecutive meetings of the Board without the Chairperson's leave; or

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- (d) the member becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**.
- (3) A member of a board established under section 3.1.27(1)(a) 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 an industry training board; and
 - (d) disclose any conflict of interest or duties to the industry training board.
- (4) The Minister may at any time remove a member of an industry training board established under section 3.1.27(1)(a) from office.

3.1.34 Proceedings of boards

- (1) Subject to this Act and any Order made under section 3.1.27(1)(a), a board established under section 3.1.27(1)(a) may regulate its own proceedings.
 - (2) A board may permit members to participate in a particular meeting or all meetings, by telephone, closed circuit television or other means of communication.
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PART 3.2—HIGHER EDUCATION

Division 1—Student fees, subscriptions and charges

3.2.1 Definition

In this Division—

organisation of students means any person or body the object of which or one of the objects of which is to represent or serve the needs of students and—

- (a) the constituting documents of which require that its membership is to be constituted by a majority of students; or
- (b) the constituting documents of which provide for any student to be a member of the organisation without the requirement for the student to apply for and be accepted as a member of that organisation; or
- (c) the majority of the members of which are students; or
- (d) in the case of an organisation with an elected governing body, at the last general election for membership of that governing body the majority of members were elected at elections where the majority of voters were students.

3.2.2 Application of Division

The provisions of this Division apply to the governing body of a post-secondary education institution despite anything to the contrary in—

- (a) any Act; or

(b) a subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984**; or

(c) any document whatever—

relating to the post-secondary education institution.

3.2.3 Provision for declining automatic membership of a student organisation

- (1) The governing body of a post-secondary education institution that has procedures to provide for students to become members of an organisation of students as a consequence of, or at the same time as, enrolling in a course of study at the institution must ensure that those procedures provide for a student to indicate at the time of enrolment that he or she does not wish to become a member of the organisation of students.
- (2) The governing body of a post-secondary education institution must ensure that a student who has indicated, in accordance with procedures referred to in subsection (1), that he or she does not wish to become a member of an organisation of students is not made a member of an organisation of students as a consequence of, or by enrolling in a course of study at that institution.

3.2.4 Students who do not join student organisation

The governing body of a post-secondary education institution must ensure that any student or prospective student of the institution who has paid the compulsory fees, subscriptions or charges of the institution but who is not or does not become a member of any organisation of students is not liable to—

- (a) exclusion from the institution; or
- (b) exclusion from or discrimination against in respect of examinations or any other academic activities of the institution; or
- (c) exclusion from facilities, services or activities for students which are wholly or partially funded by the compulsory fees, subscriptions or charges; or
- (d) pay a fine to the institution; or
- (e) any other punishment imposed by or on behalf of the institution—

because the student is not or does not become a member of an organisation of students.

3.2.5 Limitation on powers to spend funds from compulsory non-academic fees etc.

- (1) The governing body of a post-secondary education institution must not spend or allow to be spent—
 - (a) any money paid to the institution by a student or a prospective student of the institution by way of a compulsory non-academic fee, subscription or charge; or
 - (b) any money which is profit made by the institution or an organisation of students in the course of providing facilities, services or activities funded wholly or partly by the money referred to in paragraph (a)—

except for providing facilities, services or activities of direct benefit to students at the institution.

- (2) The governing body of a post-secondary education institution must establish procedures and sanctions to ensure that any money referred to in subsection (1) is spent or allowed to be spent in

accordance with that subsection and, if spent or allowed to be spent in contravention of that subsection, is repaid to the governing body.

3.2.6 Voluntary fees held on trust

- (1) If the governing body of a post-secondary education institution collects money for voluntary fees, subscriptions or charges to be paid to an organisation of students—
 - (a) for voluntary membership of an organisation of students; or
 - (b) for the voluntary use of a facility, service or activity; or
 - (c) for voluntary participation in an activity—

the governing body holds the money for the beneficial use of the organisation of students and is not entitled to retain any of the money except to defray the costs of administration of collecting, holding or transfer of the money and to pay authorised deposit-taking institution and Government fees and charges relating to collecting, holding or transfer of the money.

- (2) In this section—

authorised deposit-taking institution has the same meaning as in the Banking Act 1959 of the Commonwealth.

3.2.7 Offence

A person must not persuade another person to become a member of an organisation of students of a post-secondary education institution by threats, intimidation or deception or attempt to persuade a person to become a member by any of those means.

Penalty: 10 penalty units.

3.2.8 Statement about compulsory fees etc.

- (1) The governing body of a post-secondary education institution must ensure that the institution's annual report under the **Financial Management Act 1994** that is submitted to the Minister includes a statement about compulsory non-academic fees, subscriptions and charges payable in the preceding financial year.
- (2) The statement must specify—
 - (a) the amount of compulsory non-academic fees, subscriptions and charges collected by the institution from students and prospective students in the preceding financial year; and
 - (b) the purposes for which the institution spent those fees, subscriptions and charges or made them available and the amounts spent or made available; and
 - (c) the names of organisations of students to which the institution made the fees, subscriptions and charges or part of the fees, subscriptions and charges available and the amounts of money which were made available to each organisation; and
 - (d) the purposes for which the organisations referred to in paragraph (c) spent the money made available to them including names of other bodies to which they made the money available and the amounts of money they made available.

Division 2—Incorporation of Councils

3.2.9 Application

Nothing in this Division applies to a university, a TAFE institute or a provider of further education.

3.2.10 Post-secondary education institutions

- (1) The Governor in Council may, on the recommendation of the Minister, by order published in the Government Gazette—
 - (a) create a post-secondary education institution; or
 - (b) abolish a post-secondary education institution; or
 - (c) amalgamate one or more post-secondary education institutions; or
 - (d) change the name of a post-secondary education institution.
- (2) The Minister must not make a recommendation under subsection (1) unless the council or governing body (if any) of any institution or proposed institution concerned has made a request for the proposed order or has consented to the proposed order.
- (3) If an Order in Council under subsection (1) changes the name of an institution—
 - (a) the institution continues in existence under the new name so that its identity is not affected; and
 - (b) any reference to an institution under the former name shall, except in relation to matters that occurred before the change of name, be construed as a reference to the institution under the new name.

3.2.11 Incorporation of Councils

- (1) The Governor in Council may, on the recommendation of the Minister, by Order published in the Government Gazette—
 - (a) establish a council to be the governing body of an institution; or

s. 3.2.11

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- (b) amalgamate a council with another council;
or
 - (c) abolish a council; or
 - (d) change the name of a council; or
 - (e) make provision or further provision for or
with respect to the constitution, management
structure, membership, objectives, powers,
duties or functions of a council, the manner
of appointment or the terms and conditions
of appointment of members of a council; or
 - (f) make provision for a council to make rules
for the government of the institution; or
 - (g) make provision for a council to delegate any
of its powers and functions under this Act to
a person employed at the institution or to a
committee established by or under an Order
in Council relating to the council; or
 - (h) amend any provision of a previous order
relating to a council; or
 - (i) make provision for or with respect to
anything that is consequential on the making
of an order involving the rights and
obligations or the assignment of any property
(subject to any trusts) of any council referred
to in the Order.
- (2) The Minister must not make a recommendation
under subsection (1) unless the council of the
institution concerned has made a request for the
proposed Order or has consented to the proposed
Order.
- (3) A council established under subsection (1)—
- (a) is a body corporate with perpetual
succession; and
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- (b) has a common seal; and
 - (c) is capable in law of suing and being sued in its corporate name; and
 - (d) may acquire, hold and dispose of real and personal property for the purpose of performing its functions and exercising its powers under this Act; and
 - (e) may do and suffer all acts matters and things that a body corporate may by law do or suffer and are necessary or expedient for the purpose of performing its functions and exercising its powers under this Act.
- (4) If two or more councils previously incorporated under this Act are amalgamated under an Order made under subsection (1), any legal proceedings that might have been commenced or continued by or against any of the councils may be commenced or continued by or against the single council formed by the amalgamation.
- (5) A change of name of a council under an order under subsection (1) does not affect the identity of the council or any rights or obligations of the council, and any legal proceedings that might have commenced or continued by or against it by its former name may be commenced or continued by or against it by its new name.

3.2.12 Award of degrees or diplomas

- (1) The Governor in Council may by Order published in the Government Gazette confer on the council of a post-secondary education institution incorporated under section 3.2.11 the power to award a degree or diploma specified in the Order.

- (2) The Governor in Council may in an Order or further Order make the power to award a specified degree or diploma subject to any terms and conditions that the Governor in Council thinks fit or remove or vary any term or condition to which the power is subject or impose additional terms and conditions on the exercise of the power.
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**PART 3.3—ADULT, COMMUNITY AND FURTHER
EDUCATION**

Division 1—Preliminary

3.3.1 Definitions

In this Part—

Board means the Adult, Community and Further Education Board;

Board of AMES means the governing board of Adult Multicultural Education Services established by Order in Council under Division 5;

Board of the Centre for Adult Education means the Board of the Centre for Adult Education established by Order in Council under Division 5;

governing board means the governing board of an adult education institution established by Order in Council under Division 5;

Regional Council means a Regional Council of Adult, Community and Further Education established under Division 4.

**Division 2—Adult, Community and Further Education
Board**

**3.3.2 The Adult, Community and Further Education
Board**

- (1) The Adult, Community and Further Education Board established under the **Adult, Community and Further Education Act 1991** continues in operation under and subject to this Act.

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- (2) The Board—
- (a) is a body corporate with perpetual succession; and
 - (b) has a common seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) is capable of acquiring, holding, dealing with or disposing of property for the purpose of performing its functions and exercising its powers; and
 - (e) is capable of doing and suffering anything that a body corporate may by law do and suffer, and that is necessary or expedient for performing its functions and exercising its powers.
- (3) The common seal must be kept as directed by the Board and must only be used as authorised by the Board.
- (4) All courts must take judicial notice of the imprint of the common seal on a document and, until the contrary is proved, must presume that the document was properly sealed.

3.3.3 Functions of the Board

- (1) The functions of the Board with respect to adult, community and further education that is not provided by TAFE institutes, are—
- (a) to inquire into and make reports on the general development of policies, programs and services, having regard to, amongst other things—
 - (i) the needs of the community; and
 - (ii) the establishment of objectives and priorities; and

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- (iii) the promotion of an awareness of the importance of adult, community and further education; and
 - (iv) the adequacy of arrangements for persons who have not had or do not have access to education programs and who wish to participate in adult, community and further education programs; and
 - (v) the role of Government in supporting community initiative in planning, developing and providing adult, community and further education; and
- (b) to plan, develop, evaluate and fund, policies, programs and services for the co-ordination, provision and support of adult, community and further education having regard to—
- (i) the promotion of individual and community development through learning as reflected in those policies, programs and services; and
 - (ii) the development and maintenance of the quality of and equitable access to those programs and services; and
- (c) to provide for the delivery of adult, community and further education; and
- (d) to advise the Minister on any matter relating to adult, community and further education; and
- (e) to provide educational programs where directed by the Minister or so as to comply with any agreement or arrangement between the State and the Commonwealth or any other State or Territory of the Commonwealth; and
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- (f) to promote research and development into matters relating to adult, community and further education; and
 - (g) to promote public awareness of adult, community and further education; and
 - (h) to carry out any other function that is conferred on the Board by this or any other Act.
- (2) The functions of the Board with respect to all adult, community and further education are to act jointly with the Commission—
- (a) to plan for all adult, community and further education in the State including—
 - (i) analysing the needs of the community for adult, community and further education; and
 - (ii) deciding what priority is to be given to these needs; and
 - (iii) establishing objectives and targets in order to meet these needs; and
 - (b) establish systems to achieve co-operation between the Board and the Commission to ensure that the Board's actions are consistent with arrangements for the provision of vocational education and training in Victoria.

3.3.4 Powers of the Board

- (1) The Board has power to do everything that is necessary or convenient for it to do for or in connection with the performance of its functions including any function delegated to it.
 - (2) In addition to the powers set out in subsection (1) the Board may—
 - (a) be a member of a company, association, trust or partnership; and
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- (b) form or participate in the formation of a company, association, trust or partnership; and
 - (c) enter into a joint venture with any other person or persons; and
 - (d) apply for, obtain and hold, whether on its own behalf or jointly with any other person, any intellectual property rights; and
 - (e) assign or grant licences in respect of those intellectual property rights, with or without charge; and
 - (f) enter into agreements and arrangements for the commercial exploitation of intellectual property rights; and
 - (g) charge fees for adult, community and further education services provided by the Board.

3.3.5 Board to consult

In carrying out its functions and exercising its powers, the Board must—

- (a) give effect to the adult, community and further education plan; and
- (b) have regard to the advice of a Regional Council on any matter relating to adult, community and further education in that Region; and
- (c) consult, as a matter of general practice, with—
 - (i) the Regional Councils; and
 - (ii) the governing boards of adult education institutions; and
 - (iii) the boards of TAFE institutes; and

(iv) any person or organisation providing or using adult, community and further education—

on any matter of general concern about adult, community and further education; and

(d) ensure that its actions are consistent with the arrangements for the provision of vocational education and training.

3.3.6 Financial powers

The Board—

- (a) may apply money for or towards the costs of or incidental to the performance of its functions and the exercise of its powers under this Act; and
- (b) may make payments by way of grants, subsidies or loans in relation to adult, community and further education to any person, organisation or institution, whether public or private, on any terms or conditions that the Board thinks fit; and
- (c) may make payments by way of grants, subsidies or loans in relation to adult, community and further education to a board of a TAFE institute and any such payment—
 - (i) must be consistent with the adult, community and further education plan; and
 - (ii) must be made on any terms and conditions that the Board thinks fit; and
- (d) may make payments to a Regional Council or the governing board of an adult education institution with respect to their functions in accordance with a performance agreement entered into under section 3.3.7;

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- (e) may make payments by way of grants, subsidies or loans in relation to education other than adult, community and further education and any such payment—
- (i) must not be made unless the Minister has first given his or her consent to it; and
 - (ii) is subject to any terms and conditions imposed by the Minister.

3.3.7 Performance agreements

- (1) The Board may enter into a performance agreement with a Regional Council with respect to that Council's functions under this Act.
- (2) The Board may enter into a performance agreement with the governing board of an adult education institution with respect to the functions of the governing board under this Act.

3.3.8 Adult, community and further education plan

- (1) The Board and the Commission must jointly prepare an adult, community and further education plan.
- (2) In developing the plan the Board must have regard to the integration of regional information including information provided by a Regional Council.
- (3) A new plan must be made at the end of every 3 years after the last plan was made.
- (4) Nothing in subsection (3) prevents a new plan from being made before the end of 3 years.
- (5) Before making a new plan, the Board and the Commission must jointly evaluate the previous plan.

s. 3.3.9

- (6) Each plan must be reviewed at regular intervals not exceeding 3 years after the making of the last plan.
- (7) A plan may be amended at any time.
- (8) If the Board and Commission are unable to agree upon the making or amendment of a plan it must be determined by the Minister.

3.3.9 Implementation of the plan

The Board and the Commission must give effect to the plan.

3.3.10 Membership of the Board

- (1) There are to be 12 members of the Board to be appointed by the Governor in Council on the recommendation of the Minister of whom—
 - (a) one member is to be appointed as Chairperson; and
 - (b) one member is to be appointed as Deputy Deputy Chairperson.

S. 3.3.10(1)(b)
amended by
No. 58/2007
s. 18(a).

S. 3.3.10(1)(c)
repealed by
No. 58/2007
s. 18(b).

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- (2) In making a recommendation under subsection (1) the Minister must have regard to—
 - (a) maintaining a balance between the number of men and women on the Board; and
 - (b) ensuring that the composition of the Board reflects both metropolitan and country interests; and

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- (c) ensuring that the composition of the Board is a fair and balanced reflection of the diversity of the community; and
 - (d) ensuring that there is sufficient financial and management expertise on the Board; and
 - (e) ensuring that the composition of the Board reflects the interests of users of adult, community and further education; and
 - (f) ensuring that the composition of the Board reflects the importance of the community based provision of adult, community and further education.

3.3.11 Schedule 2

Schedule 2 has effect subject to any contrary intention in this Part.

3.3.12 Committees of the Board

- (1) The Board must establish an audit committee to audit the financial and other affairs of the Board.
- (2) The Board may establish one or more other committees and may refer matters to a committee for examination.
- (3) The Board must determine the membership, the terms and conditions of membership and procedures of a committee established under this section.

3.3.13 Staff

A General Manager of the Board employed under this Act is responsible for implementing any policy or decision of the Board made in accordance with this Part or any other Act.

Division 3—Delegations

3.3.14 Delegations by the Board

The Board may, by instrument under its common seal, delegate any power or function, other than a function specified in section 3.3.3(2), its duty to make the adult, community and further education plan under section 3.3.8 or this power of delegation to—

- (a) a member of the Board; or
- (b) the General Manager; or
- (c) any employee in the public service employed for the purposes of this Part or Part 3.1; or
- (d) a Regional Council; or
- (e) a provider of adult, community and further education including the governing board of an adult education institution; or
- (f) the Commission or the Director of the Commission; or
- (g) a person appointed or body established by the Minister under this Act.

3.3.15 Delegations by the General Manager

The General Manager may, by instrument in writing, delegate any of his or her powers or functions under this Act, other than this power of delegation, to—

- (a) any employee in the public service employed for the purposes of this Part or Part 3.1; or
 - (b) any Regional Council; or
 - (c) a person employed under Division 4; or
 - (d) a provider of adult, community and further education including the governing board of an adult education institution; or
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- (e) the Commission or the Director of that Commission; or
 - (f) a person appointed or body established by the Minister under this Act.

Division 4—Regions of adult, community and further education

3.3.16 Regions

The Minister, after consulting with and considering the advice of the Board, is to establish regions for the administration of adult, community and further education in Victoria.

3.3.17 Regional Councils

The Minister must appoint a Regional Council of Adult, Community and Further Education for each region established under section 3.3.16.

3.3.18 Functions of Regional Councils

- (1) The functions of a Regional Council are—
 - (a) to develop a process which will enable users and providers of adult, community and further education to advise the Council and the Board on the needs of adult, community and further education in the region; and
 - (b) to provide advice and prepare reports for the Board; and
 - (c) to advise on and implement policies for adult, community and further education which are consistent with the functions and policies of the Board; and
 - (d) to provide information, and contribute to planning, for adult, community and further education in the region; and

s. 3.3.18

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- (e) to make recommendations to the Board about the allocation of funds provided by the Board under Division 2 and about the allocation of resources for providing adult, community and further education in the region when it is not provided by TAFE institutes or an adult education institution; and
 - (f) to advise the Board about the effectiveness of activities funded by the Board under Division 2 and about the effectiveness of adult, community and further education activities within the region that are not provided by TAFE institutes or an adult education institution; and
 - (g) to support and promote the provision of adult, community and further education in the region; and
 - (h) to support and promote networks between community based providers of adult, community and further education; and
 - (i) to support and promote the diversity and flexibility of the community based provision of adult, community and further education; and
 - (j) to advise the Board on strategies and systems which will support and enhance the communication between the Government and the community about the provision and development of adult, community and further education in the region; and
 - (k) to participate in recommending to the Board priorities and policies to apply throughout the State; and
 - (l) to carry out any other function that is conferred on it by this or any other Act.
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- (2) The Minister may from time to time, by notice published in the Government Gazette, confer additional functions relating to adult, community and further education on a Regional Council.
- (3) In carrying out its functions a Regional Council must—
- (a) consult as a matter of general practice with any person or organisation who uses or provides adult, community and further education and any other education and training organisation in its region including the board of any TAFE institute which provides or offers adult, community and further education in the region and the governing board of an adult education institution if it provides or offers adult, community and further education in the region; and
 - (b) ensure that its actions are consistent with the arrangements for the provision of vocational education and training.

3.3.19 Powers of Regional Councils

A Regional Council has power to do everything that is necessary or convenient for it to do for or in connection with the performance of its functions including any function delegated to it.

3.3.20 Accountability

A Regional Council must carry out its functions subject to—

- (a) any performance agreement it has entered into with the Board; and
 - (b) the policies of the Board and the adult, community and further education plan; and
 - (c) the general control of the Minister and any other requirement of this Act.
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3.3.21 Membership of Regional Councils

- (1) A Regional Council consists of 9 members appointed by the Minister of whom one shall be elected as Chairperson and one shall be elected as Deputy Chairperson by the members of the Council.
- (2) The Minister must consult with any community, or other group or organisation in the region which is, in the Minister's opinion, appropriate concerning the membership of a Regional Council for that region.
- (3) In appointing members of a Regional Council, the Minister must consider any advice given in a consultation under subsection (2) and ensure that the members of the Council—
 - (a) reflect the knowledge, skills and experience of the adult, community education sector; and
 - (b) reflect in a fair and balanced way the diversity of the community in that region; and
 - (c) have knowledge and experience of governance responsibilities; and
 - (d) have knowledge and experience of fiduciary requirements and the employment of staff.
- (4) The members of a Council may co-opt, for one term of office and for a period not exceeding one year, not more than 2 members.
- (5) A co-opted member of the Council has the same rights, powers, duties and entitlements as any other member of the Council for the period during which he or she is co-opted.

3.3.22 Terms and conditions of office of members

- (1) A member holds office for the term, not exceeding 3 years, that is specified in the instrument of appointment and is eligible for re-appointment.
- (2) 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 member is absent from three consecutive meetings of the Council without the Chairperson's leave or in the case of the Chairperson, without the Minister's leave.
- (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 a Council; and
 - (d) disclose to the Council any conflict of interest or duties.
- (4) A member may resign his or her office in writing delivered to the Minister.
- (5) The Minister may remove or suspend a member from office.
- (6) A member, other than a person who holds a statutory office within the meaning of the **Public Administration Act 2004**, is employed in the public service or the teaching service or with a statutory authority, and whose travelling and personal expenses are met through that position, is entitled to be paid allowances for travelling and personal expenses at the rates and on the

conditions applicable to employees of the public service.

- (7) 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.

3.3.23 Meetings of Councils

- (1) A Regional Council must have at least 6 meetings in any year.
- (2) The Chairperson must preside at any meeting at which he or she is present.
- (3) If the Chairperson is absent the Deputy Chairperson must preside.
- (4) Subject to this Act and to any guidelines issued by the Minister, the Council may regulate its own proceedings.

3.3.24 Incorporation of Regional Councils

- (1) A Regional Council—
- (a) is a body corporate with perpetual succession; and
 - (b) has a common seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) is capable of acquiring, holding, dealing with or disposing of property for the purpose of performing its functions or exercising its powers; and
 - (e) is capable of doing and suffering anything that a body corporate may by law do and suffer and that is necessary or expedient for performing its functions and exercising its powers.
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- (2) The common seal of a Regional Council must be kept as directed by the Council and must only be used as authorised by the Council.
 - (3) All courts must take judicial notice of the imprint of the common seal on a document and, until the contrary is proved, must presume that the document is properly sealed.

3.3.25 Employment of staff

- (1) A Regional Council may employ a Director of the Regional Council (however described) and any other staff that are necessary to enable the Regional Council to perform its functions and exercise its powers.
- (2) Persons employed under this section shall be employed on terms and conditions determined by the Regional Council.
- (3) A Regional Council, in employing persons under this section, does not represent the Crown.

Division 5—Adult education institutions

3.3.26 Adult Multicultural Education Services

- (1) There continues to be established an adult education institution called Adult Multicultural Education Services.
- (2) The Board of AMES is the governing body of AMES and is constituted as a body corporate by Order in Council as provided for in this Division.
- (3) The Board of AMES has the functions and powers conferred on it by this Division and by Order in Council made under this Division.

3.3.27 Centre for Adult Education

- (1) There continues to be established an adult education institution called the Centre for Adult Education.
- (2) The Board of the Centre for Adult Education is the governing body of the Centre for Adult Education and is constituted as a body corporate by Order in Council as provided for in this Division.
- (3) The Board of the Centre for Adult Education has the functions and powers conferred on it by this Division or an Order in Council under this Division.

3.3.28 Adult education institutions

- (1) The Governor in Council may, on the recommendation of the Minister, by Order published in the Government Gazette—
 - (a) create an adult education institution; or
 - (b) abolish an adult education institution; or
 - (c) amalgamate one or more adult education institutions; or
 - (d) change the name of an adult education institution.
 - (2) The Minister must not make a recommendation under subsection (1) unless—
 - (a) the governing board or the governing body (if any) of any institution or proposed institution concerned has made a request for the proposed order or has been consulted about the proposed order; and
 - (b) the Minister has consulted the Adult, Community and Further Education Board about the proposed order.
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- (3) If an Order in Council changes the name of an institution under subsection (1)—
- (a) the institution continues in existence under the new name so that its identity is not affected; and
 - (b) in an Act, in a subordinate instrument made under an Act or in any other document a reference to an institution under the former name must, except in relation to matters that occurred before the change of name, be construed as a reference to the institution under the new name.

3.3.29 Incorporation of governing boards

- (1) The Governor in Council may, on the recommendation of the Minister by Order—
- (a) establish a governing board to oversee and manage an adult education institution; or
 - (b) amalgamate a governing board with another governing board; or
 - (c) abolish a governing board; or
 - (d) change the name of a governing board; or
 - (e) make provision or further provision for or with respect to the constitution, management structure, membership, objectives, powers, duties or functions of a governing board, the manner of appointment or the remuneration or other terms and conditions of appointment of members of a governing board; or
 - (f) make provision for the governing board to make rules for the government of the institution; or

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- (g) make provision for the governing board to delegate any of its powers and functions under this Act (except any powers or functions delegated to it under this Act) to a person employed at the institution or to a committee established by or under an Order in Council relating to the board; or
 - (h) amend any provision of a previous order relating to a governing board; or
 - (i) make provision for or with respect to anything that is consequential upon the making of an order including the rights and obligations or the assignment of any property (subject to any trusts) of any governing board referred to in the Order.
- (2) The Minister must not make a recommendation under subsection (1) unless—
- (a) the governing board of the institution concerned has made a request for the proposed Order or has been consulted about the proposed Order; and
 - (b) the Minister has consulted the Board about the proposed Order.
- (3) A governing board established under subsection (1)—
- (a) is a body corporate with perpetual succession; and
 - (b) has a common seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) is capable of acquiring, holding, dealing with or disposing of property for the purpose of performing its functions and exercising its powers; and
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- (e) is capable of doing and suffering anything that a body corporate may by law do and suffer and that is necessary or expedient for performing its functions and exercising its powers.
 - (4) If two or more governing boards previously incorporated under this Act are amalgamated under an Order under subsection (1), any legal proceedings that might have been commenced or continued by or against any of the boards may be commenced or continued by or against the single governing board formed by the amalgamation.
 - (5) A change of name under an Order under subsection (1) does not affect the identity of the governing board or any rights or obligations of the governing board or render defective any legal proceedings by or against the board, and any legal proceedings that might have been continued or commenced by or against it by its former name may be continued by or against it by its new name.

3.3.30 Functions of governing boards

- (1) The functions of the governing board of an adult education institution are to—
 - (a) oversee the institution and ensure that the institution is managed efficiently and effectively; and
 - (b) approve periodic management plans for the institution consistent with the plans and policies of the Adult, Community and Further Education Board; and
 - (c) provide the community served by the institution with efficient and effective adult, community, further education, vocational education and training, employment and

s. 3.3.30

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- other associated programs and services responsive to the needs of that community;
- (d) consult with the relevant Regional Councils about the provision of these programs and services;
 - (e) in the case of the governing board of AMES, monitor the structure, reach and accessibility of AMES services to maximise their availability to new and emerging communities and client groups;
 - (f) in the case of governing boards except the governing board of AMES, make adequate arrangements for persons and groups which have not had or do not have adequate access to programs or services provided by the institution;
 - (g) undertake generally the development and provision of adult, community, further education, vocational education and training, employment and other associated programs and services considered necessary for the objects of the adult education institution within Victoria and outside Victoria, whether in or outside Australia;
 - (h) carry out any other function conferred on the governing board by or under this Act.
- (2) Without limiting the generality of subsection (1) a governing board may carry out all or any of the following functions—
- (a) provide facilities or services for study, research or education;
 - (b) undertake research, development, counselling or other services for commercial organisations;
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- (c) aid or engage in the development or promotion of research by the institution or the application or use of the results of that research;
 - (d) prepare, publish or distribute or license the use of literary or artistic work, audio or audio-visual material or computer software;
 - (e) seek or encourage gifts to the institution or for institution purposes;
 - (f) promote or assist drama, music or the visual arts.

3.3.31 Powers of governing boards

- (1) A governing board has power to do all things that are necessary or convenient to be done for or in connection with or, as incidental to, the performance of its functions including any function delegated to it.
- (2) Without limiting the generality of subsection (1) a governing board, for the purpose of carrying out its functions, may—
 - (a) with the prior written approval of the Minister, be a member of a company, association, trust or partnership;
 - (b) with the prior written approval of the Minister, form or participate in the formation of a company, association, trust or partnership;
 - (c) enter into a joint venture with another person or persons.

3.3.32 Accountability of governing boards

- (1) A governing board must perform its functions and exercise its powers subject to—
 - (a) a performance agreement; and
 - (b) any economic or social objectives or industrial relations policies established from time to time by the Government of Victoria; and
 - (c) any Order in Council made under section 3.3.29; and
 - (d) any other requirements of this Act.
- (2) A governing board must establish and keep full and complete books and accounts of all money received and paid by the board and must arrange for a continuous audit of the income and expenditure to be made at any intervals not exceeding one month that the Minister directs.
- (3) The books and accounts referred to in subsection (2) must be kept in the form and manner approved by the Auditor-General.

3.3.33 Board membership

- (1) An Order in Council under section 3.3.29 must provide for a governing board consisting of not less than 9 and not more than 15 persons of whom—
 - (a) not less than one half must be appointed by the Minister;
 - (b) one must be a staff member of the institution elected by staff of the institution;
 - (c) one must be a student of the institution elected by students of the institution;

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- (d) one must be the chief executive officer of the institution;
- (e) in the case of the governing board of AMES, the remaining members must be persons with knowledge of or experience in the community, business, education, finance or the public sector or with special skills or knowledge relevant to AMES appointed by the governing board by co-option;
- (f) in the case of other governing boards, the remaining members must be persons with knowledge of or experience in the community or any industry served by the institution or in adult, community and further education or with special skills or knowledge relevant to the governing board appointed by the governing board by co-option.
- (2) A person who is a member of Parliament must not be appointed or elected to be a member of a governing board.

S. 3.3.33(1)(d)
amended by
No. 58/2007
s. 19(1).

3.3.34 Removal from office of members

- (1) The Minister may remove a member appointed by the Minister under section 3.3.33(1)(a) from office at any time.
- (2) The Minister may remove a member elected or appointed to a governing board under section 3.3.33(1)(b), (c), (e) or (f)—
- (a) on the recommendation of two thirds of the members for the time being of the governing board; or
- (b) on the recommendation of the Adult, Community and Further Education Board.

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- (3) The Adult, Community and Further Education Board must not make a recommendation under subsection (2)(b) unless—
- (a) the Adult, Community and Further Education Board has requested the governing board to recommend the removal of a member and the governing board has not made a recommendation within 30 days of the request; and
 - (b) the Adult, Community and Further Education Board is satisfied that the member failed to comply with any requirement of a member under this Act; and
 - (c) the Adult, Community and Further Education Board has given the member an opportunity to submit an explanation in relation to the alleged failure.

3.3.35 Reserve powers of Minister

- (1) If the Minister is satisfied that the governing board of an institution—
- (a) is inefficiently or incompetently managing the institution; or
 - (b) is failing to comply with its performance agreement; or
 - (c) has failed to comply with any provision of this Act, a guideline issued by the Minister or any directions given to the governing board by the Minister or an Order in Council establishing the governing board—

the Minister may do any one or more of the following—

- (d) issue written directions to the governing board about—
 - (i) action to be taken to remedy inefficient or incompetent management, which may include the dismissal of the institution's chief executive officer; or
 - (ii) compliance with a performance agreement; or
 - (iii) compliance with the Act, guidelines, directions or an Order in Council;
 - (e) censure the governing board;
 - (f) recommend that the Governor in Council dismiss the members of the governing board and appoint new members of the governing board and make arrangements for the elections for elected members of the governing board;
 - (g) recommend to the Governor in Council that an administrator of the institution be appointed.
- (2) If the Minister is satisfied that a governing board has failed to comply with a direction given under subsection (1)(d) the Minister may do any one or more of the things specified in subsection (1)(e), (f) and (g).

S. 3.3.35(1)(d) amended by No. 58/2007 s. 19(1).

3.3.36 Notice of proposal

- (1) If the Minister proposes to exercise his or her powers under section 3.3.35, the Minister—
 - (a) must give the governing board notice in writing of the proposal and the reasons for the proposal; and
 - (b) must consider any submissions whether oral or in writing made to the Minister by the governing board within 7 days after the

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- giving of the notice or any further time specified in the notice; and
- (c) may consider any other submissions and any matters the Minister considers appropriate—
before deciding whether or not to exercise the power.
- (2) If the Minister decides to censure or dismiss a governing board or appoint an administrator to the governing board, the Minister must—
- (a) give notice in writing of the censure, dismissal or appointment to the governing board; and
- (b) cause to be tabled in each House of Parliament within 7 sitting days of the House after the notice is given to the governing board—
- (i) a copy of the notice; and
- (ii) a report of the circumstances leading to the action; and
- (iii) a copy of any written submission made by the governing board.

3.3.37 Appointment of administrator

- (1) If the Minister decides to recommend the appointment of an administrator, the Governor in Council, on the recommendation of the Minister, may appoint an administrator of the institution for the period and subject to the terms and conditions that are specified in the appointment.
- (2) An administrator of an institution appointed under this section has and may exercise all the powers and is subject to all the duties of the governing board of the institution and the chief executive officer of the institution.

S. 3.3.37(2)
amended by
No. 58/2007
s. 19(1).

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- (3) On the appointment of an administrator, the members of the governing board cease to hold office.
 - (4) The Minister must review the appointment of an administrator within 12 months after the appointment.
 - (5) If the Minister recommends to the Governor in Council that the appointment of the administrator should be revoked, the Governor in Council may by notice published in the Government Gazette declare that the appointment will be revoked on the date specified in the notice, being a date not less than 28 days after the publication of the notice.
 - (6) If a notice is published under subsection (5) in relation to an institution—
 - (a) members of the governing board of the institution shall be elected or appointed in accordance with this Part; and
 - (b) on the date specified in the notice—
 - (i) the appointment of the administrator is revoked; and
 - (ii) the governing board of the institution is re-established.

3.3.38 Saving of acts of board

Nothing done by a governing board is in any way abated or affected by the dismissal of the governing board or the appointment of an administrator under this Division.

3.3.39 Schedule 2

Schedule 2 has effect subject to any contrary intention in this Part.

s. 3.3.40

3.3.40 Employment of staff

S. 3.3.40(1)(a)
amended by
No. 58/2007
s. 19(2).

- (1) Subject to any direction given by the Minister, a governing board—
 - (a) must employ a chief executive officer of the institution; and
 - (b) may employ such other staff as is necessary to enable the governing board to perform its functions and exercise its powers.

S. 3.3.40(3)
amended by
No. 58/2007
s. 19(3).

- (2) A governing board, in employing persons under this section, does not represent the Crown.
- (3) A governing board may, by instrument under its common seal, delegate to the chief executive officer of the institution any power of the board under this section, other than this power of delegation.

S. 3.3.41
(Heading)
substituted by
No. 58/2007
s. 19(4).

3.3.41 Minister may object to chief executive officer appointment

S. 3.3.41(1)
amended by
No. 58/2007
s. 19(3).

- (1) Before appointing a person as chief executive officer of the institution a governing board must notify the Minister in writing of the proposal to make the appointment.
- (2) The Minister may, within 10 days after receiving that notification and after considering the governing board's proposal, give to the governing board notice in writing of his or her objection to the proposed appointment.

S. 3.3.41(3)
amended by
No. 58/2007
s. 19(2).

- (3) A governing board must not appoint a person as a chief executive officer of the institution if the Minister has objected to the appointment in accordance with subsection (2).

3.3.42 Staff conditions

A governing board may determine terms and conditions of employment of persons employed under section 3.3.40 in addition to any terms or conditions that were determined or agreed in accordance with Part 6 of the **Adult, Community and Further Education Act 1991**.

3.3.43 Chief executive officers

S. 3.3.43
substituted by
No. 58/2007
s. 20.

- (1) The chief executive officer of an institution—
- (a) is the chief executive officer of the governing board of the institution; and
 - (b) is responsible for the day to day administration and management of the institution in accordance with any policies or directions of the governing board of the institution and with the requirements of this Act.
- (2) The chief executive officer of an institution must satisfy the governing board that—
- (a) funds are spent; and
 - (b) staff are carrying out functions; and
 - (c) the institution is generally managed and administered—
- in accordance with the requirements of this Act.
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CHAPTER 4—VICTORIAN REGISTRATION AND QUALIFICATIONS AUTHORITY

PART 4.1—PRELIMINARY

4.1.1 Interpretation

(1) In this Chapter—

accredit in relation to a course of study that leads to an education award or the award of a registered qualification, means recognise that the standard of the course of study, the rules for the combination of the parts of the course and the way of delivering it, are appropriate to the award or qualification;

accreditation includes renewed accreditation;

AQTF means the policy framework entitled "Australian Quality Training Framework" that defines the criteria and standards for the registration of training organisations and the accreditation of courses in the vocational education and training sector endorsed by the Ministerial Council on 8 June 2001, and that policy framework as amended from time to time by the Ministerial Council;

assessment process, in relation to a course, means the methods and criteria used or to be used to determine whether a student has achieved the learning outcomes or competencies specified for that course;

Chairperson means the Chairperson of the Authority;

condition means—

- (a) a condition or limitation on all or some of the operations of a registered provider; or
- (b) a restriction;

corresponding law means—

- (a) if a regulation prescribes a law of another jurisdiction as the corresponding law for the purposes of this definition, the law prescribed under the regulation; or
- (b) otherwise, a law of another jurisdiction that corresponds with this Act or a provision of this Act;

course means—

- (a) a course normally undertaken in, or designed to be undertaken in, year 11 or 12 of the school years; or
- (b) a course leading to the issue of the VCE or VCAL; or
- (c) a vocational education and training course, subject, unit of competency or module; or
- (d) a further education course; or
- (e) a course leading to a higher education award—

and includes—

- (f) a program of study or training leading to the award or issue of a particular qualification; and

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- (g) a subject or other part of a program, unit of competence or module of study or training leading to the award or issue of a particular qualification; and
 - (h) any other study or training notified by the Minister in the Government Gazette to be a course for the purposes of this Act;

Director means the person employed under this Act to be the Director of the Authority;

institution includes person or body;

jurisdiction means Victoria or, if it has enacted a corresponding law, another State or internal Territory;

legislative compliance standard is the standard included in the RTO standards requiring that an RTO ensures that compliance with Commonwealth, State and Territory legislation and regulatory requirements relevant to its operations is integrated into its policies and procedures and that compliance is maintained;

member means member of the Authority and includes the Chairperson;

Ministerial Council means—

- (a) in respect of the period before 24 August 2005, the council consisting of the Ministers from each State and the Commonwealth responsible for vocational education and training operating in accordance with the ANTA agreement;

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- (b) in respect of the period on or after 24 August 2005, the Ministerial Council within the meaning of the Skilling Australia's Workforce Act 2005 of the Commonwealth;

National Register means the National Training Information Service maintained by the Commonwealth to the extent that the Register consists of matters registered in accordance with this Act;

prohibition, in relation to an RTO, means a prohibition on all or some of the operations of the RTO;

qualification means—

- (a) in relation to vocational education and training or further education, formal certification by an RTO and under the AQF that a person has achieved all the units of competencies or modules comprising learning outcomes stated for the qualification in—
- (i) a nationally endorsed training package for which details of the qualification have been registered by the Commonwealth; or
 - (ii) an accredited course that provides training for the qualification; and
- (b) in relation to any other education or training, means the recognition, by the award or issue of a certificate or otherwise, that a student has achieved particular learning outcomes or competencies;

recognised University means an institution that is—

- (a) established or recognised as a University under an Act; or
- (b) established as a University under an Act of the Commonwealth, another State, the Australian Capital Territory or the Northern Territory;

registered, in relation to vocational education and training or further education, means registered on the State Register and National Register;

registering body, in relation to vocational education and training or further education, means the Authority or a body equivalent to the Authority in another jurisdiction responsible for the registration of training organisations under that jurisdiction's legislation relating to vocational education and training;

registration, in relation to an RTO, includes renewed registration;

restriction, in relation to an RTO, means a restriction on all or some of the operations of an RTO or a prohibition;

RTO means a training organisation registered on the State Register and National Register;

RTO standards means the standards for registered training organisations adopted on 8 June 2001 by the Ministerial Council under the Australian Quality Training Framework endorsed by the Council on that date as amended from time to time by the Ministerial Council;

senior secondary course means a course leading to a senior secondary qualification;

S. 4.1.1(1)
def. of
senior secondary course
inserted by
No. 70/2008
s. 18.

senior secondary qualifications means qualifications described under the senior secondary certificate of education in the AQF;

statement of attainment, in relation to vocational education and training or further education, means formal certification by an RTO under the AQF that a person has achieved—

- (a) part of a qualification; or
- (b) one or more units of competency from a nationally endorsed training package; or
- (c) all the units of competency or modules comprising learning outcomes for an accredited course that does not meet the requirements for a qualification;

TVET means Technical and Vocational Education and Training Australia Limited ACN 062 758 632 and any successor in law of that body;

S. 4.1.1(1)
def. of
TVET
inserted by
No. 70/2008
s. 18.

unit of competency, in relation to vocational education and training or further education, means a specification of knowledge and skill and their application to a specified standard of performance.

s. 4.1.1

- (2) In this Chapter, a reference to an institution operating as a University includes a reference to an institution operating as a University in or from Victoria by means of any of the following telecommunication devices—
- (a) a computer adapted for communicating by way of the internet or another communications network; or
 - (b) a television receiver adapted to allow the viewer to transmit information by way of a cable television network or another communications network; or
 - (c) a telephone; or
 - (d) any other electronic device.
- (3) In this Chapter, a reference to a course of study includes a reference to a course of study offered in or from Victoria by means of any of the telecommunication devices referred to in subsection (2).
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**PART 4.2—VICTORIAN REGISTRATION AND
QUALIFICATIONS AUTHORITY**

4.2.1 Establishment of Authority

- (1) There is established a Victorian Registration and Qualifications Authority.
- (2) The Authority—
 - (a) is a body corporate with perpetual succession;
 - (b) has a common 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 common seal must be kept as directed by the Authority and must only be used as authorised by the Authority.
- (4) All courts must take judicial notice of the imprint of the common seal on a document and, until the contrary is proved, must presume that the document was properly sealed.

4.2.2 Functions of Authority

- (1) The functions of the Authority are to—
 - (a) register Government and non-Government schools;
 - (b) register students for home schooling;
 - (c) accredit courses and register qualifications (including qualifications developed outside Australia);

s. 4.2.2

S. 4.2.2(1)(fa)
inserted by
No. 58/2007
s. 21.

- (d) authorise providers to deliver accredited courses;
- (e) authorise providers and organisations to award registered qualifications;
- (f) approve providers of specified courses for overseas students;
- (fa) approve persons, organisations (including education or training organisations) and registered schools to operate student exchange programs;
- (g) exercise the powers of the Authority to ensure that minimum standards are maintained—
 - (i) by providers and organisations it has registered; and
 - (ii) in home schooling;
- (h) ensure the public availability of meaningful and accurate information about registered education and training organisations and their compliance with the requirements of this Chapter and any standards prescribed by the regulations;
- (i) maintain a State Register that includes—
 - (i) accredited courses and qualifications;
 - (ii) registered schools and the year levels or curriculum programs a registered school is authorised to deliver;
 - (iii) registered education and training organisations and the accredited courses for which they are registered;
 - (iv) registered education and training organisations and the registered qualifications they are authorised to award or issue;

- (v) authorised providers of courses of study leading to a higher education award and accredited courses of study in higher education;
- (vi) Universities deemed to be approved under Part 4.3;
- (viii) institutions approved to operate as Universities under Part 4.3;
- (j) register on the State Register and National Register—
 - (i) approved providers of vocational education and training and further education;
 - (ii) accredited courses in vocational education and training and further education;
- (k) conduct audits of education or training organisations;
- (l) enter into arrangements with other agencies for those agencies to develop and modify courses;
- (m) consult as it considers appropriate with education bodies and other persons or bodies to monitor the framework of accredited courses and qualifications and linkages between qualifications or parts of qualifications and advise the Minister about the effectiveness of the framework;
- (n) as directed by the Minister, provide advice on policies, criteria and standards for the accreditation of courses and the registration of qualifications;
- (o) perform any other function conferred on or delegated to the Authority by or under this or any other Act.

S. 4.2.2(1)(o)
substituted by
No. 19/2008
s. 9.

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- (2) In addition to its functions under subsection (1), the Authority is responsible for—
- (a) generally ensuring that minimum standards for the operation of Government and non-Government schools in Victoria are established, maintained and met and that the standards are regularly reviewed;
 - (b) administering policies and procedures for registration of Government and non-Government schools;
 - (c) making recommendations to the Minister about regulations to be made by the Governor in Council about—
 - (i) the minimum standards for registration, accreditation, endorsement, recognition, authorisation or approval under this Chapter;
 - (ii) the requirements for registration, accreditation, endorsement, recognition, authorisation or approval under this Chapter.

4.2.3 Powers of Authority

- (1) For the purpose of performing its functions, the Authority 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) The Authority, in the performance of its functions, may exercise its powers in Victoria and elsewhere.
- (3) This section does not limit any other power given to the Authority by any other provision of this Act.

4.2.4 Membership of Authority

- (1) The Authority consists of not less than 9 and not more than 13 members of whom—
- (a) one is to be appointed by the Governor in Council as the Chairperson on the nomination of the Minister as a person who, in the Minister's opinion, is highly regarded in the area of education and training;
 - (b) one is to be the Secretary or the nominee of the Secretary;
 - (ba) one is to be the Secretary to the Department of Innovation, Industry and Regional Development or his or her nominee;
 - (c) the remaining members are to be appointed by the Governor in Council on the nomination of the Minister in accordance with subsection (2).
- (2) In nominating persons to the Governor in Council for appointment to the Authority under subsection (1)(c) the Minister must have regard to ensuring that—
- (a) the members of the Authority include—
 - (i) at least 3 persons who, in the Minister's opinion, are highly regarded in the area of school education;
 - (ii) at least 3 persons who, in the Minister's opinion, are highly regarded in the area of post-school education and training;
 - (b) the composition of the Authority—
 - (i) is a fair and balanced reflection of the diversity of the community; and
 - (ii) reflects both metropolitan and country interests;

S. 4.2.4(1) amended by No. 58/2007 s. 22(a).

S. 4.2.4(1)(ba) inserted by No. 58/2007 s. 22(b).

- (c) there is sufficient management and regulatory expertise amongst the members of the Authority.
- (3) An appointed member may resign from office by delivering to the Governor in Council a signed letter of resignation.
- (4) The Governor in Council may at any time remove an appointed member from office.

4.2.5 Schedule 2

Schedule 2 has effect subject to any contrary intention in this Part.

4.2.6 Director's responsibilities

A Director employed for the purposes of this Chapter is responsible for implementing any policy or decision of the Minister or the Authority made in accordance with this Act.

4.2.7 Delegation of Authority's power

- (1) The Authority may, by instrument under its common seal, delegate any function or power of the Authority, other than this power of delegation to any of the following—
 - (a) a member of the Authority;
 - (b) a member or the members of a committee established by the Authority;
 - (c) the Director or any other person employed for the purposes of this Chapter;
 - (d) the Secretary or any other person employed in the Department;
 - (e) the members of a body established by the Minister;
 - (f) a person, or the members of a body or organisation, offering educational programs;

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- (g) a person, or the members of a body, representing schools or a group of schools;
 - (h) an organisation acting on behalf of training or higher education providers.
- (2) The Authority may, by instrument under its common seal, delegate any power of the Authority, other than this power of delegation and a power referred to in subsection (3), to a registered education and training organisation.
- (3) The Authority, by instrument under its common seal, may delegate any of the following powers of the Authority to a registered education and training organisation or a University or institution that has been approved by the Authority under section 4.3.36 for the purposes of this subsection—
- (a) the power under Part 4.4 to investigate—
 - (i) a vocational education and training course;
 - (ii) a further education course;
 - (iii) any part of a course referred to in subparagraph (i) or (ii)—

that the registered organisation, University or institution provides or proposes to provide to determine whether it should be registered as accredited or continue to be registered as accredited;
 - (b) the power under Part 4.3 to authorise the organisation, University or institution to provide an accredited vocational education and training course or part of such a course or a further education course;

S. 4.2.7(3)(a)
amended by
No. 70/2008
s. 19.

- (c) the power under Part 4.3 to authorise the organisation, University or institution to award or issue a registered vocational education and training qualification or a registered further education qualification.

S. 4.2.7A
inserted by
No. 70/2008
s. 20.

4.2.7A Delegation of Authority's functions to TVET

- (1) The Authority, by instrument under its common seal, may delegate—
- (a) any of the following functions of the Authority to TVET—
- (i) the functions under Divisions 3 and 4 of Part 4.3 relating to the registration of training organisations except—
- (A) the function under section 4.3.10 of registering a school with respect to a senior secondary course or a senior secondary qualification; or
- (B) the function under section 4.3.11(3);
- (ii) the functions under Division 4 of Part 4.3 relating to the suspension or cancellation, or the suspension of part of the scope, of the registration of an RTO;
- (iii) the functions under Division 4 of Part 4.3 relating to the amendment of the scope or conditions of, or the imposition of new conditions on, the registration of an RTO;
- (iv) the functions under Division 4 of Part 4.3 relating to the auditing of an RTO;

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- (v) the functions under Division 2 of Part 4.4 relating to the recognition of completion of an accredited course or part of a course and the awarding, conferral or issuing of a registered qualification;
 - (vi) the functions under Part 4.5 relating to the approval of an RTO to provide a course to overseas students, the review of that approval and the suspension, cancellation or revocation of, or imposition of a condition on, that approval, except the function under section 4.5.1(3);
 - (vii) the functions under section 4.6.4 relating to the inclusion of RTOs on the National Register; and
- (b) any power of the Authority under section 4.2.3 for the purpose of performing a function delegated under this subsection.
- (2) A function delegated under subsection (1) may only be carried out by TVET in respect of a training organisation approved by the Authority under section 4.3.37.
- (3) Any fee charged by TVET for or in connection with a thing done by TVET under a function delegated under this section—
- (a) does not form part of money received by the Authority for the purposes of section 4.2.8(2)(c); and
 - (b) may be retained by TVET.
- (4) In this section *function* includes power, authority or duty.
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s. 4.2.7B

S. 4.2.7B
inserted by
No. 70/2008
s. 20.

4.2.7B Authority may enter into arrangements or agreements with TVET

The Authority may enter into an arrangement or agreement with TVET in respect of matters connected with any delegation of a function by the Authority to TVET under section 4.2.7A.

4.2.8 Victorian Registration and Qualifications Authority Fund

- (1) The Authority must establish a Fund to be known as the Victorian Registration and Qualifications Authority Fund.
- (2) There must be paid into the Fund—
 - (a) any investment income received by the Authority; and
 - (b) the proceeds of the sale of any investment made by the Authority; and
 - (c) any other money received by the Authority.
- (3) There must be paid out of the Fund any payment that is authorised by the Authority 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 Authority.
- (4) The Authority 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.

PART 4.3—REGISTRATION OF STUDENTS AND PROVIDERS

Division 1—Schools

4.3.1 Requirements for registration

- (1) The Authority may register a school under this Part.
- (2) A school can be registered by the Authority in the name of the school.
- (3) The following persons or bodies may apply to the Authority for registration of a school—
 - (a) in the case of a Government school, the Secretary;
 - (b) in the case of a non-Government school, a person or body who proposes to establish or conduct the school.
- (4) An application to the Authority must be made in the prescribed manner and contain the prescribed particulars and information and be accompanied by any fee fixed by the Minister.
- (5) The Authority may require the applicant to provide further information or material in respect of the application that the Authority reasonably requires.
- (6) The Authority must not register a school unless the Authority is satisfied that—
 - (a) the school policies relating to the discipline of students are based on principles of procedural fairness and do not permit corporal punishment; and

s. 4.3.1

S. 4.3.1(6)(b)
amended by
No. 3/2008
s. 5(1)(a).

- (b) the school complies with the minimum standards for registration prescribed by the regulations including standards relating to—
- (i) student learning outcomes;
 - (ii) enrolment policies and minimum enrolment numbers;
 - (iii) student welfare;
 - (iv) curriculum programs;
 - (v) governance of the school and the probity of any proprietor or person responsible for managing the school;
 - (vi) processes for the review and evaluation of school performance; and

S. 4.3.1
(6)(b)(vi)
amended by
No. 3/2008
s. 5(1)(b).

S. 4.3.1(6)(c)
inserted by
No. 3/2008
s. 5(2).

- (c) if the school has enrolled a student in circumstances where the school knows, or ought reasonably to know, that the student has been diagnosed as being at risk of anaphylaxis, the school has developed an anaphylaxis management policy containing matters required by a Ministerial Order to be included in the policy.

- (7) It is a condition of registration of a school that the school or any person involved in the management or operation of the school participates in the review and evaluation process under this Division, unless section 4.3.2(c) applies.

S. 4.3.1(8)
inserted by
No. 3/2008
s. 5(3).

- (8) In this Act the prescribed minimum standards for registration of schools are the matters required by subsections (6)(a) to (6)(c).

4.3.2 Compliance with standards for registration

The Authority may satisfy itself whether or not a school continues to comply with the prescribed minimum standards for registration on the basis of—

- (a) the conduct of a review and evaluation by the Authority under section 4.3.3; or
- (b) a report from the person who conducts or represents the school or, in the case of a Government school, from the Secretary; or
- (c) a report of the conduct of a review and evaluation by a person or body approved by the Authority to review a school or group of schools.

S. 4.3.2
amended by
No. 58/2007
s. 23.

4.3.3 Review of operations of schools by Authority

- (1) The Authority may at any time arrange for a review and evaluation of the operation of a school registered under this Division.
- (2) The Authority may review the operations of a school to determine whether—
 - (a) having regard to the prescribed minimum standards the school has attained and continues to attain the standards required for registration; and
 - (b) whether or not the school has complied with any condition imposed by the Authority on a registration under this Division.
- (3) The Authority, by notice in writing, may require a school or any person involved in the management or operation of the school—
 - (a) to provide, in accordance with directions in the notice, to the Authority any information about the management or operation of the school relevant to the prescribed minimum

S. 4.3.3(2)(a)
amended by
No. 58/2007
s. 23.

S. 4.3.3(3)(a)
amended by
No. 58/2007
s. 23.

s. 4.3.4

standards for registration under this Division,
that is specified in the notice; or

- (b) to produce to the Authority any records relevant to those matters that are specified in the notice and permit examination of the records and the making of copies of those records.
- (4) If the Authority is satisfied after the conduct of a review in accordance with this section that it is in the interests of the students enrolled at the school or in the public interest that the Authority should take any action referred to in section 4.3.4 the Authority may take that action in accordance with this Division.
- (5) The action may be proposed by the Authority giving notice in writing of the proposed action and giving reasons to the school affected.
- (6) The Authority must give the school affected 28 days to make submissions to the Authority and to the Minister to show cause why the proposed action should not be taken.
- (7) The Authority must—
 - (a) consider any submissions made to the Authority; and
 - (b) comply with any directions of the Minister given to the Authority after the Minister has considered any submissions made to the Minister about the proposed action.

4.3.4 Action after review

- (1) The Authority may, after reviewing and evaluating the operation of a school or considering the report of a person referred to in section 4.3.2 who has conducted a review and evaluation of the school, determine that the school no longer

complies with the prescribed minimum standards for registration.

- (2) If the Authority determines that the school no longer complies with the prescribed minimum standards for registration, it may—
- (a) suspend or cancel the registration of the school; or
 - (b) prohibit the school from enrolling any new students; or
 - (c) require the school to report to parents of students at the school that the school does not comply with the prescribed minimum standards for registration; or
 - (d) impose conditions on the school's registration.
- (2A) The Authority may substitute an action (other than the cancellation of registration) under subsection (2) in relation to a school with another action that is less onerous if the Authority considers that—
- (a) the school has partially complied with the requirements of the original action; and
 - (b) the substituted action is sufficient to ensure that the school will comply with the prescribed minimum standards.
- (3) Any action that the Authority decides upon takes effect when notice of the decision is given to the school or on any later date that may be specified in the notice.

S. 4.3.4(2A)
inserted by
No. 70/2008
s. 21.

4.3.5 Reports from registered schools

- (1) The proprietor or principal of a registered school must provide to the Authority in accordance with the regulations a report containing the information required by the regulations.
- (2) The Authority may authorise a person or body which is approved by the Authority to review a school or group of schools to provide a report required by subsection (1) for the school or group of schools the person or body is approved to review.
- (3) A person must not wilfully provide any false or misleading information in a report under this section.

Penalty: 5 penalty units.

4.3.6 Notice of registration to be displayed

The proprietor or principal of a registered school must have legibly printed or painted in a conspicuous place near the main entrance to the school—

- (a) the name of the school; and
- (b) the name of the proprietor or principal of the school; and
- (c) a statement of the fact that the school is registered and of the description under which it is registered.

4.3.7 Attendance register in registered schools

The principal or person in charge of a registered school at which children of compulsory school age attend must ensure that the attendance of those children is recorded in an attendance register in accordance with the regulations.

Penalty: 5 penalty units.

4.3.8 Register of schools

- (1) The Authority must make and keep a record of the schools that are registered by the Authority in a division of the State Register.
- (2) The record of registered schools must include—
 - (a) the name of the school;
 - (b) the name of the principal or proprietor of the school;
 - (c) the year levels of schooling the school is registered to offer.

Division 2—Registration of students for home schooling

4.3.9 Authority to register students for home schooling

- (1) The Authority may—
 - (a) register a student for home schooling in accordance with the regulations; and
 - (b) cancel the registration of a student for home schooling if—
 - (i) the parents of the student or the student refuse permission to authorised officers of the Authority to review the educational program, material or other records used for or related to the home schooling of the student to determine whether the requirements of the registration or the regulations relating to home schooling are being complied with; or
 - (ii) the parents or the student fail to comply with the requirements of the registration or any regulations relating to home schooling.

S. 4.3.9
amended by
No. 58/2007
s. 24 (ILA
s. 39B(1)).

s. 4.3.10

S. 4.3.9(2)
inserted by
No. 58/2007
s. 24.

(2) In this section—

student means a child—

- (a) who is, or will be, at least 6 years old during the year that he or she is registered for home schooling; and
- (b) who is under the age of 18 years.

Division 3—School sector and VET

4.3.10 Registration of education and training organisations

- (1) The Authority may register a person, body or school under this Division.
- (2) The following persons or bodies may apply to the Authority for registration of a person, body or school on the State Register with respect to a course or qualification—
 - (a) a person or body that provides or proposes to provide an accredited course or the principal of a school that provides or proposes to provide an accredited course;
 - (b) a registered education and training organisation that proposes to provide an accredited course in addition to any other course that the organisation is registered on the State Register to provide;
 - (c) any person or body that proposes to award, confer or issue a registered qualification;
 - (d) a registered education and training organisation that proposes to award, confer or issue a registered qualification in addition to any other registered qualification that the organisation is registered on the State Register to award, confer or issue.

S. 4.3.10(2)(d)
amended by
No. 58/2007
s. 25.

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- (3) An application must be in the form approved by the Authority and accompanied by any fee fixed by the Minister.
 - (4) The applicant must give the Authority any further information it requires to investigate and decide the application.
 - (5) A person who has applied under Division 4 for registration on the National Register of an education or training organisation with respect to vocational education and training or further education is to be treated by the Authority as having also applied in accordance with this Division for registration on the State Register.
 - (6) The provisions of Division 4 apply to and in relation to the application of a person referred to in subsection (5) and any registration of that person on the National Register in addition to the requirements of this Division.
 - (7) A registration may be limited or restricted by reference to—
 - (a) the course or class of courses determined by the Authority; or
 - (b) the qualification or class of qualifications determined by the Authority; or
 - (c) any other circumstances determined by the Authority.

4.3.11 Criteria for registration

- (1) The Authority must not register a person, body or school under this Division unless it is satisfied that the person, body or school complies with the prescribed minimum standards for registration including standards for—
 - (a) student learning outcomes and welfare services;

s. 4.3.11

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- (b) student enrolment records and certification;
- (c) teaching, learning and assessment;
- (d) governance, probity and compliance with statutory requirements;
- (e) quality assurance, review and evaluation processes.
- S. 4.3.11(1)(e)**
amended by
No. 58/2007
s. 26(1).
- S. 4.3.11(1)(f)**
repealed by
No. 58/2007
s. 26(2).
- * * * * *
- S. 4.3.11(1A)**
inserted by
No. 58/2007
s. 26(3).
- (1A) Without limiting subsection (1), the prescribed minimum standards for registration may require a person, body or school to comply with any guidelines issued by the Authority under this Division.
- (2) In determining whether to register a person, body or school the Authority may have regard to whether the person, body or school, any person involved in the management of the person, body or school or any person involved in the business of the provision of courses by the person, body or school—
- S. 4.3.11(2)(a)**
amended by
No. 58/2007
s. 26(4).
- (a) has ever had their registration under this Division suspended or cancelled; or
- S. 4.3.11(2)(b)**
amended by
No. 58/2007
s. 26(4).
- (b) has ever had conditions imposed on their registration under this Division; or
- (c) has ever been convicted of an indictable offence; or
- (d) has ever become bankrupt or taken the benefit of any law for the relief of bankrupt debtors, or compounded with their creditors
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-
- or made an assignment of their property for their benefit; or
- (e) has ever been disqualified from managing corporations under Part 2D.6 of the Corporations Act; or
 - (f) was involved in the provision of courses by another person or body who is covered by paragraph (a) to (e) at the time of the events that gave rise to the relevant prosecution or other action.
- (3) The Authority may from time to time issue guidelines about the matters referred to in subsection (1) or (2).

4.3.12 Terms of registration

- (1) A registration remains in force for a period specified by the Authority not exceeding 5 years unless sooner suspended or cancelled.
- (2) A registered person, body or school must pay the fees for registration of that person, body or school.
- (3) The Authority may suspend or cancel a registration.
- (4) In determining whether to suspend or cancel a registration the Authority may have regard to—
 - (a) whether the registration fees have been paid;
 - (b) any of the matters mentioned in section 4.3.11(1).

Division 4—National registration

4.3.13 Application of Division

- (1) This Division only applies to vocational education and training and further education.

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- (2) If there is any inconsistency between the requirements of this Division and Division 3, the provisions of this Division prevail to the extent of the inconsistency.

4.3.14 Registration and national effect of registration

A training organisation or a course is to be treated as being registered on the National Register, to the extent that details of the training organisation or course are recorded on the National Register—

- (a) for the purposes of this Act, by the Authority;
- (b) for the purposes of a corresponding law of another jurisdiction by the body responsible for registering providers of education or training or accrediting courses in that jurisdiction;
- (c) for the purposes of this Act, a corresponding law or a regulation made under this Act.

4.3.15 Applying in Victoria for registration

- (1) A person may apply to the Authority for registration on the National Register as an education or training organisation.
- (2) A person who has applied under Division 3 for registration of an education or training organisation with respect to vocational education and training or further education is to be treated by the Authority as having also applied in accordance with this Division for registration on the National Register.
- (3) The provisions of this Division apply to and in relation to the application of a person referred to in subsection (2) and any registration of that person on the State Register in addition to the requirements of Division 3.

4.3.16 Decision about registration

- (1) On an application for registration, the Authority may register the applicant as a training organisation on the National Register, or refuse to do so.
- (2) In deciding the application, the Authority must apply the RTO standards.
- (3) The Authority must not grant the application unless—
 - (a) on registration under the application, the applicant will not otherwise be registered as a training organisation by a registering body; and
 - (b) the Authority considers that the applicant's principal place of business is in Victoria or all or most of its operations will be conducted in Victoria; and
 - (c) a compliance audit has been conducted of the applicant that shows the applicant complies with the RTO standards (other than the legislative compliance standard).
- (4) Subsection (3)(c) does not apply to an application if—
 - (a) the application is made by an RTO registered by another registering body; and
 - (b) the RTO has received a notice from the other registering body under a provision of a corresponding law corresponding to section 4.3.22; and
 - (c) the application does not ask for an amendment of the RTO's existing scope of registration or registered conditions.

s. 4.3.16

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- (5) Subsections (2) and (3) do not limit the grounds on which the Authority may decide not to grant the application.
- (6) The Authority may impose reasonable conditions on the registration of the training organisation to take effect for the period of registration.
- (7) A condition imposed under subsection (6)—
- (a) must apply for all jurisdictions (it can not be limited in effect to a particular place or jurisdiction); and
 - (b) must be consistent with this Act and the RTO standards.
- (8) If the Authority decides to grant the application, the Authority must—
- (a) register the applicant as a training organisation and the applicant's scope of registration; and
 - (b) if the Authority imposes a condition under subsection (6)—
 - (i) give the applicant a notice of the decision; and
 - (ii) register the condition for the applicant.
- (9) The Authority must comply with subsection (8)—
- (a) immediately after granting the application; or
 - (b) if the application is a transfer application mentioned in section 4.3.22, immediately after the existing registration of the training organisation is cancelled under section 4.3.24.
- (10) If the Authority decides not to grant the application, the Authority must immediately give the applicant a notice of its decision.
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4.3.17 Registration conditions

- (1) Registration of an RTO under this Division is subject to—
 - (a) conditions imposed under subsection (2); and
 - (b) registered conditions imposed—
 - (i) under section 4.3.16(6) or 4.3.21(2); or
 - (ii) by another registering body under a provision of a corresponding law corresponding to section 4.3.21(2)(a).
- (2) For an RTO registered under section 4.3.16, the following conditions are imposed for the RTO's period of registration—
 - (a) the RTO must comply with requirements stated to apply to an RTO under the RTO standards;
 - (b) the RTO must give notice to the Authority of the following matters as soon as practicable after they happen—
 - (i) any substantial change to the RTO's control, management or operations;
 - (ii) any matter the RTO standards state the RTO must give notice of to the Authority;
 - (c) the RTO—
 - (i) must submit to any compliance audit conducted by the Authority under section 4.3.25; and
 - (ii) if a particular compliance audit shows the RTO does not comply with the RTO standards (other than the legislative compliance standard), must take all necessary steps to comply with the standards;

s. 4.3.18

- (d) the RTO must submit to any compliance audit conducted by another registering body under a provision of a corresponding law corresponding to section 4.3.26;
 - (e) the RTO must not contravene a provision of this Act or a corresponding law;
 - (f) the RTO must give to the Authority any information about any of its operations reasonably required by the Authority;
 - (g) the RTO must give to the Authority any information reasonably required by it relating to a registered condition imposed by the Authority under section 4.3.21;
 - (h) the RTO must give to another registering body any information reasonably required by the other registering body under a provision of a corresponding law corresponding to section 4.3.21(2)(a).
- (3) Conditions mentioned in subsections (1) and (2) to which an RTO is subject apply in relation to the operations of the RTO in every jurisdiction, unless the contrary intention appears.
- (4) An RTO must not contravene a condition of its registration.
- (5) It is declared that a condition to which an RTO registered by another registering body is expressed to be subject in Victoria under a provision of a corresponding law corresponding to subsection (3) has effect for Victoria.

4.3.18 Term of registration

Registration may be for a term up to 5 years and may be renewed, if application for renewal is made before the registration expires.

4.3.19 Amending registration on application by registered education and training organisation

- (1) The Authority may, on application by an RTO that was registered by it, amend the RTO's registered details.
- (2) If the application is to amend the RTO's scope of registration or registered conditions—
 - (a) the application must be in the form approved by the Authority and accompanied by any fee fixed by the Minister; and
 - (b) the RTO must give the Authority any information reasonably required by it to decide the application.
- (3) For an application mentioned in subsection (2), section 4.3.16 applies as if it were an application under section 4.3.16, subject to the following—
 - (a) section 4.3.16(3)(a) is not relevant;
 - (b) section 4.3.16(3)(b) applies in relation to the scope of registration or registered conditions amended in accordance with the application;
 - (c) section 4.3.16(3)(c) only requires a compliance audit to the extent an audit is relevant to the amendment.

4.3.20 Removal of registered details

The Authority must remove from the National Register the details of an RTO registered by it—

- (a) if the RTO's registration expires; or
- (b) if the RTO applies to the Authority to have its registration cancelled and the Authority grants the application.

4.3.21 Amending, suspending or cancelling registration without application

- (1) An object of this section is to ensure that, of all registering bodies, the registering body that registers an RTO has the primary responsibility to take action against the RTO if a ground mentioned in subsection (3) arises.
- (2) On one or more of the grounds mentioned in subsection (3), the Authority may on its own initiative—

S. 4.3.21(2)(a)
amended by
No. 70/2008
s. 22.

- (a) amend the scope of registration or registered conditions, or impose a new condition on the registration, of an RTO that was registered by another registering body, but only to impose a restriction applying in this jurisdiction; or

S. 4.3.21(2)(b)
amended by
No. 70/2008
s. 22.

- (b) amend the scope of registration or registered conditions, or impose a new condition on the registration, of an RTO that was registered by it, including by imposing a restriction applying in this or another jurisdiction; or
 - (c) suspend the registration, or part of the scope of registration, of an RTO that was registered by it, by imposing a prohibition applying in this or another jurisdiction while the suspension is in force; or
 - (d) cancel the registration of an RTO that was registered by it.
- (3) The grounds are as follows—
 - (a) the registration, or the part of the scope of registration, was obtained because of incorrect or misleading information;
 - (b) the RTO has contravened a condition of its registration;

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- (c) the RTO has not complied with or does not have a record of compliance with RTO standards.
- (4) The Authority may not impose a restriction under subsection (2)(a) unless the registering body that registered the RTO—
- (a) fails to take any step to deal with the matter to which the grounds relate within 30 days after the matter comes to its attention; or
 - (b) fails, after taking any step to deal with the matter to which the grounds relate, to take another step within 30 days.
- (5) Subsection (4) does not apply if the Authority is relying on a ground established by a compliance audit under section 4.3.26.
- (6) Subsection (4) does not stop the Authority, before the end of a 30 day period mentioned in the subsection, taking all steps necessary to impose a restriction at any time after the period has ended.
- (7) A restriction imposed under subsection (2)(a), (b) or (c) may, but need not, relate to a particular place or jurisdiction, but if it does so, it may only be imposed because of a particular fact situation that has arisen in the place or jurisdiction.
- (8) A restriction imposed under subsection (2)(a), (b) or (c) must be consistent with this Chapter and the RTO standards.
- (9) In exceptional circumstances, the Authority may exercise its powers under subsection (2)(c) to direct the RTO to immediately stop conducting operations continued under section 4.3.23(3).
- (10) Before cancelling the registration of an RTO under subsection (2)(d), the Authority must consult the registering bodies of each of the other jurisdictions where the RTO is operating.
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- (11) Failure to comply with subsection (10) does not affect a cancellation of the registration of an RTO.

4.3.22 Cancelling registration on change of business operations

- (1) This section applies to an RTO registered by the Authority.
- (2) On the grounds that an RTO does not have its principal place of business, and does not conduct all or most of its operations, in Victoria, the Authority may cancel the RTO's registration—
 - (a) on application by the RTO; or
 - (b) on its own initiative.
- (3) The Authority must give notice to the RTO at least 6 months before cancelling the registration.
- (4) If, before the end of the period mentioned in subsection (3), the RTO makes an application to another registering body for registration as a training organisation, the Authority must not cancel the registration of the RTO until the transfer application is decided.

4.3.23 Effect of suspension of registration of RTO

- (1) This section applies if a prohibition is imposed on an RTO under section 4.3.21(2)(c).
- (2) A person must not, for training or an assessment provided or to be provided in operations the subject of the prohibition, do anything for any of the following purposes—
 - (a) recruiting or enrolling anyone;
 - (b) soliciting or accepting any consideration from anyone for anyone's recruitment or enrolment;
 - (c) starting anyone's training or assessment;

- (d) if the operations have been directed to immediately stop under section 4.3.21(9)—training or assessing anyone.

Penalty: 60 penalty units in the case of a natural person and 300 penalty units in the case of a body corporate.

- (3) If the RTO, before the prohibition took effect, entered into an agreement to provide training or an assessment to a person, subsection (2)(a) to (c) does not prohibit anyone from relying on the agreement—
- (a) to provide the training or assessment; or
 - (b) to solicit or accept consideration for the provision of the training or assessment.

4.3.24 Registering body to register amendment, suspension or cancellation

If, in relation to an RTO, the Authority decides to do anything under section 4.3.21(2) or section 4.3.22(2), it must, on the National Register—

- (a) for an amendment of the scope of registration or registered conditions or the imposition of a new condition—amend the scope of registration or registered conditions in accordance with its decision; or
- (b) for a suspension of the registration or part of the scope of registration—register the suspension; or
- (c) for a cancellation of the registration—remove the registered details of the RTO.

S. 4.3.24(a)
amended by
No. 70/2008
s. 23.

4.3.25 Audit of RTO registered by the Authority

- (1) This section applies in relation to—
- (a) an RTO registered by the Authority; and
 - (b) any of the RTO's operations.

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- (2) The Authority may at any time conduct a compliance audit of the RTO.

4.3.26 Audit of RTO registered by another registering body

- (1) This section applies in relation to—
- (a) an RTO registered by a registering body other than the Authority (the *other registering body*); and
 - (b) any of the RTO's operations in Victoria.
- (2) Subsection (3) applies if—
- (a) the Authority—
 - (i) suspects on reasonable grounds that the RTO may have contravened the RTO standards; and
 - (ii) has advised the other registering body of the suspected contravention; and
 - (b) the other registering body—
 - (i) within 30 days after receiving the advice, fails to take steps to deal with the suspected contravention to the satisfaction of the Authority; or
 - (ii) at any time advises the Authority that it does not propose to take any step or further step to deal with the suspected contravention.
- (3) The Authority may conduct a compliance audit of the RTO.

4.3.27 Conduct of audit

- (1) A compliance audit mentioned in this Division must be conducted in accordance with any relevant national standards.

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- (2) A failure to comply with subsection (1) is of no effect if the failure—
- (a) does not substantially affect the outcome of the audit; or
 - (b) arises out of inconsistency between the standards mentioned in the subsection and legislation of the particular jurisdiction in relation to which the failure arises.

4.3.28 Powers not limited by compliance audit provisions

A provision of this Division that makes provision for a compliance audit does not limit the power of any registering body to inquire into the activities of an RTO or training organisation.

4.3.29 Function or power may be used to support national scheme

- (1) This section applies to a person who, apart from this section, may exercise a power or perform a function under this Part in relation to a registered education or training organisation or an RTO or an applicant for registration under section 4.3.10 or 4.3.16.
- (2) The person may also perform the same kind of function or exercise the same kind of power in this jurisdiction—
- (a) at the request of the Authority, for inquiries into whether an RTO registered by another registering body is complying with this Part or a corresponding law; or
 - (b) at the request of another registering body, for a compliance audit that is being conducted under a corresponding law in relation to—
 - (i) an RTO registered by the other registering body; or

- (ii) an applicant for registration by the other registering body under a provision of a corresponding law corresponding to section 4.3.16.
- (3) Subsection (2) does not limit the person's functions or powers.

Division 5—Higher education

4.3.30 Approval of Universities

- (1) The Authority may, by notice published in the Government Gazette, approve an institution, other than an autonomous college or a TAFE institute, to operate as a University or part of a University.
- (2) An institution that is established as a University under an Act of the Commonwealth, another State, the Australian Capital Territory or the Northern Territory is deemed to have the approval of the Authority under this section to operate as a University or part of a University (as the case requires).
- (3) A person representing an institution may apply to the Authority in writing for approval to operate as a University.
- (4) In deciding whether to grant approval under subsection (1), the Authority may have regard to Government policies and priorities and to all or any of the following matters—
 - (a) in the case of an institution established in a foreign country, whether it is recognised as a University by the authority in the foreign country that, in the Authority's opinion, is the competent authority;
 - (b) the National Protocols for Higher Education Approval Processes first endorsed by the Ministerial Council on Education,

Employment, Training and Youth Affairs on 31 March 2000, as in force from time to time;

- (c) any other matter relating to the management or operations of the institution that, in the opinion of the Authority, are relevant to the ability of the institution to operate as a University or part of a University;
- (5) The Authority may from time to time issue guidelines about all or any of the matters referred to in subsection (4) and must publish any guidelines that are issued in the Government Gazette.
- (6) An approval remains in force for any period not exceeding 5 years that the Authority determines unless sooner revoked.
- (7) An approval is subject to any other conditions imposed by the Authority.
- (8) The Authority may charge any fee fixed by the Minister for investigating an application for approval under this section.

4.3.31 Revocation or suspension of approval of University

- (1) The Authority may, after the conduct of a review in accordance with section 4.3.35 and after considering any submissions made in accordance with that section, by notice published in the Government Gazette, revoke or suspend the approval or deemed approval or impose any condition on the approval or deemed approval.
- (2) Any suspension, revocation or condition imposed by the Authority under subsection (1) takes effect on the date the notice is published in the Government Gazette or such later date as is specified in the notice.

4.3.32 Disallowance of notices

- (1) The power to make a notice under section 4.3.30 or 4.3.31 is subject to the notice being disallowed by Parliament.
- (2) A copy of every notice under section 4.3.30 or 4.3.31 must be laid before both Houses of Parliament on or before the 6th sitting day after the publication of the notice in the Government Gazette.
- (3) Part 5 of the **Subordinate Legislation Act 1994** applies to a notice under section 4.3.30 or 4.3.31 as if the notice were a statutory rule within the meaning of that Act laid before each House of the Parliament under section 15 of that Act.
- (4) Subsections (1), (2) and (3) do not apply—
 - (a) to a notice granting or revoking an approval relating to an institution that is established as a University under an Act of a Territory or an Act or law of another country; or
 - (b) with respect to a University deemed to be approved to operate as a University under section 4.3.30(2).

4.3.33 Authorisation to conduct higher education courses

- (1) A person representing an institution may apply to the Authority in writing for authorisation to conduct a course of study in higher education.
- (2) In deciding whether to authorise an institution to conduct a course of study, the Authority may have regard to—
 - (a) the National Protocols for Higher Education Approval Processes first endorsed by the Ministerial Council on Education, Employment, Training and Youth Affairs on 31 March 2000, as in force from time to time;

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- (b) any other matter relating to the management or operations of the institution or the administration of the course of study that, in the opinion of the Authority, are relevant to the institution's ability to provide the course of study.
- (3) The Authority may from time to time issue guidelines about all or any of the matters referred to in subsection (2) and must publish any guidelines that are issued in the Government Gazette.
- (4) An authorisation under this section remains in force for any period not exceeding 5 years that the Authority determines unless sooner revoked.
- (5) An authorisation is subject to any other conditions imposed by the Authority.
- (6) The Authority may charge any fee fixed by the Minister for investigating any application for authorisation under this section.

4.3.34 Suspension or cancellation of authorisation

- (1) The Authority, after conducting a review in accordance with section 4.3.35 of an institution conducting an accredited course of study and after considering any submissions made in accordance with section 4.3.35, may suspend or cancel the authorisation or impose any condition on the authorisation.
- (2) Any suspension, cancellation or condition that the Authority decides upon takes effect when notice of the decision is given to the institution or on any later date that may be specified in the notice.
- (3) In determining whether to revoke an authorisation the Authority may have regard to all or any of the matters referred to in section 4.3.30(4).

4.3.35 Review of operations of universities, institutions

- (1) The Authority may at any time arrange for a review of the operation of—
 - (a) a University approved or deemed to be approved to operate in Victoria under section 4.3.30; or
 - (b) an institution authorised to conduct a course of study under section 4.3.33.
 - (2) In the case of a University that is approved under section 4.3.30(1), the Authority must ensure that a review of the University's operation is conducted within 5 years after the first enrolment of students at that University in Victoria.
 - (3) The Authority may appoint a person or committee to review the operations of a University, post-secondary education provider or other institution and advise the Authority—
 - (a) having regard to the matters set out in this Part and the guidelines published under this Part whether or not the University, post-secondary education provider or other institution has attained and continues to attain the standards required of a University, post-secondary education provider or other institution for the purposes of this Part; and
 - (b) whether or not the University, post-secondary education provider or other institution has complied with any condition imposed by the Authority on an approval, or authorisation under this Division.
 - (4) The Authority, by notice in writing, may require a University, post-secondary education provider or other institution or any person involved in the management or operation of the University, post-secondary education provider or other institution—
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- (a) to provide, in accordance with directions in the notice, to the Authority or any person or committee appointed by the Authority any information about the matters set out in this Act or any guidelines published under this Part relevant to the University, post-secondary education provider or other institution, that is specified in the notice; or
- (b) to produce to the Authority or any person or committee appointed by the Authority any records relevant to those matters that are specified in the notice and permit examination of the records and the making of copies of those records.
- (5) If the Authority is satisfied after the conduct of a review in accordance with this section that it is in the interests of the students enrolled at the University, post-secondary education provider or other institution or in the public interest that—
- (a) the approval or deemed approval of the University should be suspended or revoked; or
- (b) the authorisation of an institution to conduct a course of study should be suspended or revoked; or
- (c) any condition should be imposed on an approval or authorisation—
- the Authority may suspend, cancel or revoke that endorsement, approval or authorisation or impose that condition in accordance with this Division.
- (6) A suspension, cancellation, revocation or condition may be proposed by the Authority giving notice in writing of the proposed suspension, cancellation, revocation or condition and giving reasons to the University or institution affected.
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- (7) The Authority must give the University or institution 28 days to make submissions to the Authority to show cause why the proposed suspension, cancellation, revocation or condition should not be imposed and must consider any submissions made.

Division 6—Approval to exercise delegated powers

4.3.36 Approvals to enable delegation of powers

- (1) The Authority may, on the application of—
- (a) a registered education and training organisation; or
 - (b) a University or a University approved to operate in Victoria under section 4.3.30; or
 - (c) an institution authorised to conduct a course of study under section 4.3.33—

investigate the organisation, University or institution to determine whether it should be approved for the purpose of delegating to it the powers and functions under section 4.2.7(3).

- (2) The Authority must not approve an organisation, University or institution unless it is satisfied that it is fit and competent to carry out the powers that may be delegated to it under section 4.2.7(3).
- (3) The Authority must from time to time investigate the fitness and competence of an approved organisation, University or institution to continue to carry out the powers that have been delegated to it under section 4.2.7(3).
- (4) The Authority may charge an organisation, University or institution that applies for approval under this section fees for the investigation of the organisation, University or institution to—

- (a) determine whether it is fit and competent to carry out the powers that may be delegated to it under section 4.2.7(3); and
 - (b) determine whether it is fit and competent to continue to carry out the powers that have been delegated to it under section 4.2.7(3).
- (5) The Authority may have regard to government policy and to any relevant national standards about delegating powers under section 4.2.7(3) in determining whether an organisation, University or institution is fit and competent to carry out those powers.
- (6) The Authority may authorise the payment of fees under this section by periodic instalment amounts fixed by the Authority.
- (7) If the Authority authorises the payment of fees by instalments for an investigation under this section, the Authority may take that action and may make any determination in respect of the application on payment of the first instalment of the fee.
- (8) The organisation, University or institution required to pay fees under this section must pay each instalment by the date that it is due to be paid.
- (9) Any instalment that is not paid by the due date for that instalment is a debt due to the Authority.

S. 4.3.36(6)
inserted by
No. 58/2007
s. 27.

S. 4.3.36(7)
inserted by
No. 58/2007
s. 27.

S. 4.3.36(8)
inserted by
No. 58/2007
s. 27.

S. 4.3.36(9)
inserted by
No. 58/2007
s. 27.

4.3.37 Approval by Authority of training organisations to be managed by TVET

S. 4.3.37
inserted by
No. 70/2008
s. 24.

- (1) The Authority may, on the application of a training organisation, assess that organisation to determine whether it should be approved—
- (a) to apply to TVET—
 - (i) to be registered on the State Register and the National Register; and

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- (ii) for TVET to manage the registration of the organisation; or
- (b) if the organisation is an RTO, to apply to TVET to transfer the management of the RTO's registration to TVET.
- (2) An application for an approval under this section must be in the form approved by the Authority.
- (3) The applicant must give the Authority any further information it requires to investigate and decide the application.
- (4) The Authority must not approve an organisation under this section unless it is satisfied that the organisation meets the criteria published by the Authority for the purposes of this section.
- (5) The Authority may revoke an approval under this section if—
- (a) the Authority is no longer satisfied that the holder of the approval meets the criteria published by the Authority for the purposes of this section; or
 - (b) the Authority revokes the delegation under section 4.2.7A of its functions to TVET; or
 - (c) the holder of the approval requests that the approval be revoked; or
 - (d) the Authority considers, in the circumstances, that it is in the public interest to revoke the approval.
- (6) The Authority must give notice in writing to the holder of an approval that the Authority has revoked the approval.
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- (7) The revocation of an approval takes effect—
- (a) when notice of the revocation is given to the holder of that approval; or
 - (b) if a later date is specified in the notice, on that date.
- (8) On revocation of an approval of an organisation under this section, the functions relating to the registration of the organisation or the management of that registration revert to the Authority.
- (9) In this section, *manage*, in relation to the registration of a training organisation approved under this section, means the performance of any function that may be delegated to TVET by the Authority under section 4.2.7A.

Note

The type of training organisation that may be approved under this section will typically be an organisation that currently or will principally operate in Victoria and also operate in at least one other Australian jurisdiction.

PART 4.4—ACCREDITATION AND QUALIFICATIONS

Division 1—Investigation and accreditation

4.4.1 Investigation of a course or part of a course by Authority

- (1) The Authority may investigate any course or part of a course to determine whether it should be registered as accredited.
- (2) The Authority may, on the application of a person or body that has applied for registration or is registered under Part 4.3, investigate a course or part of a course to determine whether it should be registered as accredited.
- (3) The Authority may investigate a course or part of a course which is registered as accredited to determine whether it should continue to be registered as accredited.
- (4) If the Authority investigates a course or part of a course under subsection (1), (2) or (3) it must prepare a written report on the content and educational standard of the course or part of the course.
- (5) Despite subsection (2), the Authority may consider an application from any person in relation to a course or part of a course in vocational education and training or further education.
- (6) An application must be in the form approved by the Authority and accompanied by any fee fixed by the Minister for the application and investigation of the course or part of the course.
- (7) The applicant must give the Authority any further information it requires to investigate the course or part of the course and decide the application.

S. 4.4.1(4)
amended by
No. 70/2008
s. 25(a).

S. 4.4.1(6)
amended by
No. 70/2008
s. 25(b).

S. 4.4.1(7)
amended by
No. 70/2008
s. 25(b).

4.4.2 Accreditation of a course or part of a course

- (1) The Authority may accredit a course or a part of a course if it is satisfied—
- (a) the following matters are appropriate to the qualification (if any) to which the course or part of the course leads—
 - (i) the aims and learning outcomes of the course or part of the course; S. 4.4.2(1)(a) amended by No. 70/2008 s. 26(a).
 - (ii) in the case of a course other than a higher education course, the scope of the studies of the course or part of the course; S. 4.4.2(1)(a)(ii) amended by No. 70/2008 s. 26(b).
 - (iii) the assessment processes for the course or part of the course to be used to determine whether a student has achieved the learning outcomes of the course or part of the course; and S. 4.4.2(1)(a)(i) amended by No. 70/2008 s. 26(c).
 - (b) the course or part of the course are likely to achieve the specified purposes of the course or part of the course; and S. 4.4.2(1)(b) amended by No. 70/2008 s. 26(d).
 - (c) the contents and standards of the course or part of the course are consistent with any relevant national standards about the principles, processes or other matters to be applied in accrediting the course or part of the course; and S. 4.4.2(1)(c) amended by No. 70/2008 s. 26(e).
 - (d) that the fee for the application and investigation fixed by the Minister has been paid.

s. 4.4.2

- (2) In deciding an application for accreditation of a course or part of a course in vocational education and training or further education, the Authority must also apply the standards for accreditation of courses adopted on 8 June 2001 by the Ministerial Council under the AQTF, as amended from time to time by the Ministerial Council.
- (3) In deciding an application for accreditation of a course or part of a course in higher education, the Authority must also have regard to—
 - (a) the National Protocols for Higher Education Approval Processes first endorsed by the Ministerial Council on Education, Employment, Training and Youth Affairs on 31 March 2000, as in force from time to time;
 - (b) any matter relating to the teaching or administration of the course of study or part of the course;
 - (c) any other matter relating to the management or operations of the institution or the administration of the course of study or part of the course that, in the opinion of the Authority, are relevant to the institution's ability to provide the course of study or part of the course.
- (4) Subsections (1), (2) and (3) do not limit the grounds on which the Authority may refuse to grant an application.
- (5) The Authority may impose any conditions on the accreditation of a course or part of a course.
- (6) If the Authority decides to grant the application it must immediately register the course or part of the course on the State Register.

S. 4.4.2(3)(b)
amended by
No. 70/2008
s. 26(f).

S. 4.4.2(3)(c)
amended by
No. 70/2008
s. 26(f).

S. 4.4.2(5)
amended by
No. 70/2008
s. 26(g).

S. 4.4.2(6)
amended by
No. 70/2008
s. 26(h).

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- (7) If the Authority decides not to grant the application it must immediately give the applicant a notice of the decision and a copy of the written report on the content and educational standard of the course or part of the course prepared under section 4.4.1. **S. 4.4.2(7) amended by No. 70/2008 s. 26(h).**
- (8) The Authority may accredit a course or part of a course for a period not exceeding 5 years and may renew the accreditation if an application for renewal is made before the accreditation expires. **S. 4.4.2(8) amended by No. 70/2008 s. 26(i).**
- (9) The Authority may from time to time issue guidelines about all or any of the matters referred to in subsections (1), (2) and (3) and must publish any guidelines that are issued in the Government Gazette.

4.4.3 Cancellation or suspension of accreditation

- (1) The Authority may suspend or cancel the accreditation of a course or part of a course in vocational education and training or further education that was accredited by the Authority if it is of the opinion that the course or part of the course no longer complies with the standards for accreditation of courses adopted on 8 June 2001 by the Ministerial Council under the AQTF as amended from time to time by the Ministerial Council and considering any submissions made in accordance with subsection (3). **S. 4.4.3(1) amended by No. 70/2008 s. 27(a).**
- (2) The Authority may suspend or cancel the accreditation of a higher education course or part of such a course that was accredited by the Authority or impose a condition on that accreditation after considering the advice of a person or committee appointed to conduct a review under section 4.4.4 and any submissions made in accordance with subsection (3). **S. 4.4.3(2) amended by No. 70/2008 s. 27(b).**

s. 4.4.4

- (3) The Authority must give written notification to the person or body who has applied for the accreditation setting out—
- (a) details of the proposed suspension or cancellation of the accreditation or the imposition of conditions; and
 - (b) the reasons for the suspension or cancellation or the imposition of conditions; and
 - (c) that the person may make submissions to the Authority within 14 days of the notice to show cause why the proposed suspension, cancellation or condition should not be imposed.

S. 4.4.4
amended by
No. 70/2008
s. 28.

4.4.4 Review of higher education courses

The Authority may appoint a person or committee to review a course of study or part of the course accredited by the Authority and advise the Authority as to whether or not the course of study or part of the course continues to attain the standards required of a higher education course of study or part of such a course under this Act.

Division 2—Qualifications

4.4.5 Who can issue qualifications?

- (1) A person or body that is registered under Division 3 of Part 4.3 may recognise—
- (a) the completion of an accredited course or part of an accredited course that it is registered to provide; or
 - (b) the award, conferral or issue of a registered qualification that it is registered to award, confer or issue—

S. 4.4.5(1)(b)
amended by
No. 58/2007
s. 28.

by the issue of a written statement or otherwise.

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- (2) If a person or body that is registered under Division 3 of Part 4.3 ceases to exist, the Authority may do any thing that the person or body was authorised to do under subsection (1).
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PART 4.5—OVERSEAS STUDENTS

4.5.1 Approval to provide courses for overseas students

S. 4.5.1(1)
amended by
No. 58/2007
s. 29(1).

(1) The Authority may approve a registered school, a University or another education or training organisation or institution as suitable to provide a specified course to students from overseas.

S. 4.5.1(2)
amended by
No. 58/2007
s. 29(2)(a).

(2) In deciding whether to grant approval, the Authority may have regard to all or any of the following matters in relation to the school, University, education or training organisation or institution where, or by whom, the course is to be provided—

(a) the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students issued under Part 4 of the Education Services for Overseas Students Act 2000 of the Commonwealth and as amended from time to time;

S. 4.5.1(2)(ab)
inserted by
No. 58/2007
s. 29(2)(b).

(ab) the suitability of the course for overseas students;

(b) guidelines issued by the Authority;

S. 4.5.1(2)(c)
amended by
No. 58/2007
s. 29(2)(a).

(c) any other matter relating to the management or operations of the school, University, education or training organisation or institution where, or by whom, the course is to be provided.

(3) The Authority may from time to time issue guidelines dealing with all or any of the matters referred to in subsection (2) and must publish any guidelines that are issued.

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- (4) The Authority may charge a fee fixed by the Minister for the investigation of an application or for an approval under this Part.
 - (5) An approval under this section remains in force for a period, not exceeding 5 years, specified by the Authority unless sooner suspended or cancelled by the Authority.

4.5.2 Process for approval

- (1) A person authorised by a registered school, University or another education or training organisation or institution may apply in the form approved by the Authority for approval of the school, University, organisation or institution to provide a specified course.
- (2) The person applying for approval must pay—
 - (a) any fees fixed by the Minister for the investigation of an application for approval;
 - (b) any fees fixed by the Minister for the approval.

S. 4.5.2(1)
substituted by
No. 58/2007
s. 30.

4.5.3 Suspension or cancellation of approval

- (1) The Authority may suspend or cancel the approval of a school, University or other institution to provide a specified course to overseas students if—
 - (a) the Authority is satisfied after conducting a review in accordance with section 4.5.4 and after considering any submissions made in accordance with that section, that the school, University or other institution is no longer suitable to be approved; or
 - (b) any fee relating to the approval has not been paid.

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- (2) The Authority must notify the Minister of the Commonwealth for the time being administering the Education Services for Overseas Students Act 2000 of the Commonwealth as soon as practicable of any approval or cancellation or suspension of approval under this Part or a decision of VCAT in relation to an approval under this Part.

4.5.4 Review of operations of institutions and courses

- (1) The Authority may at any time arrange for a review of the operation of the approval of a school, University or other institution approved to provide a course of study under this Part.
- (2) The Authority may appoint a person or committee to review the operation of a school, University or other institution or course of study and advise the Authority having regard to the matters set out in section 4.5.1 and the guidelines published under that section whether or not the school, University or other institution or course of study has attained and continues to attain the standards required for approval under this Part.
- (3) The Authority, by notice in writing, may require a school, University, or other institution or any person involved in the management or operation of the school, University or other institution—
- (a) to provide, in accordance with directions in the notice, to the Authority or any person or committee appointed by the Authority any information about the matters set out in section 4.5.1 or any guidelines published under that section relevant to the school, University or other institution, that is specified in the notice; or

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- (b) to produce to the Authority or any person or committee appointed by the Authority any records relevant to those matters that are specified in the notice and permit examination of the records and the making of copies of those records.
- (4) If the Authority is satisfied after the conduct of a review in accordance with this section that it is in the interests of overseas students enrolled at the school, University or other institution or in the public interest that the approval should be suspended or cancelled the Authority may suspend, cancel or revoke that approval in accordance with this Part.
- (5) A suspension, cancellation, revocation or condition may be proposed by the Authority giving notice in writing of the proposed suspension, revocation or condition and giving reasons to the school, University or institution affected.
- (6) The Authority must give the school, University or institution 28 days to make submissions to the Authority to show cause why the proposed suspension, cancellation, revocation or condition should not be imposed and must consider any submissions made.
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Pt 4.5A
(Heading and
ss 4.5.4A–
4.5.4F)
inserted by
No. 58/2007
s. 31.

PART 4.5A—OVERSEAS EXCHANGE STUDENTS

S. 4.5.4A
inserted by
No. 58/2007
s. 31,
renumbered
as s. 4.5A.1 by
No. 19/2008
s. 14(a).

4.5A.1 Approval of overseas secondary student exchange organisations

- (1) The Authority may approve a person, an organisation (including an education or training organisation) or a registered school as suitable to operate a student exchange program.
- (2) In deciding whether to grant approval, the Authority may have regard to all or any of the following matters in relation to the person, organisation or registered school—
 - (a) the suitability of the person, organisation or registered school to operate a student exchange program;
 - (b) guidelines issued by the Authority;
 - (c) any other matter relating to the management or operations of the person, organisation or registered school proposing to operate the student exchange program.
- (3) The Authority may from time to time issue guidelines for the purposes of determining whether a person, organisation or registered school is suitable to operate a student exchange program.
- (4) Any guidelines issued under subsection (3) must be published as soon as practicable in the Government Gazette.

4.5A.2 Conditions of approval

The approval of a person, organisation or registered school to operate a student exchange program under section 4.5A.1 is subject to any conditions imposed by the Authority.

S. 4.5.4B inserted by No. 58/2007 s. 31, renumbered as s. 4.5A.2 by No. 19/2008 s. 14(b)(i), amended by No. 19/2008 s. 14(b)(ii).

4.5A.3 Application for approval

- (1) A person, or a person authorised by an organisation or registered school, may apply in the form approved by the Authority and published in the Government Gazette for approval of the person, organisation or school to operate a student exchange program.
- (2) The Authority may require the applicant to provide further information or material in respect of the application for approval.
- (3) An application under subsection (1) must be accompanied by the fee (if any) fixed by the Minister.

S. 4.5.4C inserted by No. 58/2007 s. 31, renumbered as s. 4.5A.3 by No. 19/2008 s. 14(c).

4.5A.4 Duration and renewal of approval

- (1) An approval under section 4.5A.1 continues in force for a period, not exceeding 6 years, specified by the Authority unless sooner suspended or cancelled by the Authority.
- (2) The renewal of an approval to operate a student exchange program continues in force for a period, not exceeding 6 years, specified by the Authority unless sooner suspended or cancelled by the Authority.

S. 4.5.4D inserted by No. 58/2007 s. 31, renumbered as s. 4.5A.4 by No. 19/2008 s. 14(d)(i).

S. 4.5A.4(1) amended by No. 19/2008 s. 14(d)(ii).

s. 4.5A.5

S. 4.5A.4(3)
amended by
No. 19/2008
s. 14(d)(iii).

S. 4.5.4E
inserted by
No. 58/2007
s. 31,
renumbered
as s. 4.5A.5 by
No. 19/2008
s. 14(e).

- (3) Sections 4.5A.1, 4.5A.2 and 4.5A.6 apply to a renewal of an approval in the same way as they apply to an approval.

4.5A.5 Application for renewal of approval

- (1) A person, or a person authorised by an organisation or registered school, may apply in the form approved by the Authority and published in the Government Gazette for renewal of an approval to operate a student exchange program before the existing approval expires.
- (2) The Authority may require the applicant to provide further information or material in respect of the application for renewal of an approval.
- (3) An application under subsection (1) must be accompanied by the fee (if any) fixed by the Minister.

S. 4.5.4F
inserted by
No. 58/2007
s. 31,
renumbered
as s. 4.5A.6 by
No. 19/2008
s. 14(f)(i),
amended by
No. 19/2008
s. 14(f)(ii).

4.5A.6 Suspension or cancellation of approval

The Authority may suspend or cancel, or impose any condition on, the approval of a person, organisation or registered school to operate a student exchange program if the person, organisation or school breaches a condition of its approval imposed under section 4.5A.2 or this section.

PART 4.6—STATE REGISTER

4.6.1 State Register

- (1) The Authority must maintain a State Register containing details of accredited courses and qualifications and other matters required to be registered under this Chapter.
- (2) If the Authority determines that a course or part of a course should be registered as accredited on the State Register the Authority must register the course or part of the course as accredited on the State Register.
- (3) The Authority must, on the request of the Minister—
 - (a) record on the State Register a qualification endorsed by the Ministerial Council that the Minister is satisfied should be registered as a qualification; and
 - (b) strike off the State Register a qualification that the Minister is satisfied should be struck off.
- (4) The Authority may record on the State Register any other qualification that the Authority is satisfied should be registered as a qualification.
- (5) If the Authority determines that a course should be struck off the State Register, the Authority must strike the course off the Register.
- (6) The Authority may do any of the things referred to in subsection (2) or (5) in relation to a course whether or not the course has been investigated under this Part.

4.6.2 Division of education and training organisations

- (1) The Authority must establish and maintain a division in the State Register of persons bodies or schools who—
 - (a) are authorised by the Authority under section 4.3.10 to provide accredited courses; and
 - (b) are authorised under section 4.4.5 to award, confer or issue registered qualifications.

S. 4.6.2(1)(b)
amended by
No. 58/2007
s. 32.

- (2) The division must specify—
 - (a) the name of the registered person or body; and
 - (b) the accredited course or courses that the registered person or body is authorised to provide; and
 - (c) the registered qualification or qualifications that the registered person or body is authorised to award, confer or issue; and
 - (d) any limitations or restrictions on the registration.

S. 4.6.2(2)(c)
amended by
No. 58/2007
s. 32.

4.6.3 Division of Higher Education

- (1) The Authority must establish and maintain a higher education division in the State Register.
- (2) The Authority must ensure that particulars of approvals given under section 4.3.30 and accreditations and authorisations under sections 4.3.33 and 4.4.2 are entered in the higher education division in the State Register.

4.6.4 National registration

- (1) The Authority must register on the National Register a person or body who is registered as an education and training organisation under section 4.3.10 with respect to a course or qualification in vocational education and training or further education.
 - (2) The Authority may register a person on the National Register as a training organisation that provides, within its scope of registration—
 - (a) training and assessments resulting in the issue of qualifications or statements of attainment by the organisation; or
 - (b) assessments resulting in the issue of qualifications or statements of attainment by the organisation.
 - (3) The Authority must register on the National Register a vocational education and training course or a further education course that is registered as accredited on the State Register.
 - (4) If the accreditation of a vocational education and training course or a further education course that was registered on the National Register by the Authority expires, the Authority must remove the registered details of the course from the National Register.
 - (5) If the Authority cancels the accreditation of a vocational education and training course or a further education course that was registered on the State Register and the National Register by the Authority, the Authority must remove the registered details of the course from the National Register.
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PART 4.7—OFFENCES

4.7.1 Unregistered schools

A person must not carry on or conduct a school unless the school is registered under Part 4.3.

Penalty: 10 penalty units.

4.7.2 Offences by unregistered persons

- (1) A person or body must not use the name or title of "registered provider" or any other name, title, letters or description implying or that may reasonably be understood to imply that the person or body is registered under section 4.3.10 to provide a course or part of a course unless the person or body is registered under section 4.3.10 to do so.

Penalty: 60 penalty units for a natural person and 300 penalty units for a body corporate.

- (2) A person or body must not use any name, title, letters or description implying that the person or body is registered to provide a course or part of a course under section 4.3.10 in particular circumstances unless the person or body is registered under section 4.3.10 to do so in relation to those circumstances.

Penalty: 60 penalty units for a natural person and 300 penalty units for a body corporate.

(3) This section—

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S. 4.7.2(3)(a)
repealed by
No. 70/2008
s. 29.

(b) does not apply to a vocational education and training course or a further education course registered on the National Register.

4.7.3 Offence in relation to accredited courses

A person, body or school must not provide or offer to provide an accredited course leading to a senior secondary qualification registered on the State Register unless that person is registered on the State Register as being authorised to provide the course.

Penalty: 60 penalty units for a natural person and 300 penalty units for a body corporate.

4.7.4 Offences in relation to courses and qualifications

(1) A person, body or school must not in relation to a course or part of a course provided by the person, body or school use the name or title of "government accredited" or any other name, title, letters or description implying or that may reasonably be understood to imply that the course or part of a course is registered as accredited on the State Register unless the person, body or school is registered under section 4.3.10 to do so.

Penalty: 60 penalty units for a natural person and 300 penalty units for a body corporate.

(2) A person, body or school must not in relation to a qualification awarded or issued by that person or body use the term "government recognised" or any other term, title, letters or description

s. 4.7.5

implying or that may reasonably be understood to imply that the qualification is registered on the State Register unless the person, body or school is registered under section 4.3.10.

Penalty: 60 penalty units for a natural person and 300 penalty units for a body corporate.

S. 4.7.4(3)
repealed by
No. 70/2008
s. 30.

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- (4) This section does not apply to vocational education and training or further education.

4.7.5 Offence to falsely claim to be an RTO

- (1) A person who is not an RTO must not claim to be an RTO.

Penalty: 60 penalty units in the case of a natural person and 300 penalty units in the case of a body corporate.

- (2) A person who is not, or not acting for, an RTO operating within the scope of registration of the RTO must not—

- (a) issue, or claim to be able to issue, a qualification or statement of attainment; or
- (b) claim to be able to provide training or assessments resulting in the issue of a qualification or statement of attainment.

Penalty: 60 penalty units in the case of a natural person and 300 penalty units in the case of a body corporate.

- (3) A person must not claim to be able to provide training resulting in the issue of a qualification or statement of attainment by another person knowing that the other person is not authorised in

accordance with this Act to issue the qualification or statement of attainment.

Penalty: 60 penalty units in the case of a natural person and 300 penalty units in the case of a body corporate.

- (4) For the purposes of subsections (1) to (3), the person claims to be an RTO or claims to be able to do a particular thing if the person—
- (a) makes that claim; or
 - (b) purports to be an RTO or to be able to do the particular thing; or
 - (c) does any act likely to induce someone else to believe the person is an RTO or is able to do the particular thing.
- (5) This section does not apply to a registering body.

4.7.6 Only approved universities to operate in Victoria

An institution, other than a University established or recognised under an Act, must not operate or purport to operate as a University or part of a University without the approval of the Authority.

Penalty: 300 penalty units.

4.7.7 Accreditation and authorisation of courses required

- (1) An institution must not—
- (a) confer or offer to confer a higher education award in relation to a course of study; or
 - (b) offer or conduct a course of study leading to the conferral of a higher education award whether the award is to be conferred by that institution or any other institution; or
 - (c) represent in any manner that a course of study offered or conducted by that institution leads to or would entitle a person completing that course to, the conferral of a higher
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education award whether the award is to be conferred by that institution or any other institution—

unless—

- (d) in the case of an autonomous college, it is authorised by an Order in Council under section 3.2.12 to confer the award;
- (e) in the case of an institution operated by a company established or controlled by a university, the governing body of the university has the power to control the standards and quality of the course of study offered by the institution and confers the award in relation to that course of study;
- (f) in the case of any other institution—
 - (i) the course of study is accredited by the Authority; and
 - (ii) the Authority has authorised the institution to conduct the course of study.

Penalty: 200 penalty units.

(2) Subsection (1) does not apply to—

- (a) a recognised University;
- (b) an institution that has the approval of the Authority to operate as a University under section 4.3.30;
- (c) the Melbourne College of Divinity;
- (d) a body corporate named as a higher education institution empowered to issue its own qualifications on the Register of Recognised Education Institutions and Authorised Accreditation Authorities in Australia referred to in the Higher Education Support Act 2003 of the Commonwealth.

4.7.8 Offence to falsely claim to provide an accredited course

- (1) A person must not claim to provide a course that is registered as accredited on the State Register or the National Register unless the course is so registered.

Penalty: 60 penalty units in the case of a natural person and 300 penalty units in the case of a body corporate.

- (2) For the purposes of subsection (1), the person claims to provide a course that is registered as accredited if the person—
- (a) makes that claim; or
 - (b) claims to provide a course that purports to be registered as accredited; or
 - (c) does any act likely to induce someone else to believe a course the person is providing is registered as accredited.

4.7.9 Offence in relation to qualifications

A person, body or school must not award, confer or issue, or offer to award, confer or issue, a senior secondary qualification registered on the State Register unless that person is registered on the State Register as being authorised to award, confer or issue the qualification.

Penalty: 60 penalty units for a natural person and 300 penalty units for a body corporate.

S. 4.7.9
amended by
No. 58/2007
s. 33.

PART 4.8—REVIEW BY VCAT

4.8.1 Review by VCAT

- (1) A person whose interests are affected by any of the following decisions of the Authority may apply to VCAT for review of the decision—
- (a) not to grant registration under Part 4.3; or
 - (b) to suspend or cancel registration under Part 4.3; or
 - (c) not to grant an approval or authorisation under Part 4.3; or
 - (d) to revoke an approval or authorisation under Part 4.3; or
 - (e) not to grant an accreditation under Part 4.4; or
 - (f) to revoke an accreditation under Part 4.4; or
 - (g) not to approve a school, person, body, institution or provider to provide a specified course under Part 4.5; or
 - (h) to suspend or cancel the approval of a school, person, body, institution or provider to provide a specified course under Part 4.5; or
 - (i) not to approve a person, organisation (including an education or training organisation) or registered school to operate a student exchange program under Part 4.5A; or
 - (j) to suspend or cancel the approval of a person, organisation (including an education or training organisation) or registered school to operate a student exchange program under Part 4.5A.

S. 4.8.1(1)(h)
amended by
No. 58/2007
s. 34(1).

S. 4.8.1(1)(i)
inserted by
No. 58/2007
s. 34(2).

S. 4.8.1(1)(j)
inserted by
No. 58/2007
s. 34(2).

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- (2) An application for review must be made within 28 days after the later of—
- (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.
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PART 4.9—INFORMATION AND EVIDENCE

4.9.1 Publication of registers

- (1) The Authority must cause a copy of the State Register to be published on a website maintained by the Authority on the Internet.
- (2) The Authority must ensure that no details of students registered for home schooling under Part 4.3 are published on the website under subsection (1) or made available to the public.

4.9.2 Certificate prima facie evidence

A certificate purporting to be signed by the Chairperson or any two members of the Authority certifying any matter relating to the contents of the State Register as at that date is evidence, and, in the absence of evidence to the contrary, is proof of the matters stated in it.

4.9.3 False representation

A person must not wilfully make or cause to be made, or provide, any false or misleading information in any matter relating to registration on the State Register under this Chapter.

Penalty: 10 penalty units.

4.9.4 Information may be made available

- (1) The Authority may disclose to a Department of the Commonwealth Government or to another registering body information it has about, or arising from—
 - (a) an application by anyone for registration or approval under this Chapter;
 - (b) the registration or approval of a person or body under this Chapter;

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- (c) a compliance audit conducted under this Chapter;
 - (d) action taken by the Authority in relation to a person or body approved or registered under this Chapter;
 - (e) the performance of a function or the exercise of a power by a person under this Chapter at the request of another registering body.
- (1A) The Authority may disclose to a person, who has been delegated functions of the Authority under section 4.2.7A, any information it has about the performance of an RTO.
- (2) A person disclosing information under subsection (1) or (1A) or under a provision of a corresponding law corresponding to subsection (1) or (1A) does not contravene an obligation not to disclose the information, whether imposed by an Act or by another rule of law.
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S. 4.9.4(1A)
inserted by
No. 70/2008
s. 31(1).

S. 4.9.4(2)
amended by
No. 70/2008
s. 31(2).

CHAPTER 5—GENERAL

PART 5.1—ADMINISTRATION

5.1.1 Department

- (1) There is to be a Department responsible for the administration of education and training in Victoria with the principal function of assisting the Minister in the administration of this Act.
- (2) The Department is to consist of—
 - (a) a Departmental Head appointed under section 12 or 19 of the **Public Administration Act 2004**; and
 - (b) any other persons employed by the Departmental Head under this Act, the **Public Administration Act 2004** or any other Act.

5.1.2 Supply of information

The council or governing body of an education or training institution must supply the Minister with any information that he or she may reasonably require for the effective monitoring, development and planning of education and training in or related to Victoria.

PART 5.2—MINISTER'S POWERS

5.2.1 Minister's general powers

- (1) The Minister has power to do anything that is set out in this Act or that is necessary or convenient to be done in or in connection with the functions of the Minister under this or any other Act.
- (2) Without limiting subsection (1), the Minister also has the following powers—
 - (a) to set the overall policy for education and training in or related to Victoria;
 - (b) to issue policies, guidelines, advice and directions to education or training institutions in or related to Victoria;
 - (c) to establish, name, maintain, carry on, modify, merge or close Government schools and educational services in accordance with this Act;
 - (d) to establish, name, modify, merge or abolish—
 - (i) school councils for Government schools in accordance with this Act;
 - (ii) ACFE regions and regional councils in accordance with this Act;
 - (iii) industry training boards in accordance with this Act;
 - (iv) approved training agents in accordance with this Act;
 - (v) bodies to advise the Minister on education and training matters including post-secondary education;
 - (vi) other bodies in accordance with this Act;

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- (e) to require any education or training institution to supply the Minister with any information that he or she may reasonably require for the effective monitoring, development and planning of education and training in or related to Victoria.
- (3) A person or body established by or under this Act or continued in operation under this Act and a University with a TAFE division must comply with—
- (a) a policy, guideline or direction issued by the Minister to the extent that the policy, guideline or direction relates to, or is expressed to apply to, the operations of that institution, person, body or TAFE division; and
 - (b) a requirement under section (2)(e) issued in writing by the Minister.
- (4) Despite the powers given to the Minister under subsections (1) and (2), the Minister may not give any direction to—
- (a) the Victorian Curriculum and Assessment Authority in relation to the awarding of a certificate or qualification to any particular student or the assessment contained in a certificate or qualification to be awarded to any particular student;
 - (b) the Victorian Registration and Qualifications Authority in relation to any particular student about the following—
 - (i) the recognition of the completion of an accredited course or part of an accredited course;
 - (ii) the award or issue of a registered qualification;
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- (iii) the award or issue of a qualification for an accredited course;
 - (iv) the recognition of the matters in subparagraph (i), (ii) or (iii) by the issuing of a written statement or otherwise.
- (5) The Victorian Registration and Qualifications Authority and the Victorian Curriculum and Assessment Authority must include in their annual report under the **Financial Management Act 1994** in the period to which the report relates a copy of each direction that is given under subsection (2) to the Authority and that is expressed to apply to that Authority.
- (6) Despite subsection (3) the Victorian Institute of Teaching is only required to give due regard to any advice given by the Minister in relation to the exercise of its powers and the performance of its functions.
- (7) Nothing in this section limits the powers of the Minister at common law or under any convention or practice relating to powers of Ministers generally.

5.2.2 Minister's powers about multi-sector arrangements

Without limiting any other powers of the Minister under this Act, the Minister may—

- (a) enter into agreements and effect arrangements to enable—
 - (i) a Government school and a TAFE institute to share facilities or services and to provide or deliver education services in partnership or under a joint arrangement;

- (ii) shared educational precincts to be established where a Government school, a TAFE institute and a University could be located in the same area;
- (iii) multi-sector education services to be provided at the same location or under the management or control of more than one person or body;
- (b) approve agreements or arrangements entered into by any person or body to do any of the things referred to in paragraph (a).

5.2.3 Minister's powers to acquire land

- (1) The Minister may purchase by agreement or compulsorily acquire any land required for the purposes of this Act.
- (2) Despite subsection (1), the Minister may only purchase by agreement any estate or interest in land to be used to operate a preschool program or programs on the land or on premises on the land.
- (3) The **Land Acquisition and Compensation Act 1986** applies to this Act and for that purpose—
 - (a) this Act is the special Act; and
 - (b) the Minister is the Authority.

5.2.4 Minister's power to take land on lease

- (1) The Minister may, for and on behalf of the Crown, take on lease or under any other arrangement any land or premises required for the purposes of this Act.
- (2) The Minister may, for and on behalf of the Crown, grant or enter into any lease or any other arrangement of any land or premises required for the purposes of providing education or training or

for providing a direct or indirect benefit to education or training.

5.2.5 Minister's power over reserved Crown lands

The Minister, for and on behalf of the Crown, may enter into any lease or licence over any land reserved for educational purposes under the **Crown Land (Reserves) Act 1978**.

5.2.6 Vesting of land in Minister administering this Act

S. 5.2.6
substituted by
No. 70/2008
s. 32.

- (1) All land acquired for the purposes of this Act by a Minister administering this Act is vested in the Minister administering the **Education and Training Reform Act 2006**.
- (2) The Minister administering the **Education and Training Reform Act 2006** is deemed to be the registered proprietor of land that is vested in the Minister under subsection (1).
- (3) The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title, must make any amendments in the Register that are necessary because of the operation of subsection (1) or (2).
- (4) The Minister administering the **Education and Training Reform Act 2006** may sell or otherwise dispose of any land vested in the Minister and may do all things necessary and execute all necessary documents for that purpose.
- (5) The proceeds of every sale or disposition of an interest in fee simple in land must be paid into the Consolidated Fund.
- (6) In this section the *Minister administering the Education and Training Reform Act 2006* means any Minister of the Crown for the time being administering this section.

5.2.7 Agreements and arrangements concerning use of property

- (1) The Minister may enter into an agreement or arrangement, on any terms that the Minister thinks fit, with any person (including any other responsible Minister of the Crown) or body—
 - (a) for or in relation to the use of any real or personal property for the purposes of this Act; or
 - (b) for or in relation to the use, for the benefit of the community, or any part of the community, of—
 - (i) any lands vested in the Minister or taken on lease under section 5.2.4; or
 - (ii) any lands of the Crown reserved for any educational purpose (whether or not vested in trustees or jointly in the Minister for the time being administering the **Conservation, Forests and Lands Act 1987** and trustees); or
 - (iii) any equipment or materials used for the purposes of any Government school.
 - (2) Without limiting the generality of subsection (1), an agreement or arrangement under this section may provide for—
 - (a) the development, construction, improvement, renovation or repair of any property to which the agreement or arrangement relates; and
 - (b) the provision of services or performance of work in connection with the use of any such property.
 - (3) For the purpose of carrying out an agreement or arrangement under subsection (1), the Minister may do anything and exercise any powers,
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functions and authorities as, in the opinion of the Minister, are necessary or expedient to carry out the terms of the agreement or arrangement.

- (4) Despite anything to the contrary in any other Act, a responsible Minister of the Crown or public statutory body is authorised and empowered by authority of this section to enter into an agreement or arrangement under this section with the Minister and to do or suffer anything necessary or expedient for carrying the agreement or arrangement into effect.
- (5) A Minister of the Crown, at the request of the Minister or a school council, with the approval of the Minister, may enter into any agreement or arrangement which the Minister is authorised to enter into under this section.
- (6) A Minister of the Crown or the school council may do anything and exercise any powers, functions and authorities as in his, her or its opinion are necessary or expedient to carry out the terms of the agreement or arrangement.
- (7) An agreement or arrangement made under this section is of full force and effect despite anything to the contrary in any Act or law relating to Crown lands.

5.2.8 Minister's powers for off shore education services

- (1) The Minister may do all or any of the following to enable educational, training or other related services to be provided outside Victoria—
 - (a) enter into a contract or arrangement for providing those educational, training or other related services outside Victoria and employ people outside Victoria to provide those services;

s. 5.2.9

- (b) purchase, acquire or dispose of land or any interest in land or premises outside Victoria or enter into any agreement concerning land or premises outside Victoria;
 - (c) enter into a joint venture with another person or body to provide educational, training or other related services overseas outside Victoria.
- (2) Without limiting subsection (1), the Minister may enter into a contract or arrangement for educational or other related services of a Government school to be provided (whether within or outside Victoria) to persons not attending a Government school.

S. 5.2.9
amended by
No. 58/2007
s. 35(a).

5.2.9 Delegations by Minister

The Minister may, by instrument, delegate to another Minister, a member of the Parliament of Victoria, any person holding office under this Act or any person employed under this Act or involved in the administration of this Act his or her powers under this Act, other than—

- (a) the power to issue directions or guidelines to any body established under this Act or any other body established under any other Act that the Minister is responsible for administering; or
- (b) the power to issue guidelines about vocational education and training or adult, community and further education in Victoria; or
- (c) the power to acquire real property or an interest in real property by agreement or compulsory acquisition; or
- (d) the power to nominate or appoint any Chairperson or member of a board established under this Act; or

S. 5.2.9(d)
amended by
No. 58/2007
s. 35(b).

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- (e) the power to fix fees; or
 - (f) the power to appoint authorised officers or school attendance officers; or
 - (g) this power to delegate.

5.2.10 Establishment of bodies to advise Minister

- (1) The Minister may from time to time by Order appoint any person or establish any body comprising persons with experience or expertise in, or able to offer informed advice about, education and training—
 - (a) to advise the Minister on any matter relating to education and training referred to the person or body by the Minister; and
 - (b) to exercise any of the powers and functions of the Minister that are delegated to the person or body under this Act.
- (2) The Minister may, in any Order made under subsection (1), make any provision with respect to the terms and conditions of appointment of the person or of the members of the body and the functions and procedure of the person or the body as the Minister thinks fit.
- (3) Nothing in this section limits the powers of the Minister to establish advisory committees or other similar bodies or have regard to the advice of any person, committee or other body.

5.2.11 Minister's powers to require financial agreements

The Minister may require any person or body that receives or will receive any grant of money from the State for educational purposes to enter into an agreement setting out the terms and conditions of receiving that money.

5.2.12 Minister's powers to make orders

The Minister may make any Orders that are required, permitted or authorised to be made by the Minister under this Act.

5.2.13 Minister's powers to fix fees

(1) The Minister, by Order, may fix any fees that are required, permitted or authorised to be fixed by the Minister under this Act.

S. 5.2.13(1A)
inserted by
No. 70/2008
s. 33.

(1A) The Minister, when fixing a fee under subsection (1) that may be charged by, or is required to be paid to, the Authority for or in connection with a thing done by the Authority, may fix a different higher fee if the thing is to be done by a person performing a function delegated by the Authority under section 4.2.7A.

(2) The Minister's powers to fix fees may be exercised by fixing different fees for different classes of applications or investigations.

S. 5.2.13(3)
inserted by
No. 58/2007
s. 36.

(3) If the Minister fixes a fee by Order under this section, the Minister may in the Order authorise the payment of the fee by periodic instalment amounts fixed by the Minister.

S. 5.2.13(4)
inserted by
No. 58/2007
s. 36.

(4) Despite anything to the contrary in this Act, if the Minister authorises the payment of a fee by instalments in respect of an application or investigation, the body considering the application or undertaking the investigation may take that action and may make any determination in respect of the application on payment of the first instalment of the fee.

S. 5.2.13(5)
inserted by
No. 58/2007
s. 36.

(5) The person required to pay the fee that is authorised to be paid by instalments must pay each instalment by the date that it is due to be paid.

Education and Training Reform Act 2006
No. 24 of 2006
Part 5.2—Minister's Powers

s. 5.2.13

(6) Any instalment that is not paid by the due date for that instalment is a debt due to the body charging the fee.

S. 5.2.13(6)
inserted by
No. 58/2007
s. 36.

PART 5.3—SECRETARY'S FUNCTIONS AND POWERS

5.3.1 Secretary's powers of employment

- (1) For the purposes of this Act, there shall be staff employed by the Secretary under Part 3 of the **Public Administration Act 2004**.
- (2) Staff employed for the purposes of Part 2.5, Division 1 of Part 3.1, Division 2 of Part 3.3 or Chapter 4 or 5 may only be employed by the Secretary under Part 3 of the **Public Administration Act 2004**.

5.3.2 Secretary's other functions and powers

The Secretary is responsible for implementing any policy or decision of the Minister or of the Commission made in accordance with Part 3.1.

5.3.3 Delegation of Secretary's powers

- (1) The Secretary, by instrument, may delegate to any person (including a statutory authority established or continued under this Act) any power or function of the Secretary under this Act, other than this power of delegation and the Secretary's powers under section 2.4.3(1)(c) and (d).
- (2) The Secretary may, by instrument, delegate to a school council or any other person any power or function of the Secretary relating to the employment of persons under section 2.4.3(1)(c) and (d).
- (3) A school council may by instrument delegate to a member or the members of a sub-committee which consists entirely of members of the council all or any of the powers or functions delegated to the council under subsection (2).

S. 5.3.3(1)
amended by
No. 19/2008
s. 10.

S. 5.3.3(2)
amended by
No. 58/2007
s. 37.

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- (4) The Secretary may, by instrument, limit the powers or functions which may be delegated under subsection (3) or impose conditions on the exercise of the delegated powers or functions either generally or with respect to particular schools or class of school.

5.3.4 Secretary may request criminal record check

- (1) In this section—

relevant person means—

- (a) a person employed by the Secretary in the teaching service under Part 2.4 or under the **Public Administration Act 2004**; or
- (b) a person employed by a school council under Part 2.3.
- (2) The Secretary may, at any time, request the Chief Commissioner of Police to give to the Secretary information concerning the criminal record, if any, of a relevant person who performs some or all of their duties in a Government school and, for that purpose, may disclose to the Chief Commissioner the information concerning the relevant person that is necessary to conduct the criminal record check.
- (3) If a request relates to a relevant person employed by a school council, the school council may disclose to the Secretary the information concerning the relevant person that is necessary to conduct the criminal record check.
- (4) The Secretary may make a request under subsection (2) without the consent of the relevant person named in the request but must give notice of the request to that person.

s. 5.3.5

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- (5) The Chief Commissioner of Police must, not more than 14 days after receiving a request under subsection (2), enquire into and report to the Secretary on the criminal record, if any, of the relevant person named in the request.
 - (6) If the report relates to a relevant person employed by a school council, the Secretary may give a copy of the report to the school council.

5.3.5 Effectiveness and efficiency review

- (1) The Secretary may appoint a person to carry out, in accordance with any Order made by the Minister under subsection (3), an effectiveness and efficiency review of the operations, or specified operations, of a school council and to report the results of the review to the Secretary.
- (2) In subsection (1) a reference to an effectiveness and efficiency review of operations of a council is a reference to—
 - (a) an examination of the functions performed by, and the operations carried on by, the council for the purpose of forming an opinion concerning the extent to which those operations are being carried on in an effective and efficient manner; and
 - (b) an examination of the procedures that are followed by the council for reviewing operations carried on by it and an evaluation of the adequacy of those procedures to enable the council to assess the extent to which those operations are being carried on in an effective and efficient manner.

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- (3) The Minister may make an Order for or with respect to any matter that relates to effectiveness and efficiency reviews including but not limited to—
- (a) the nature of the reviews;
 - (b) the manner in which the reviews are to be carried out;
 - (c) the frequency and timing of reviews.
- (4) The Secretary must ensure that written notice of the carrying out of an effectiveness and efficiency review is given before the commencement of the carrying out of that review to both the president of the school council and the principal.
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Pt 5.3A
(Heading and
ss 5.3A.1–
5.3A.19)
inserted by
No. 19/2008
s. 11.

**PART 5.3A—VICTORIAN STUDENT NUMBERS AND
STUDENT REGISTER**

Division 1—Introductory

S. 5.3A.1
inserted by
No. 19/2008
s. 11.

5.3A.1 Definitions

In this Part—

authorised user means a person or body or class
of person or body authorised under
section 5.3A.9;

disclose in relation to related information includes
divulge or communicate to any person or
body;

education or training provider means a person,
body or school registered by the Authority
under Division 1 or Division 3 of Part 4.3
but does not include a university, except the
TAFE Division of a university;

related information means, in respect of a
Victorian student number, the information
contained in the Student Register relating to
the student allocated with that number;

student includes a child.

S. 5.3A.2
inserted by
No. 19/2008
s. 11.

5.3A.2 Application of Part

This Part applies to students of less than 25 years
of age.

Division 2—Victorian student numbers and the Student Register

5.3A.3 Requirements for allocation or verification of Victorian student numbers

S. 5.3A.3
inserted by
No. 19/2008
s. 11.

- (1) An education or training provider must, at the time of enrolling a student in a course or program of study or training, apply to the Secretary—
 - (a) to allocate a Victorian student number to the student; or
 - (b) if a Victorian student number has previously been allocated to the student, to verify that number.
- (2) The Authority must, at the time of registering a student for home schooling, apply to the Secretary—
 - (a) to allocate a Victorian student number to the student; or
 - (b) if a Victorian student number has previously been allocated to the student, to verify that number.

5.3A.4 Information to be provided to Secretary

S. 5.3A.4
inserted by
No. 19/2008
s. 11.

- (1) An education or training provider or the Authority must—
 - (a) provide to the Secretary, with an application under section 5.3A.3(1)(a) or 5.3A.3(2)(a), the information set out in paragraphs (b) to (e) of section 5.3A.7; and
 - (b) provide to the Secretary, with an application under section 5.3A.3(1)(b) or 5.3A.3(2)(b), the information set out in paragraphs (a) to (e) of section 5.3A.7.

S. 5.3A.4(1)(a)
amended by
No. 70/2008
s. 39(1).

S. 5.3A.4(1)(b)
amended by
No. 70/2008
s. 39(1).

s. 5.3A.5

- (2) The relevant education or training provider or the Authority must notify the Secretary of any changes to the information provided under this section, including any cancellation of enrolment or registration for home schooling of the student, as soon as possible after the change.

S. 5.3A.5
inserted by
No. 19/2008
s. 11.

5.3A.5 Secretary must allocate or verify Victorian student number

- (1) The Secretary must allocate a Victorian student number to a student—
 - (a) on receiving an application from an education or training provider under section 5.3A.3(1)(a) relating to the enrolment of the student; or
 - (b) on receiving an application from the Authority under section 5.3A.3(2)(a) relating to the registration of the student for home schooling.
- (2) Subsection (1) does not apply if the Secretary has previously allocated a Victorian student number to the student.
- (3) The Secretary must verify the Victorian student number previously allocated to a student on receiving an application from an education or training provider under section 5.3A.3(1)(b) or from the Authority under section 5.3A.3(2)(b) in relation to the student.

S. 5.3A.6
inserted by
No. 19/2008
s. 11.

5.3A.6 Secretary to notify provider or Authority of Victorian student number

The Secretary must notify the relevant education or training provider or the Authority (as the case requires) of the Victorian student number allocated to a student under section 5.3A.5(1).

5.3A.7 Secretary must establish Student Register

The Secretary must establish and maintain a Student Register containing the following information received by the Secretary under this Part relating to any student allocated with a Victorian student number—

S. 5.3A.7
inserted by
No. 19/2008
s. 11.

- (a) the student's Victorian student number;
- (b) the student's full name;
- (c) the student's date of birth;
- (d) the gender of the student;
- (e) the date of enrolment of the student by an education or training provider or registration of the student for home schooling (as the case requires);
- (f) the date of cancellation of enrolment of the student by an education or training provider or cancellation of registration of the student for home schooling (as the case requires).

5.3A.8 Secretary to maintain Student Register

The Secretary must ensure that any information recorded in the Student Register that relates to a student is corrected if the Secretary is informed of any change to that information under section 5.3A.4(2).

S. 5.3A.8
inserted by
No. 19/2008
s. 11.

Division 3—Access, use or disclosure of Victorian student numbers and related information

5.3A.9 Authorisations for use of Victorian student numbers or related information

- (1) The Secretary may authorise any of the following persons, bodies or classes of person or body to access, use or disclose one or more Victorian student numbers or related information—

S. 5.3A.9
inserted by
No. 19/2008
s. 11.

s. 5.3A.9

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- (a) the Victorian Curriculum and Assessment Authority;
 - (b) the Victorian Registration and Qualifications Authority;
 - (c) any education or training provider;
 - (d) any person employed under Part 3 of the **Public Administration Act 2004** in the Department whose duties include the analysis and evaluation of information relating to students.
- (2) An authorisation under subsection (1) may authorise the access, use or disclosure of one or more Victorian student numbers or related information for any or all of the following purposes—
- (a) monitoring and ensuring student enrolment and attendance;
 - (b) ensuring education or training providers and students receive appropriate resources;
 - (c) statistical purposes relating to education or training;
 - (d) research purposes relating to education or training;
 - (e) ensuring students' educational records are accurately maintained.
- (3) The Secretary must publish notice of an authorisation under subsection (1) in the Government Gazette.
- (4) An authorisation under subsection (1)—
- (a) takes effect on the date that the notice is published in the Government Gazette or a later date specified in the notice; and
 - (b) may be subject to conditions.
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- (5) An authorisation under subsection (1) must not authorise the disclosure of personal information that relates to an individual student.

5.3A.10 Authorised users must only act in accordance with authorisation

S. 5.3A.10
inserted by
No. 19/2008
s. 11.

- (1) An authorised user must not access, use or disclose the Victorian student number allocated to a student or any related information otherwise than in accordance with an authorisation under section 5.3A.9.
- (2) An authorised user, other than a statutory authority, who fails to comply with subsection (1) is guilty of an offence and liable to a penalty not exceeding 30 penalty units.

5.3A.11 Student, parent or guardian may access Student Register information

S. 5.3A.11
inserted by
No. 19/2008
s. 11.

- (1) A student or a student's parent or guardian may apply to the Secretary for a copy of the information recorded in the Student Register relating to that student.
- (2) An application under subsection (1) must—
- (a) be in the manner and form approved by the Secretary; and
 - (b) be accompanied by—
 - (i) evidence of the applicant's identity to the satisfaction of the Secretary; and
 - (ii) in the case of a parent or guardian, evidence of the applicant's relationship to the student to the satisfaction of the Secretary.

s. 5.3A.12

S. 5.3A.12
inserted by
No. 19/2008
s. 11.

5.3A.12 Secretary to provide copy of information to students, parents or guardians

- (1) If a student or the student's parent or guardian applies for a copy of the information recorded in the Student Register relating to the student in accordance with section 5.3A.11, the Secretary must provide a copy of that information to the student, parent or guardian.
- (2) Subsection (1) does not apply to the provision of information to a parent or guardian if an order of a court or tribunal prevents or restricts access by the parent or guardian to that student.

S. 5.3A.13
inserted by
No. 19/2008
s. 11.

5.3A.13 Student may use or disclose his or her Victorian student number

Despite anything to the contrary in this Part, a student may use or disclose the Victorian student number allocated to him or her for any lawful purpose.

S. 5.3A.14
inserted by
No. 19/2008
s. 11.

5.3A.14 Prohibition on Secretary's use or disclosure

The Secretary must not use, or disclose to any person or body, the Victorian student number allocated to a student or any related information except—

- (a) to an authorised user in accordance with the authorisation of that authorised user; or
- (b) to the student, or parent or guardian of that student under section 5.3A.12; or
- (c) in the exercise of any other function, power or duty under this Part.

S. 5.3A.15
inserted by
No. 19/2008
s. 11.

5.3A.15 False representation

A person must not wilfully make or cause to be made any false or misleading statement, or provide any false or misleading information, in any matter relating to—

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- (a) the allocation of a Victorian student number;
or
 - (b) registration on, or access to, the Student Register.

Penalty: 10 penalty units.

Division 4—Implementation of allocation of Victorian student numbers

5.3A.16 Definition

In this Division, *commencement date* means the day that section 11 of the **Education and Training Reform Amendment Act 2008** comes into operation.

S. 5.3A.16
inserted by
No. 19/2008
s. 11.

5.3A.17 Secretary to allocate current students with Victorian student numbers

- (1) The Secretary must allocate the following students with a Victorian student number as soon as is practicable—
 - (a) any student who, immediately before the commencement date, was enrolled with an education or training provider and is still enrolled with that provider;
 - (b) any student who, immediately before the commencement date, was registered for home schooling by the Authority and is still registered for home schooling.
- (2) On allocating a Victorian student number under subsection (1), the Secretary must notify the relevant education or training provider or the Authority (as the case requires) of the Victorian student number allocated to the student.

S. 5.3A.17
inserted by
No. 19/2008
s. 11.

s. 5.3A.18

- (3) Subsection (1) does not apply if—
- (a) the Secretary has previously allocated the student with a Victorian student number under section 5.3A.5(1); or
 - (b) the student—
 - (i) is no longer enrolled with any education or training provider; or
 - (ii) has ceased to be registered for home schooling.

S. 5.3A.18
inserted by
No. 19/2008
s. 11.

5.3A.18 Secretary may request information relating to students

- (1) For the purposes of section 5.3A.17, the Secretary may request—
- (a) an education or training provider to provide the information set out in paragraphs (b) to (e) of section 5.3A.7 relating to any student who—
 - (i) was enrolled with the provider immediately before the commencement date; and
 - (ii) is still enrolled with that provider at the date of the request; or
 - (b) the Authority to provide the information set out in paragraphs (b) to (e) of section 5.3A.7 relating to any student who—
 - (i) was registered for home schooling immediately before the commencement date; and
 - (ii) is still registered for home schooling at the date of the request.
- (2) An education or training provider or the Authority must comply with any request under subsection (1) as soon as is practicable.

S. 5.3A.18
(1)(a)
amended by
No. 70/2008
s. 39(1).

S. 5.3A.18
(1)(b)
amended by
No. 70/2008
s. 39(1).

5.3A.19 Appointed days for application of section 5.3A.3 to providers

S. 5.3A.19
inserted by
No. 19/2008
s. 11.

- (1) Despite section 5.3A.3, that section does not apply to a specific class of education or training provider until a day appointed by the Minister under this section.
- (2) The Minister may, by Order published in the Government Gazette, appoint a day (being a day not later than 31 December 2010) for the application of section 5.3A.3 to a class of education or training provider specified in that Order.

PART 5.4—WORKPLACE LEARNING

Pt 5.4 Div. 1
(Heading)
amended by
No. 70/2008
s. 34.

Division 1—Work experience and structured workplace learning arrangements

5.4.1 Definitions

In this Part—

child means a person under the age of 15 years;

factory means factory within the meaning of Part 3 of the **ANZAC Day Act 1958**;

S. 5.4.1 def. of
factory
amended by
No. 62/2008
s. 8.

law includes employment agreement or contract of employment;

school means—

- (a) a registered school; or
- (b) a school approved by the Minister for the purposes of this Division;

school year, in respect of any school, means that portion of the year beginning with the first school day of that year and ending with the last school day of that year;

structured workplace learning arrangement means an arrangement for structured workplace learning made under section 5.4.5;

trade includes process, trade, business and occupation and any branch or branches of a process, trade, business or occupation;

work experience arrangement means an arrangement made under section 5.4.3;

young person means a person of or over the age of 15 years and under the age of 21 years.

5.4.2 Application

The provisions of this Division relating to work experience arrangements also apply to a student at a TAFE institute or a University with a TAFE division who is in a course of study that is or is equivalent to year 11 or year 12 of secondary education as if the student were a student at a registered school.

5.4.3 Work experience arrangements

- (1) A student at a school may be placed with an employer for work experience as part of the student's education if the principal of the school has made an arrangement in writing with the employer about the placement of the student with the employer.
- (2) A work experience arrangement may be made under subsection (1) in respect of a child only if the principal is satisfied that—
 - (a) the health, education and moral and material welfare of the child will not suffer from the proposed arrangement; and
 - (b) the child is fit to be engaged in the proposed work experience; and
 - (c) the child will not be subjected to any form of exploitation in the course of the proposed work experience; and
 - (d) the proposed work experience is not prohibited employment within the meaning of the **Child Employment Act 2003**.

Note

Section 5.4.7 contains further restrictions on the making of work experience arrangements for certain types of employment.

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- (3) A work experience arrangement under subsection (1) may be made with an employer in another State or Territory—
- (a) if that State or Territory is declared by Order of the Governor in Council to be a reciprocating State or Territory for the purposes of this section; or
 - (b) if the principal is satisfied that it is appropriate that the arrangement should be made.
- (4) A work experience arrangement under subsection (1) may be made in respect of a student of or over the age of 21 years in the circumstances set out in a Ministerial Order made under section 5.4.4.

5.4.4 Orders about work experience arrangements

- (1) The Minister may make Orders about the placement of students with employers for obtaining work experience as part of a student's education.
- (2) Without limiting the generality of subsection (1) an Order may provide for—
- (a) the number of students that an employer or class of employer is permitted to employ under a work experience arrangement;
 - (b) the minimum rate of payment payable to a student employed under a work experience arrangement;
 - (c) the hours of the day in which a student can work under a work experience arrangement;
 - (d) any other terms and conditions for work experience arrangements including work experience arrangements referred to in section 5.4.3(3);
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- (e) the circumstances and terms and conditions under which the principal of a school can make work experience arrangements about the placement of students of or over the age of 21 years with an employer;
 - (f) requiring that work experience arrangements cannot be made for a student who is a child unless the following persons have provided a check about any criminal record of that person to the principal—
 - (i) the employer; and
 - (ii) any other person who will have direct supervision or control of the student during the placement if the supervision or control will not be directly supervised by another person;
 - (g) requiring students to undertake occupational, health and safety training before undertaking work experience;
 - (h) requiring that the principal ensures that he or she or a teacher at the school contacts a student at least once during the time the student is placed with an employer for work experience.

5.4.5 Structured workplace learning arrangements

- (1) A student of a school who is of or over the age of 15 years and undertaking a course of study accredited by the Authority may be placed with an employer for training as part of that course of study if the principal of the school, the employer, the student and, if the student is under the age of 18 years, the parent of the student have made an arrangement about the placement of the student with the employer.

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- (2) A person must not make an arrangement under this section if the arrangement would include any period of placement at a skills or training centre that is not operated by the employer or is not under the direct control of the employer.
 - (3) An arrangement for structured workplace learning may be made with an employer in another State or Territory—
 - (a) if that State or Territory is declared by Order of the Governor in Council to be a reciprocating State or Territory for the purposes of this section; or
 - (b) if the principal of the school is satisfied that it is appropriate that the arrangement should be made.

5.4.6 Orders about structured workplace learning

- (1) The Minister may make Orders about the work placement of students or any class of students with employers for training.
 - (2) Without limiting the generality of subsection (1) an Order may provide for—
 - (a) the circumstances in which and the requirements which must be satisfied before structured workplace learning arrangements can be entered into;
 - (b) without limiting the generality of paragraph (a), requiring students to undertake training in occupational health and safety relevant to the workplace where they will be employed under a structured workplace learning arrangement before the arrangement can be entered into;
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- (c) the maximum number of structured workplace learning hours or days that a student can be employed for under a structured workplace learning arrangement;
 - (d) the hours of the day in which a student can work under a structured workplace learning arrangement;
 - (e) the maximum number of students who can be employed by an employer at any time;
 - (f) the circumstances in which a structured workplace learning arrangement can be varied, suspended or cancelled;
 - (g) the minimum rate of payment for a student employed under a structured workplace learning arrangement;
 - (h) any other terms and conditions for structured workplace learning arrangements including structured workplace learning arrangements referred to in section 5.4.5 with employers in other States or Territories.

5.4.7 Conditions of employment under work experience arrangements

- (1) The employment of students under work experience arrangements is subject to the following conditions—
 - (a) a student must not be employed under this Division for more than 40 days during any school year nor more than 10 days during any school term;
 - (b) the principal of a school may make a work experience arrangement with an employer for the placement of a particular student with that employer for specified periods during a school year;

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- (c) an employer must not at any time employ more than the number of students that employers are permitted to employ by an Order made under section 5.4.4;
 - (d) the period of employment in respect of any arrangement must not exceed a total of 10 days;
 - (e) the full period in respect of the employment is to be a period falling within the school year.
- (2) A work experience arrangement—
- (a) may be varied or amended by a further arrangement; and
 - (b) may be cancelled at any time by notice in writing—
 - (i) given by the employer to the principal of the school; or
 - (ii) given by the principal of the school to the employer.
- (3) The principal of a school may suspend the operation of a condition in subsection (1)—
- (a) to allow a student to be employed under a work experience arrangement for more than 10 days but not exceeding 15 days during any school term;
 - (b) to allow the period of employment of that student to exceed a total of 10 days but not to exceed a total of 15 days during any school term in respect of the arrangement—

if authorised to do so by Ministerial Order and subject to any terms or conditions required by Ministerial Order.

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- (4) The Minister or a person employed in the Department authorised in writing by the Minister for that purpose may suspend the operation of all or any of the conditions of employment set out in paragraphs (a), (b), (d) and (e) of subsection (1) with respect to any student with a disability or impairment.
- (5) A suspension made under subsection (4)—
- (a) must be in writing signed by the Minister or the authorised officer;
 - (b) may be given with respect to any specified student or any specified group or class of students;
 - (c) may be for a specified time or indefinitely; and
 - (d) may be varied or revoked by the Minister or the authorised officer (as the case requires).

5.4.8 Conditions of employment under structured workplace learning arrangements

- (1) A structured workplace learning arrangement must—
- (a) be in writing; and
 - (b) set out—
 - (i) details of the accredited course of study; and
 - (ii) the skills and competencies that the student is expected to obtain during the structured workplace learning; and
 - (iii) the total number of days or hours that the student will be employed by the employer; and

s. 5.4.9

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- (iv) the period of employment under the structured workplace learning; and
 - (v) the name of the employer or a person authorised by the employer to make structured workplace learning arrangements, the trading or operating name of the employer and the address of the work place where the student will be employed; and
- (c) be signed by—
- (i) the principal of the student's school; and
 - (ii) the employer or a person authorised by the employer to make structured workplace learning arrangements; and
 - (iii) the student; and
 - (iv) if the student is under the age of 18 years, the parent of the student.
- (2) A structured workplace learning arrangement must not provide for any period of employment exceeding one calendar year.

5.4.9 Payment

- (1) Despite anything to the contrary in any law, the minimum rate of payment payable to a student employed under an arrangement—
 - (a) in the case of a work experience arrangement, is the minimum rate of payment fixed under section 5.4.4; or
 - (b) in the case of a structured workplace learning arrangement, is the minimum rate of payment fixed under section 5.4.6.

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- (2) If—
- (a) an arrangement is for employment with an organisation that is engaged wholly or mainly in an educational, charitable, or community welfare service not conducted for profit; and
 - (b) the student determines that the whole of his or her payment will be donated back to the organisation; and
 - (c) the written consent of his or her parent is obtained to the proposed donation—
- the determination of the student to donate back the payment and the consent of his or her parent may be stated in the arrangement.
- (3) A department of the Commonwealth Government or a body established under a Commonwealth Act that employs a student under an arrangement is not required to make any payment to the student, despite anything to the contrary in this or any other Act or in any law or award.
 - (4) If the Minister is satisfied that a structured workplace learning arrangement is for the employment of a student or a category of students in a skills or training centre conducted by an employer on a not for profit basis, the Minister may determine that the employer is not required to make any payment to a student or a member of the category of students referred to in the determination in respect of any period of employment in that centre.
 - (5) If the Minister makes a determination under subsection (4) the employer is not required to make any payment to the student or the member of the category of students referred to in the determination in respect of any period of employment in the skills or training centre despite
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anything to the contrary in this or any other Act or in any law or award.

- (6) For the purposes of the **Accident Compensation Act 1985**, payment at the minimum rate under subsection (1) is deemed to be payable to a student in the circumstances set out in subsections (3), (4) and (5).

5.4.10 Duty of care

- (1) A school or the principal or a teacher of a school does not have and is not to be deemed to have a duty relating to the care or control of a student of the school while that student is employed—
- (a) under a work experience arrangement or a structured workplace learning arrangement; or
 - (b) as an apprentice under a training contract under Part 5.5 if the training for the student under that contract has been approved or endorsed by the principal of the school.
- (2) An action does not lie against a school or the principal or a teacher of a school because of a breach of a duty referred to in subsection (1).

5.4.11 Application of certain laws if employment is for work experience

- (1) Subject to this Division, an Act or law relating to the prohibition or regulation of the employment of children or young persons does not apply to the employment of a child or young person who—
- (a) is a student at a school; and
 - (b) is of or over 14 years of age; and
 - (c) with the written consent of a parent is employed under a work experience arrangement.

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- (2) If an Act or law prohibits the employment or regulates the working conditions in a specified occupation—
- (a) of persons of less than or not more than a specified age expressed as a number of years; or
 - (b) of females—
- then subsection (1) must not be taken to permit the employment of a person contrary to that Act or law.
- (3) For the avoidance of doubt, a permit under Division 2 of Part 2 of the **Child Employment Act 2003** is not required for the employment of a child in accordance with a work experience arrangement, except as provided by subsection (4).
- (4) A work experience arrangement authorising the employment of a child in a factory or in a class of employment declared to be dangerous employment under subsection (5) cannot be made unless—
- (a) the child is of or over 14 years of age; and
 - (b) a permit has been issued under Division 2 of Part 2 of the **Child Employment Act 2003** in respect of the proposed employment.
- (5) The Minister, by Order published in the Government Gazette, may declare any class of employment to be dangerous employment if, in the Minister's opinion, there is a higher than usual risk of a child being exposed to the risk of physical injury in employment of that class.
- (6) The Minister, by Order published in the Government Gazette, may from time to time amend or revoke an order made under subsection (5).
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- (7) If in respect of any trade the working conditions of young persons are regulated but the employment or working conditions of children are not specifically prohibited or regulated, a child may be employed in that trade pursuant to a work experience arrangement so long as the working conditions are those applicable to a young person.

5.4.12 Arrangements for students from interstate

- (1) The principal of a school lawfully conducted in a reciprocating State or Territory may in writing—
- (a) make a work experience arrangement with an employer in Victoria with a view to providing a student at the school with work experience in Victoria as part of the student's education; or
 - (b) make a structured workplace learning arrangement with an employer in Victoria with a view to providing a student of or over the age of 15 years at the school with training in Victoria as part of the student's education.
- (2) Subject to subsection (3), the provisions of this Division apply to and in relation to—
- (a) a student in respect of whom an arrangement is made under subsection (1) in all respects as if the student were a student at a registered school in Victoria; and
 - (b) a principal who makes an arrangement under subsection (1) in all respects as if the principal were a principal of a registered school in Victoria.

S. 5.4.12(3)
repealed by
No. 70/2008
s. 35.

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- (4) For the purposes of this section, a reference in this Part to—
- (a) a *school* includes a reference to a school lawfully conducted in a reciprocating State or Territory;
 - (b) a *principal* includes a reference to the principal at such a school;
 - (c) a *student* includes a reference to a child or young person within the meaning of this Division who is a student at such a school;
 - (d) a *teacher* includes a reference to a teacher or the principal at such a school;
 - (e) a *work experience arrangement* includes a reference to a work experience arrangement under subsection (1)(a);
 - (f) a *structured workplace learning arrangement* includes a reference to a structured workplace learning arrangement under subsection (1)(b).
- (5) In this section, *reciprocating State or Territory* means another State or Territory which is declared by Order of the Governor in Council to be a reciprocating State or Territory for the purposes of this Division.

Division 2—Practical placement

5.4.13 Definitions

In this Division—

employer includes a department of the Commonwealth Government or a body established under a Commonwealth Act;

law includes an employment agreement and any provision which restricts the employment of persons who are not apprentices;

post-secondary student means a student who is enrolled in a post-secondary education course of a TAFE provider;

practical placement agreement means an agreement entered into under section 5.4.14(1);

TAFE provider means a body registered under section 4.3.10 by the Authority.

5.4.14 Practical placement agreements

- (1) A post-secondary student of a TAFE provider may be placed with an employer for work experience or training if the governing body of the TAFE provider has entered into an agreement in writing with the employer about the placement of that student.
- (2) A practical placement agreement—
 - (a) may be varied or amended by another agreement; and
 - (b) must be consistent with any determination of the Commission about placements of that kind; and
 - (c) may be cancelled at any time by notice in writing—
 - (i) given by the employer to the governing body; or
 - (ii) given by the governing body to the employer.

5.4.15 Determination about the placement of post-secondary students

- (1) The Commission may make a determination about the placement of post-secondary students or any class of post-secondary student with employers for work experience or training.
- (2) The determination may—
 - (a) fix the period of the placements to which the determination relates; and
 - (b) specify the number of students any employer or class of employer may take; and
 - (c) specify that the Commission retain the power to cancel or vary any placement; and
 - (d) specify any other conditions that are to apply to those placements.

5.4.16 Payment

- (1) The Governor in Council may, by Order published in the Government Gazette, fix a rate of payment for students employed under a practical placement agreement.
- (2) A student employed under a practical placement agreement is not entitled to receive any remuneration except payment at the rate that is fixed by Order of the Governor in Council.
- (3) The minimum rate of payment payable to a student employed under a practical placement agreement, despite anything to the contrary in any Act or law, is the minimum rate of payment as fixed by Order of the Governor in Council.
- (4) A department of the Commonwealth Government or a body established pursuant to a Commonwealth Act that employs a student under a practical placement agreement is not required to make any payment to the student, despite anything

to the contrary in this or in any other Act or in any law or training contract.

- (5) For the purposes of the **Accident Compensation Act 1985**, a student employed under a practical placement agreement is deemed to be paid the minimum rate of payment as fixed by Order of the Governor in Council.

5.4.17 Suspension of conditions for students

- (1) The Commission may suspend the operation of all or any of the provisions of this Division for any student or class of students.
- (2) A suspension under subsection (1) may operate for a specified time or indefinitely.

5.4.18 Duty of care

- (1) A duty which any person has relating to the care or control of a student of a TAFE provider as a student of that provider is to be taken not to apply while that student is employed under a practical placement agreement and an action does not lie against that person because of a breach of that duty.
- (2) Subsection (1) does not extend to a duty which a person has as occupier of the premises of the TAFE provider.

5.4.19 Application of certain laws where employment is to gain work experience or training

- (1) Any Act or law relating to the prohibition of or regulation of the employment of persons of or over the age of 15 years and under the age of 21 years does not apply to the employment of such a person who is—
- (a) a student of a TAFE provider; and
- (b) employed under a practical placement agreement.

(2) If an Act or law prohibits the employment or regulates the working conditions in a specified occupation—

(a) of persons of less than or not more than a specified age expressed as a number of years; or

(b) of females—

then subsection (1) must not be taken to permit the employment of a person contrary to that Act or law.

Division 3—Minimum terms and conditions for students

5.4.20 Orders about non-payment for work

If the Secretary is satisfied that a student or a class of student—

(a) is undertaking a post-secondary education course; and

(b) is required to work during those studies for the purpose of gaining knowledge and skill which relates to those studies or to satisfy the practical training and experience requirements of the course—

the Secretary may order that the student or class of student is not required to be paid for the work.

PART 5.5—APPRENTICES

Division 1—Preliminary

5.5.1 Definitions

In this Part—

approved training agent means a person or body appointed to be an approved training agent under Division 5;

approved training scheme means a training scheme approved under section 5.5.2.

Division 2—Training schemes

5.5.2 Training schemes

- (1) The Commission may determine that a specified training scheme is an approved training scheme.
 - (2) A determination under subsection (1) may provide for all or any of the following matters—
 - (a) whether the vocation is one to which sections 5.5.15(1), 5.5.16(2), 5.5.16(3), 5.5.16(4), 5.5.17(1)(d) and 5.5.19 do not apply;
 - (b) the duration of an approved training scheme by reference to a fixed period or a maximum or minimum period;
 - (c) whether any apprentice may be engaged as a full time or part time employee;
 - (d) any requirement for a probationary period and, if so, its length;
 - (e) the nature and syllabus of the training scheme and any course of study, instruction or practical or workplace training comprising the content of that scheme;
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- (f) the requirements as to age, education, experience or any other matter to be satisfied by a person wishing to undertake the training scheme;
 - (g) the standards of skill and knowledge required to adequately perform the activities or tasks of the vocation which are to be obtained by an apprentice undertaking the training scheme;
 - (h) the credit to be given in the training scheme for any qualifications, training or experience that an apprentice undertaking the training scheme has prior to entry to that scheme;
 - (i) minimum requirements for training plans;
 - (j) minimum hours per week for employment and training.
- (3) A determination may be made so as to apply, adopt or incorporate any matter contained in any document issued or published by any person or body.
- (4) The Commission must cause a notice to be published in the Government Gazette of the making of a determination and setting out where copies of the approved training scheme can be obtained.

5.5.3 Certain provisions do not apply to certain vocations

Sections 5.5.15(1), 5.5.16(2), 5.5.16(3), 5.5.16(4), 5.5.17(1)(d) and 5.5.19 do not apply to, or in relation to, a vocation if the Commission makes a determination under section 5.5.2, that those provisions do not apply to the vocation specified in the determination.

Division 3—State training and employment provisions

5.5.4 State training and employment provisions

Schedule 4 has effect.

Note

Schedule 4 sets out training and employment conditions for trainees not covered by the National Training Wage Award.

5.5.5 Training and employment agreements to accord with Schedule 4

- (1) A provision of a training contract or an employment agreement or any other contract of employment to which an apprentice is a party is of no effect to the extent that it provides a term or condition of employment that is less favourable to the apprentice than one applicable under Schedule 4.
- (2) An employer must not enter into, or purport to enter into a training contract or an employment agreement or any other contract of employment with an apprentice that provides a term or condition of employment that is less favourable to the apprentice than one applicable under clause 6(1) of Schedule 4.

Penalty: 100 penalty units.

- (3) If a training contract or an employment agreement or any other contract of employment to which an apprentice is a party does not at any time comply with a term or condition of employment applicable under clause 6(1) of Schedule 4, it must then, for the purposes of section 160 of the **Long Service Leave Act 1992**, be taken to have effect as if it did.
- (4) A training contract or an employment agreement or any other contract of employment entered into by an employer in contravention of subsection (2)

is not, for that reason only, illegal, void or unenforceable.

Division 4—Training contracts

5.5.6 Employer must have Commission's approval to enter into a training contract with an apprentice

An employer must not employ a person under a training contract unless the employer is approved by the Commission to do so.

Penalty: 10 penalty units for a natural person and 50 penalty units for a body corporate.

5.5.7 Procedure for approval

- (1) In determining whether to approve an employer to employ a person under a training contract the Commission must have regard to the employer's ability to comply with the training contract.
- (2) Without limiting the generality of subsection (1), the Commission must have regard to all of the following matters—
 - (a) the premises in which the person is to be employed;
 - (b) the equipment and methods to be used in training;
 - (c) whether any person whom the employer uses or proposes to use for the purpose of supervising the training of an apprentice under a training contract—
 - (i) has the appropriate qualifications, knowledge and skill for that purpose; and
 - (ii) is otherwise a fit and proper person for that purpose;

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- (d) whether the employer is a fit and proper person for employing an apprentice.
 - (3) An approval under subsection (1) may be given subject to conditions—
 - (a) limiting the number of apprentices that the employer may have in the employer's employment at any one time; and
 - (b) as to any other matters that the Commission thinks fit.
 - (4) The Commission may revoke an approval at any time and in any circumstances including those where a condition of the approval is breached.

5.5.8 Employer's obligations under a training contract

- (1) An employer who employs an apprentice under a training contract—
 - (a) must ensure that the apprentice is trained in accordance with an approved training scheme; and
 - (b) must allow the apprentice to comply with the approved training scheme without hindrance if that scheme or any part of that scheme is conducted during normal working hours.

Penalty: 10 penalty units for a natural person and 50 penalty units for a body corporate.

- (2) If an apprentice under a training contract attends a vocational education and training course provided by a registered education and training organisation in accordance with an approved training scheme during normal working hours, that attendance is deemed to be attendance at work for the purposes of any employment agreement or any other contract of employment.

5.5.9 Apprentice's obligations under a training contract

An apprentice's obligations under a training contract include the obligation to comply with the requirements of the approved training scheme.

5.5.10 Approval of training contracts

- (1) A training contract must be in the form, and contain the particulars, approved by the Commission.
- (2) The Commission may approve a training contract only if the agreement is substantially in the same form and has the same content as the agreement approved by the Ministerial Council.
- (3) The Commission may refuse to approve a training contract if the Commission is of the opinion that the training contract does not comply with this Part or any determination of the Commission under this Part.

5.5.11 Parties to training contract

- (1) The parties to a training contract are—
 - (a) the employer; and
 - (b) the apprentice; and
 - (c) if the apprentice is under 18 years, the parent or guardian of the apprentice.
- (2) If an apprentice has no parent or guardian or no parent or guardian resident in Victoria and capable of acting, the Commission may approve a person to act instead of the parent or guardian.
- (3) If an apprentice is under the age of 18 years and the Commission is satisfied that it is in the interests of the employer and the apprentice, the Commission may consent to the training contract being executed by the employer and the apprentice only.

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- (4) The Commission must endorse its consent under subsection (3) on the original training contract and the endorsement has the effect of dispensing with the necessity of there being a parent or guardian as a party to the training contract.

5.5.12 Execution of training contract

- (1) The employer must arrange for—
- (a) the training contract to be executed by the parties and lodged with the Commission or a person or body nominated by the Commission within 14 days after the date the employment of the apprentice commences or any further time allowed by the Commission; and
 - (b) a copy of the training contract to be given to the apprentice within 14 days after the date of execution of the training contract.
- (2) If a training contract is not executed and lodged in accordance with subsection (1), the Commission may execute a contract on behalf of all or any of the parties and on that execution the parties are to be treated as having made the contract accordingly.
- (3) If an apprentice is dismissed before a training contract was executed under subsection (1) or (2) the Commission may declare, by notice in writing to that apprentice and the employer, that the apprentice is to be treated as having been employed under a training contract from the date the employment commenced.
- (4) If a person is required to be employed under a training contract under this section, the date the contract takes effect is to be treated as the date the person commenced that employment whether the contract is executed under subsection (1) or (2).
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5.5.13 Apprentice to be enrolled in training

The employer must arrange for—

- (a) the apprentice to be enrolled in a vocational education and training course provided by a registered education and training organisation, as required by the approved training scheme, within 3 months after the date of commencement of the training contract; and
- (b) a training plan to be signed by—
 - (i) the employer; and
 - (ii) the apprentice; and
 - (iii) the registered education and training organisation; and
- (c) a copy of the training plan referred to in paragraph (b) to be lodged with the Commission, a person or body nominated by the Commission or an approved training agent within 3 months after the date of commencement of the training contract.

5.5.14 Term of a training contract

- (1) The Commission may determine the term or terms or fix minimum or maximum terms of training contracts for any vocation or for any specified training contract.
- (2) If the Commission is satisfied that an apprentice has the knowledge and skills required under a training contract it may reduce the term of the agreement.
- (3) If the Commission is satisfied that an apprentice does not have the knowledge and skills required under a training contract it may extend the term of the agreement.

5.5.15 Cancellation, suspension or variation of a training contract

- (1) The parties to a training contract may by mutual consent—
 - (a) cancel the training contract; or
 - (b) suspend the training contract; or
 - (c) vary the provisions of the training contract.
- (2) The Commission may at any time order the cancellation or suspension of a training contract if it is of the opinion that special circumstances make the cancellation or suspension desirable.
- (3) The powers of the Commission under subsection (2) are in addition to any other powers of the Commission under this Part.

5.5.16 Suspension or cancellation of a training contract if insufficient employment available

- (1) If an employer is temporarily unable to provide sufficient work to keep an apprentice fully employed under a training contract during any working week or month, the employer may—
 - (a) reduce the time of employment of the apprentice in the week or month; and
 - (b) reduce the wages of the apprentice in proportion to the reduction of the time of his or her employment in the week or month.
- (2) If an employer cannot provide sufficient employment for an apprentice employed by the employer under a training contract because of lack of business or financial difficulties the Commission may, on the application of the employer—

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- (a) order the suspension of the training contract for any period that the Commission thinks fit; or
 - (b) order the cancellation of the training contract.
- (3) The Commission must not make an order unless it is satisfied after due inquiry that the circumstances warrant the making of an order.
- (4) Nothing in this section limits the powers of the employer to stand down an apprentice under a provision of the apprentice's training contract for the standing-down of apprentices who cannot usefully be employed because of any strike, breakdown of machinery or any stoppage of work for any cause for which the employer cannot reasonably be held responsible or the deduction of payment for any part of a day during which the apprentice is stood down.

5.5.17 Commission to determine grievances in certain circumstances

- (1) The Commission may determine any question or difference arising between an employer and an apprentice about—
- (a) the training contract or anything contained in the training contract; or
 - (b) the construction or operation of the training contract; or
 - (c) the rights, duties and liabilities of the employer or apprentice under the training contract; or
 - (d) the dismissal or threatened dismissal of an apprentice if the apprentice believes that the dismissal or threatened dismissal is harsh, unjust or unreasonable.

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- (2) The Commission must not determine any question or difference about whether money is or is not due by an employer to an apprentice.
 - (3) The Commission must enquire into any matter referred to it under this section and it may—
 - (a) cancel, suspend or vary the training contract; or
 - (b) order all or any parties to a training contract to perform all or specified obligations or duties under or related to the agreement; or
 - (c) make any consequential orders that it thinks fit; or
 - (d) make any other order it thinks fit.
 - (4) A party to a proceeding before the Commission under this section is not entitled to legal representation.
 - (5) A person must not contravene any order made by the Commission under this section.

Penalty: 5 penalty units.

5.5.18 Associations of employers may employ apprentices

- (1) An association of employers may enter into a training contract with a person.
- (2) The members of an association of employers that is not a body corporate must appoint one of their members who—
 - (a) is to be treated as the employer of the apprentice for the purposes of this Act; and
 - (b) must execute the training contract on behalf of the association; and
 - (c) is responsible for complying with this Act and the regulations.

5.5.19 Partnerships

- (1) If a person has entered into a training contract with partners, the training contract is not determined by reason only of the death or retirement of any of those partners but is to be treated as being assigned to the surviving or continuing partner or partners.
- (2) On the transmission of the business or any part of the business of an employer, the training contract of an apprentice in any vocation which may form part of the business transmitted is to be treated as being assigned to the person to whom the business is being transmitted.
- (3) In this section *transmission* includes transfer, conveyance, assignment or succession whether by agreement or operation of law.

Division 5—Approved training agents

5.5.20 Approved training agents

The Minister may, by Order published in the Government Gazette, appoint any person or body to be an approved training agent for the purposes of this Part.

5.5.21 Delegations to approved training agents

- (1) Without limiting the powers of the Commission under section 3.1.9, the Commission may, by instrument under its common seal, delegate to any person or body appointed as an approved training agent any power or function of the Commission under sections 5.5.6, 5.5.7, 5.5.11(2), (3) and (4), 5.5.14 and 5.5.16(2).
- (2) The Commission must ensure that a copy of an instrument of delegation under this section is published in the Government Gazette as soon as practicable after its making.

5.5.22 Review of decisions of approved training agents

- (1) A person who is aggrieved by any decision of an approved training agent made under section 5.5.6, 5.5.7, 5.5.11(2), (3) or (4), 5.5.14 or 5.5.16(2) acting as a delegate of the Commission under section 5.5.21 may apply to the Commission for a review of that decision within 14 days after the person was notified of that decision by the approved training agent or within any longer period that the Commission allows.
- (2) The Commission may exercise all the powers and discretions that it would have had in determining the matter under review and may in writing—
 - (a) affirm the decision under review; or
 - (b) vary the decision under review; or
 - (c) set aside the decision under review and—
 - (i) make a decision in substitution for the decision set aside; or
 - (ii) remit the matter for reconsideration by the approved training agent in accordance with any directions or recommendations of the Commission.

Division 6—General

5.5.23 Register of apprentices

The Commission must establish and maintain a register of apprentices who have entered into training contracts which have been lodged under section 5.5.12.

5.5.24 Subsidies

The Commission may cause to be paid to an apprentice a subsidy towards the costs incurred in attending a vocational education and training course required by the training scheme and conducted by a registered education and training organisation at a place remote from the apprentice's home or place of work.

5.5.25 Fees for certificates

The Commission may charge a fee fixed by the Minister for the issue of any certificate or duplicate certificate for the purposes of this Part.

PART 5.6—VOLUNTEER WORKERS COMPENSATION

5.6.1 Definitions

(1) In this Part—

approved community work means community work engaged in by a student of a registered school and approved by the principal of the school as school community work;

Authority means the Victorian WorkCover Authority under the **Accident Compensation Act 1985**;

child of a volunteer school worker or volunteer student worker means a child of the worker or of the worker's partner who—

- (a) is under the age of 16 years; or
- (b) is 16 years or more but under the age of 21 years and is a full-time student;

dependant of a volunteer school worker or volunteer student worker means a person who was at the date of the worker's death wholly, mainly or partially dependent on the worker for financial support;

domestic partner of a person means—

- (a) a person who is in a registered relationship with the person; or
- (b) a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender);

S. 5.6.1(1)
def. of
*domestic
partner*
substituted by
No. 12/2008
s. 73(1)(Sch. 1
item 18.1).

partner of a volunteer school worker or volunteer student worker means—

- (a) in relation to a person who died before 23 August 2001—the person's spouse at the time of death;
- (b) in relation to a person who dies on or after 23 August 2001—the person's spouse or domestic partner at the time of death;

school work means—

- (a) the carrying out of the functions of the school council of any Government school;
- (b) the carrying on of any activities for the welfare of any Government school—
 - (i) by the school council of that school; or
 - (ii) by any parents' club or association or other body organised to promote the welfare of the school; or
 - (iii) at the request of the principal or the school council of the school or of any body referred to in subparagraph (ii);
- (c) the giving of any assistance in the work of any Government school or the provision of a preschool program by the school council of any Government school;
- (d) attendance at meetings in relation to Government schools convened at a State or regional level by any body receiving financial support from the Government; or

- (e) attendance at meetings in relation to Government schools in any region being meetings convened by the Secretary;

spouse of a person means a person to whom the person is married;

volunteer school worker means a person who without remuneration or reward voluntarily engages in school work;

volunteer student worker means a person who, without remuneration or reward, voluntarily engages in approved community work.

S. 5.6.1(2)
substituted by
No. 12/2008
s. 73(1)(Sch. 1
item 18.2).

- (2) For the purposes of the definition of *domestic partner* in subsection (1)—
- (a) *registered relationship* has the same meaning as in the **Relationships Act 2008**; and
- (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.

5.6.2 Compensation for personal injuries

- (1) If a volunteer school worker suffers personal injury arising out of, or in the course of engaging in, school work or travelling to or from a place where school work is to be or has been engaged in—
- (a) the worker is entitled to be paid compensation; or

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- (b) if the worker dies, the worker's partner or any child or dependant of the worker is entitled to be paid compensation.
- (2) If a volunteer student worker suffers personal injury arising out of or in the course of approved community work—
- (a) the worker is entitled to be paid compensation; or
- (b) if the worker dies, the worker's partner or any child or dependant of the worker is entitled to be paid compensation.
- (3) The compensation must, in respect of personal injury suffered before 4 p.m. on 31 August 1985 be paid in accordance with and subject to the provisions of the **Workers Compensation Act 1958** as if within the meaning of that Act at the time the person so suffered the personal injury—
- (a) the person was a worker employed by the Crown; and
- (b) the person suffered a personal injury arising out of or in the course of employment with the Crown.
- (4) The compensation shall, in respect of personal injury suffered on or after 4 p.m. on 31 August 1985, be paid in accordance with and subject to the **Accident Compensation Act 1985** as if within the meaning of that Act at the time the person so suffered the personal injury—
- (a) the person was a worker employed by the Crown; and
- (b) the person suffered a personal injury arising out of or in the course of employment with the Crown.

S. 5.6.2(4)
amended by
No. 58/2007
s. 38.

s. 5.6.2A

S. 5.6.2A
inserted by
No. 58/2007
s. 39.

5.6.2A Cessation of benefits

- (1) If judgment is obtained, or a compromise or settlement is made, in respect of proceedings referred to in section 134AB(1) of the **Accident Compensation Act 1985** in respect of an injury, the Authority or the Crown as the employer is not liable—
 - (a) where pecuniary loss damages (within the meaning of section 134AB of the **Accident Compensation Act 1985**) are awarded, to make payments under section 93CA, 93CB, 93CC, 93E or 93EA of that Act in respect of the injury; or
 - (b) where pain and suffering damages (within the meaning of section 134AB of the **Accident Compensation Act 1985**) are awarded, to make payments under section 98C or 98E of that Act in respect of the injury.
- (2) This section applies only in respect of proceedings issued after the commencement of section 39 of the **Education and Training Reform Miscellaneous Amendments Act 2007**.

5.6.3 Compensation for damage to property

- (1) Subject to subsection (2), if a volunteer school worker or a volunteer student worker suffers damage to or destruction of any property that belongs to the worker or that is in the worker's possession or under the worker's control and the damage or destruction arises—
 - (a) in the case of a volunteer school worker—
out of or in the course of the carrying out of school work; and

(b) in the case of a volunteer student worker—
out of or in the course of the carrying out of
approved community work—

the Minister may authorise the payment to the
owner of the property of any compensation for the
damage or destruction that the Minister thinks
reasonable in the circumstances.

- (2) A person is not entitled to recover both damages
in respect of damage or destruction to any
property referred to in subsection (1) and
compensation under this section for that damage
and destruction.
- (3) If a person recovers both damages and
compensation in respect of damage or destruction
to any property referred to in subsection (1), the
amount of the compensation may be recovered
from the person by the Minister by proceedings in
a court of competent jurisdiction as a debt due by
that person to the Crown.

5.6.4 Jurisdiction

Without limiting the generality of section 5.6.2, if
any question or matter arises under that section,
including any question as to the amount of any
compensation payable or the existence and extent
of dependency—

- (a) the County Court, the Magistrates' Court and
VCAT have under this Act the same
jurisdiction to hear and determine the
question or matter as though it were a
question or matter that arose under the
Workers Compensation Act 1958 or the
Accident Compensation Act 1985 (as the
case requires); and
- (b) if the County Court, the Magistrates' Court
or VCAT exercises that jurisdiction such of
the provisions of those Acts as are applicable

apply with the necessary adaptations and modifications.

S. 5.6.5
amended by
No. 58/2007
s. 40.

5.6.5 Authority to represent Crown

In all proceedings before the County Court, the Magistrates' Court, VCAT or the Accident Compensation Conciliation Service or a Medical Panel and generally in regard to claims for compensation and the payment of compensation under section 5.6.2, the Authority—

- (a) represents the Crown; and
- (b) has the same powers, rights and authorities as an employer has under the **Workers Compensation Act 1958** or as an authorised insurer has under the **Accident Compensation Act 1985** (as the case requires) in regard to the corresponding matter relating to a worker under that Act.

5.6.6 Payments

- (1) The Authority is entitled to the reimbursement of its reasonable costs and expenses incurred in representing the Crown under section 5.6.5.
- (2) The Authority must make any payment of compensation under section 5.6.2 out of the WorkCover Authority Fund under the **Accident Compensation Act 1985**.
- (3) There is to be paid into the WorkCover Authority Fund out of the Consolidated Fund which is hereby to the necessary extent appropriated accordingly—
 - (a) the amounts to be reimbursed under subsection (1); and
 - (b) the amount of any payments under subsection (2).

5.6.7 Recovery from third parties

If compensation has been paid pursuant to section 5.6.2 or 5.6.3 and the personal injury, damage or destruction in respect of which compensation has been paid was caused under circumstances creating a liability on the part of some person other than the volunteer school worker or volunteer student worker to pay damages in respect of that injury, damage or destruction, the Minister may take proceedings against that person in a court of competent jurisdiction to recover from that person the amount of the compensation paid under this Part.

5.6.8 Compensation for property damage and expenses to be paid from Consolidated Fund

The amount of any compensation paid under section 5.6.3 and any expenses incurred in the administration of this Part are to be paid out of the Consolidated Fund which is hereby to the necessary extent appropriated accordingly.

5.6.9 Offence

A person in or in connection with any claim for compensation under this Part must not wilfully make any false statement to or otherwise wilfully mislead or attempt to mislead the Minister or any other person.

Penalty: 5 penalty units.

PART 5.7—SCHOLARSHIPS

5.7.1 Scholarships at Government schools

- (1) If a person by subscription, gift or will founds or assists in founding a scholarship in connection with any Government school—
 - (a) any money or property so provided must be invested in any manner in which money may be invested under the **Trustee Act 1958** or in any other manner permitted by the deed of gift or will;
 - (b) the scholarship when founded must be open to any student on the roll of a Government school unless the deed of gift or will otherwise provides;
 - (c) if the Government school is discontinued the Minister may direct that the scholarship is to attach to another Government school;
 - (d) if the scholarship enabled the student to attend another education institution or undertake a course at another education institution and the institution is discontinued or no longer offers the course, the Minister may direct that the scholarship is to be used to enable the student to undertake a course at another institution;
 - (e) if circumstances at the school are or become such as not to justify the provision of the scholarship for the purposes for which it was founded, the Minister may direct that it is to be available for some other appropriate purpose.
 - (2) Nothing in subsection (1) limits the operation of the **Charities Act 1978**.
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- (3) The trustee of a scholarship is not liable for breach of trust arising solely from the trustee's application of the money or property of the scholarship in accordance with a direction of the Minister given under subsection (1).

S. 5.7.1(3)
amended by
No. 58/2007
s. 41.

5.7.2 Minister's powers to grant scholarships

- (1) The Minister may grant to a person a scholarship at any school, university or other educational institution subject to any terms or conditions prescribed by the regulations.
- (2) A scholarship granted by the Minister entitles the holder to the benefits and allowances that are prescribed by the regulations.
- (3) If the Minister grants to a person a scholarship at any school, university or other educational institution that is discontinued after the grant of the scholarship, the Minister may direct that the scholarship attaches instead to some other school, university or other educational institution.
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PART 5.8—ENFORCEMENT

5.8.1 Authorised officers

- (1) The Secretary may appoint any of the following persons as an authorised officer for the purposes of this Act—
 - (a) a person employed under the **Public Administration Act 2004** in the administration of Part 3.1, 3.2 or 5.5; or
 - (b) a person employed by the board of TAFE institute or a University with a TAFE division;
 - (c) a person employed by an approved training agent.
- (2) The Institute may appoint a person employed under section 2.6.65 as an authorised officer for the purposes of this Act.
- (3) The Authority may appoint a person employed under the **Public Administration Act 2004** in the administration of Chapter 4 as an authorised officer for the purposes of this Act.

5.8.2 Identification

- (1) The person who appoints an authorised officer must furnish the authorised officer with an identification card bearing a recent photograph of the officer.
- (2) An authorised officer must produce his or her identity card for inspection—
 - (a) before exercising a power under this Act; and
 - (b) at any time during the exercise of a power under this Act, if asked to do so.

Penalty: 10 penalty units.

5.8.3 Powers of authorised officers

- (1) An authorised officer appointed by the Secretary—
 - (a) with any necessary help, may enter, at any time during ordinary working hours on any day, any premises where an apprentice is employed or where the officer has reasonable cause to believe that an apprentice is employed; and
 - (b) in the case of a place referred to in paragraph (a)—
 - (i) may require the production of any documents relating to the employment of any apprentice required to be kept under this or any other Act or under the National Training Wage Award made by the Australian Industrial Relations Commission as varied from time to time, and inspect and examine them and take copies or extracts from them; and
 - (ii) may make any inquiries that appear to be necessary to ascertain whether the provisions of Part 5.5 are being or have been complied with.
 - (2) An authorised officer appointed by the Institute with any necessary help, may enter, at any time during ordinary working hours on any day, any premises—
 - (a) where a person is undertaking teaching duties or where the officer has reasonable cause to believe that a person is undertaking teaching duties; and
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s. 5.8.3

- (b) may make any inquiries or inspect and examine any documents relating to the matters referred to in Part 2.6 and take copies or extracts from those documents.
- (3) An authorised officer appointed by the Authority with any necessary help, may enter, at any time during ordinary working hours on any day, any premises—
- (a) where, or where the officer has reasonable cause to believe that a school registered or required to be registered under Part 4.3 is being carried on or conducted; and
 - (b) where, or where the officer has reasonable cause to believe that, a person, body or school registered under Part 4.3 is providing a course or part of a course; and
 - (c) where, or where the officer has reasonable cause to believe that, an institution approved or deemed to be approved to operate as a University under Part 4.3 is so operating; and
 - (d) where, or where the officer has reasonable cause to believe that an institution is conducting a course of study accredited under Part 4.4; and
 - (e) where, or where the officer has reasonable cause to believe that, a person or body approved under Part 4.5 is providing a course or part of a course to overseas students; and
 - (ea) where, or where the officer has reasonable cause to believe that, a person, organisation or registered school approved under Part 4.5A to operate a student exchange program is operating a student exchange program; and

S. 5.8.3(3)(b)
amended by
No. 70/2008
s. 39(2).

S. 5.8.3(3)(ea)
inserted by
No. 58/2007
s. 42(a).

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- (f) in the case of a place referred to in paragraph (a), may make any inquiries or inspect and examine the attendance register of a school and any documents relating to the prescribed minimum standards for registered schools and take copies or extracts from those documents; and
- (g) in the case of a place referred to in paragraph (b), may make any inquiries or inspect and examine any documents relating to the matters referred to in section 4.3.11 or 4.3.33 and take copies or extracts from those documents; and
- (h) in the case of a place referred to in paragraph (c), may make any inquiries or inspect and examine any documents relating to the matters referred to in section 4.3.30 or 4.3.33 or guidelines made under those sections and take copies or extracts from those documents; and
- (i) in the case of a place referred to in paragraph (d), may make any inquiries or inspect and examine any documents relating to the matters referred to in section 4.4.2 or guidelines made under that section about those matters and take copies or extracts from those documents; and
- (j) in the case of a place referred to in paragraph (e), may make any inquiries or inspect and examine any documents relating to the matters referred to in section 4.5.1 or guidelines made under that section about those matters and take copies or extracts from those documents; and
- (k) in the case of a place referred to in paragraph (e), may make any inquiries or inspect and examine any documents relating

S. 5.8.3(3)(f)
amended by
No. 3/2008
s. 6.

S. 5.8.3(3)(k)
amended by
No. 58/2007
s. 42(b).

s. 5.8.4

to the matters that are specified in a notice under section 4.5.4(3) that have not been produced to the Authority or any person or committee appointed by the Authority and take copies or extracts from those documents; and

S. 5.8.3(3)(l) inserted by No. 58/2007 s. 42(c), amended by No. 19/2008 s. 14(g).

- (l) in the case of a place referred to in paragraph (ea), may make any inquiries or inspect and examine any documents relating to the matters referred to in section 4.5A.1 or guidelines made under that section about those matters and take copies or extracts from those documents.

5.8.4 Exercise of powers by authorised officers

- (1) An authorised officer may not exercise any power under section 5.8.3—
 - (a) in relation to premises if the occupier of the premises has required the officer to produce his or her identification card for inspection by the occupier and the officer fails to comply with the requirement; or
 - (b) in relation to premises used as or mainly as residential premises, except with the consent of the occupier.
- (2) A person must not obstruct delay or intimidate an authorised officer when the officer is exercising or attempting to exercise his or her functions as an authorised officer.

Penalty: 60 penalty units.

5.8.5 Authority to provide information to school attendance officers

The Authority must, on the request of a school attendance officer, provide the officer with any information relating to the registration of students for home schooling that the officer may

reasonably require for carrying out the officer's functions and powers under Part 2.1.

5.8.6 Proceedings for offences

- (1) Proceedings for an offence against Part 2.6 may only be taken by a person employed under section 2.6.65 who is authorised by the Institute either generally or in a particular case to take those proceedings.
- (2) Proceedings for an offence against Chapter 4 may only be taken by a person employed for the purposes of Chapter 4 who is authorised by the Authority either generally or in a particular case to take those proceedings.
- (3) Proceedings for an offence against Part 5.5 may only be taken by a person employed for the purposes of Part 3.1 who is authorised by the Secretary either generally or in a particular case to take those proceedings.
- (4) Proceedings for offences against a provision of this Act other than Part 2.6 or 5.5 or Chapter 4 may be taken by a person authorised by the Minister generally or in any particular case.
- (5) All courts must take judicial notice of the fact that a person referred to in this section has valid authority to take proceedings referred to in this section.

5.8.7 Offences by corporations etc.

- (1) If a corporation contravenes any provision of this Act, the person who is the principal executive officer (however described) of the corporation is deemed to have contravened the same provision if that person knowingly authorised or permitted the contravention.

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- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or convicted under that provision.
 - (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act.
 - (4) If a provision of this Act is contravened in respect of an unincorporated body of persons—
 - (a) the person who is the principal executive officer (however described) of the body at the time of the contravention is deemed to have contravened the same provision at that time if that person knowingly authorised or permitted the contravention; and
 - (b) if there was a governing body of the unincorporated body at the time of the contravention, each person who is a member of the governing body of that unincorporated body at that time is also deemed to have contravened the provision at that time if that person knowingly authorised or permitted the contravention.

5.8.8 Evidentiary

- (1) In any proceedings for an offence under Part 2.6 a certificate signed by or on behalf of the Institute and stating that on any specified date a person is or is not or was or was not registered or registered with specific limitations or restrictions under Part 2.6 is admissible in evidence in the proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate.
 - (2) In any proceedings for an offence under Chapter 4 a certificate signed by or on behalf of the Director of the Authority and stating that on any specified
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date a person, school or body is or is not or was or was not registered, approved or authorised or registered, approved or authorised with specific limitations or restrictions under Chapter 4 is admissible in evidence in the proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate.

- (3) In any proceedings for an offence under Part 5.5 a certificate signed by or on behalf of the Secretary and stating that—
- (a) on any specified date a person is or is not or was or was not registered under section 5.5.23 as an apprentice who has entered a training contract lodged under section 5.5.8; or
 - (b) on any specified date a person or body did or did not have the approval of the Commission under section 5.5.6 to employ a person under a training contract—

is admissible in evidence in the proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate.

- (4) A certificate signed by or on behalf of the Secretary purporting to record a determination, resolution or decision of the Commission is evidence of the making of that determination, resolution or decision by the Commission.
- (5) A certificate signed by or on behalf of the Director of the Authority purporting to record a determination, resolution or decision of the Authority is evidence of the making of that determination, resolution or decision by the Authority.

5.8.9 Evidence

The provisions of sections 14, 15, 16 and 21A of the **Evidence Act 1958** apply to and in relation to an investigation or proceedings which the Authority, the Secretary, the delegate of the Authority or Secretary, a Merit Protection Board, a Disciplinary Appeals Board, a review committee established under Part 2.5 or a formal hearing panel under Part 2.6 is authorised to conduct under this Act as if the Authority, Secretary, delegate, Merit Protection Board or Disciplinary Appeals Board, review committee or panel were a board or the chairman of a board appointed by the Governor in Council.

PART 5.9—GENERAL

5.9.1 Delegation

A person may delegate a power or function even though the person may only exercise the power or perform the function after receiving the report, recommendation, opinion or advice or after consulting the person to whom the power or function is delegated.

5.9.2 Disposal of land of non-vested schools

- (1) This section applies to land which on 1 January 1873 had been—
 - (a) granted by the Crown to or for the benefit of a denominational body for school purposes without receiving any purchase money; or
 - (b) reserved by the Crown permanently or temporarily for school purposes for the benefit of a denominational body.
- (2) Land to which this section applies may be disposed of by the denominational body to or for the benefit of which the land has been granted or reserved, subject to the provisions for the disposal of land in Act No. 391.
- (3) The proceeds of disposition of the land may be applied for the purposes of the denominational body in the manner that the body considers to be most beneficial.

5.9.3 Supreme Court—limitation of jurisdiction

It is the intention of sections 2.2.2, 2.3.31 and 2.4.22 to alter or vary section 85 of the **Constitution Act 1975**.

PART 5.10—DELEGATED LEGISLATION

Division 1—Regulations

5.10.1 Regulations

- (1) The Governor in Council may make regulations generally prescribing any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) Without limiting any power of the Governor in Council to make regulations under this Act, the Governor in Council may make regulations for or with respect to any of the matters set out in Schedule 5 including the heading to an item in the Schedule.

5.10.2 Scope of regulations

- (1) Regulations made under this Act—
 - (a) may be of general or limited application;
 - (b) may differ according to differences in time, place or circumstances;
 - (c) may confer a discretionary authority or impose a duty on, or leave any matter to be determined or approved by, a specified person or class of persons.
- (2) A power conferred by this Act to make regulations providing for fees may be exercised by prescribing different fees for different classes of applications or investigations.

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- (3) A power to make regulations may be exercised—
- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case;
 - (b) so as to make, as respects the cases in relation to which the power is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
 - (ii) any such provision either unconditionally or subject to any specified condition.
- (4) Regulations may be made—
- (a) so as to apply—
 - (i) at all times or at a specified time; or
 - (ii) to all schools or to a specified school or a specified class of school; or
 - (iii) as specified in both subparagraphs (i) and (ii);
 - (b) so as to require a matter affected by the regulations to be—
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a specified person or a specified class of persons; or
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s. 5.10.3

S. 5.10.2(4)(c)(ii)
amended by
No. 58/2007
s. 43(a).

S. 5.10.2(4)(c)(iii)
inserted by
No. 58/2007
s. 43(b).

- (iii) as specified in both subparagraphs (i) and (ii);
- (c) so as to apply, adopt or incorporate any matter contained in any document issued or published by any person or body whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as issued or published at the time the regulations are made or at any time before then; or
 - (iii) as amended from time to time;
- (d) so as to confer a discretionary authority or impose a duty on a specified person or a specified class of persons;
- (e) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.

Division 2—Orders in Council

5.10.3 Orders in Council

- (1) The Governor in Council may make any Orders which are required or permitted to be made for carrying out or giving effect to this Act.
- (2) An Order in Council must be published in the Government Gazette as soon as practicable after it is made.

Division 3—Ministerial orders

5.10.4 Ministerial orders—general provisions

- (1) The Minister may make Orders which are required or permitted to be made for carrying out or giving effect to this Act.
- (2) Without limiting any power of the Minister to make Orders under this Act, the Minister may make Orders for or with respect to any of the matters set out in Schedule 6 including the heading to an item in the Schedule.
- (3) An Order or a provision of an Order comes into operation at the beginning of the day on which the Order is made or at the beginning of any later day that is expressed in the Order as the day on which the Order or provision (as the case requires) comes into operation.
- (4) The Minister must ensure that an Order is published as soon as practicable after it is made.
- (5) A power conferred by this Act to make an Order may be exercised—
 - (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case;
 - (b) so as to make, as respects the cases in relation to which the power is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or

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- (ii) any such provision either unconditionally or subject to any specified condition.
- (6) An Order may be made—
- (a) so as to apply—
- (i) at all times or at a specified time; or
 - (ii) to all persons, schools, bodies or institutions or to specified persons, schools, bodies or institutions or a specified class of person, school, body or institution; or
 - (iii) as specified in both subparagraphs (i) and (ii);
- (b) so as to require a matter affected by the Order to be—
- (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a specified person or a specified class of persons; or
 - (iii) as specified in both subparagraphs (i) and (ii);
- (c) so as to apply, adopt or incorporate any matter contained in any document issued or published by any person or body whether—
- (i) wholly or partially or as amended by the Order; or
 - (ii) as issued or published at the time the Order is made or at any time before then;
- (d) so as to confer a discretionary authority or impose a duty on a specified person or a specified class of persons;
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- (e) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the Order, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.

5.10.5 Ministerial Orders—special provisions

Despite section 5.10.4, an Order providing for or in respect of any matter relating to employment in the teaching service may provide that it shall take effect on and from a day earlier than the day on which it is made.

5.10.6 Ministerial Orders—disallowance

- (1) The power for the Minister to make an Order for or with respect to the discipline of students in Government schools is subject to the Order being disallowed by Parliament.
 - (2) A copy of every Order made under this section must be laid before both Houses of Parliament on or before the 6th sitting day after the publication of the Order in accordance with section 5.10.4.
 - (3) Section 15 and Part 5 of the **Subordinate Legislation Act 1994** apply to an Order made under this section as if the Order were a statutory rule within the meaning of that Act, notice of the making of which had been published in the Government Gazette on the day on which the Order was published in accordance with this Part.
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s. 6.1.3

CHAPTER 6—REPEALS, AMENDMENTS, SAVINGS AND TRANSITIONALS

Ss 6.1.1, 6.1.2
repealed by
No. 19/2008
s. 13.

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6.1.3 Transitional and saving provisions

- (1) Schedule 8 has effect.
- (2) Despite section 5 of the **Subordinate Legislation Act 1994**, the Registered Schools Board Regulations 1996, as in force immediately before the day on which this Act receives the Royal Assent, continue in operation until the commencement of section 6.1.1(1).
- (3) A teacher who is deemed to be registered or have permission to teach under section 91 of the **Victorian Institute of Teaching Act 2001**, immediately before the day on which this Act receives the Royal Assent, must pay the first annual registration fee under section 91 of that Act before 30 December 2007.

S. 6.1.4
inserted by
No. 58/2007
s. 44.

6.1.4 Transitional provision—Teaching Service Act

Despite its repeal, the **Teaching Service Act 1981** as in force immediately before 1 July 2007 continues to apply to—

- (a) an inquiry under section 45 or Part V of that Act that has commenced but has not been finally determined before 1 July 2007; and
- (b) any action under section 9 of that Act that has commenced but not concluded before 1 July 2007; and

- (c) any action under section 65A or 65B of that Act that has commenced but not concluded before 1 July 2007.

6.1.5 Transitional provision—Government teaching service

S. 6.1.5
inserted by
No. 58/2007
s. 45.

This Act applies to—

- (a) an inquiry under section 2.4.56; and
(b) any action that may or must be taken under Division 9 of Part 2.4; and
(c) any investigation or inquiry under Division 10 of Part 2.4—

that commences after the commencement of section 45 of the **Education and Training Reform Miscellaneous Amendments Act 2007**, irrespective of when the grounds for action are alleged to have occurred.

6.1.6 Transitional provision—directors of TAFE institute boards

S. 6.1.6
inserted by
No. 58/2007
s. 45.

A person who, immediately before the commencement of section 16 of the **Education and Training Reform Miscellaneous Amendments Act 2007**, held office as a director of a TAFE institute board, continues to hold office as a director for the balance of his or her term of appointment subject to this Act as if that section had not been enacted.

6.1.7 Transitional provision—operators of student exchange programs

S. 6.1.7
inserted by
No. 58/2007
s. 45.

A school or organisation that was registered with the Department immediately before the commencement of section 31 of the **Education and Training Reform Miscellaneous Amendments Act 2007** as suitable to operate a student exchange program is deemed to be approved by the Authority under Part 4.5A to

s. 6.1.8

operate that program for 3 years after the commencement of that section unless that approval is sooner suspended or cancelled by the Authority under that Part.

S. 6.1.8
inserted by
No. 19/2008
s. 15.

6.1.8 Transitional provision—overseas exchange students

Anything done before the commencement of section 14 of the **Education and Training Reform Amendment Act 2008** under a provision of Part 4.5A that is renumbered by that section 14, is taken in respect of any period after that commencement to have been done under that provision as renumbered by that section 14.

S. 6.1.9
inserted by
No. 70/2008
s. 36.

6.1.9 Transitional provisions—Education and Training Reform Further Amendment Act 2008

- (1) The following land acquired before the commencement of section 32 of the **Education and Training Reform Further Amendment Act 2008** for the purposes of this Act or a corresponding previous enactment is vested in the Minister administering the **Education and Training Reform Act 2006**—
 - (a) land held in any of the names listed in Schedule 9;
 - (b) land held in the name of a Minister administering an Education Act (however described);
 - (c) land held in the name of the Minister administering the Tertiary Education Act or any corresponding previous enactment (however described);
 - (d) land held in the name of a Minister for Education (however described);

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- (e) land held in the name of the Minister for Skills and Workforce Participation in relation only to the land described in the following folios of the register—
- (i) Vol. 11036 Folio 884;
 - (ii) Vol. 11036 Folio 885;
- (f) land held in a name that is substantially the same as any name referred to in paragraphs (a) to (d).
- (2) The Minister administering the **Education and Training Reform Act 2006** is deemed to be the registered proprietor of all land that is vested in the Minister under subsection (1).
- (3) A reference in a document relating to land referred to in subsection (1) to a person or body as the registered proprietor of that land is taken to be a reference to the Minister administering the **Education and Training Reform Act 2006**.
- (4) The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title, must make any amendments in the Register that are necessary because of the operation of this section.
- (5) In this section the *Minister administering the Education and Training Reform Act 2006* means any Minister of the Crown for the time being administering section 5.2.6.

6.1.10 Transitional provision—Education and Training Reform Further Amendment Act 2008

Division 9A inserted by section 12 of the **Education and Training Reform Further Amendment Act 2008** may apply in respect of the conduct of an employee in the teaching service that occurred before the commencement of section 12 of that Act unless before that

S. 6.1.10
inserted by
No. 70/2008
s. 37.

s. 6.1.11

commencement an investigation or an inquiry under Division 10 into that conduct has been commenced.

S. 6.1.11
inserted by
No. 70/2008
s. 38.

6.1.11 Transitional provision—Education and Training Reform Further Amendment Act 2008

- (1) Despite the repeal of sections 4.7.2(3)(a) and 4.7.4(3) by sections 29 and 30 of the **Education and Training Reform Further Amendment Act 2008** respectively, sections 4.7.2(3)(a) and 4.7.4(3) as in force immediately before the commencement day continue to apply in respect of a school, that is deemed under clause 1.5 of Schedule 8 to be registered as a school under this Act, until 1 July 2012 or, if any of the following events occurs before that date, until that event occurs—
 - (a) the Authority suspends or cancels the school's registration;
 - (b) in the case of a school that offered either the VCE, VCAL or the International Baccalaureate Diploma or more than one of those courses, before the commencement day, the school is no longer able to continue to provide that course or any of those courses so offered because of one or more of the following—
 - (i) the Victorian Curriculum and Assessment Authority withdraws its acceptance of the school's ability to offer the course or courses;
 - (ii) the International Baccalaureate Organisation withdraws its approval of the school's ability to offer the International Baccalaureate Diploma.

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- (2) In this section *commencement day* means the date of commencement of sections 29 and 30 of the **Education and Training Reform Further Amendment Act 2008**.
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SCHEDULES

SCHEDULE 1

Sections 1.1.5(2)(b), 1.2.2(2)(b),
2.2.4(1), 2.2.7(3)

LEARNING AREAS SUBJECT TO FREE INSTRUCTION

The Arts

English

Health and Physical Education (including Sport)

Languages other than English

Mathematics

Science

Studies of Society and Environment

Technology.

SCHEDULE 2

Sections 2.5.8, 2.6.61, 3.1.8(1), 3.1.17,
3.3.11, 3.3.39 and 4.2.5

GENERAL PROVISIONS FOR AUTHORITIES

1 Definitions

In this Schedule—

authority means any of the following bodies—

- (a) the Victorian Curriculum and Assessment Authority;
- (b) the Council of the Victorian Institute of Teaching;
- (c) the Victorian Registration and Qualifications Authority;
- (d) the Adult, Community and Further Education Board;
- (e) the governing board of an adult education institution;
- (f) the Victorian Skills Commission;
- (g) the board of a TAFE institute;

member means a member of an authority.

2 Terms and conditions of appointment of members

- (1) An appointed member holds office for the term, not exceeding 3 years, that is specified in the instrument of appointment, and is eligible for re-appointment.
- (2) An elected member holds office for 3 years and is eligible to stand for re-election except as provided in any Order establishing an authority.

Sch. 2

- (3) The office of an appointed 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 member is absent from 3 consecutive meetings of the Authority without the leave of the chairperson, or in the case of the chairperson without the Minister's leave.
- (4) 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 authority; and
 - (d) disclose to the authority any conflict of interest or duties except those arising directly out of the person's qualification for membership of the authority.
- (5) 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.

3 Payment of members

- (1) A member or acting member of an authority, other than a member who holds a full-time Government office, or a full-time position in the public service, teaching service or with a statutory authority (other than a university) is entitled to receive the remuneration and fees that are fixed in the member's instrument of appointment or are fixed from time to time by the Governor in Council for that member.

Sch. 2 cl. 3(1)
amended by
No. 58/2007
s. 46(1)(a).

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- (2) Each member or acting member of an authority is entitled to receive the personal and travelling expenses that are fixed in the member's instrument of appointment or are fixed from time to time by the Governor in Council.
- (3) Despite subclauses (1) and (2), a director of a TAFE institute board is to be paid the remuneration, fees and allowances that are fixed from time to time by the board of the TAFE institute.
- (4) Despite subclauses (1) and (2), a member of the governing board of an adult education institution is to be paid the remuneration, fees and allowances that are fixed from time to time by the board of the Institution.
- (5) All fees, allowances and remuneration paid to directors of a TAFE institute board or members of the governing board of an adult education institution are subject to the approval of the Minister.

Sch. 2 cl. 3(3)
amended by
No. 58/2007
s. 46(1)(b).

Sch. 2 cl. 3(4)
amended by
No. 58/2007
s. 46(1)(c).

Sch. 2 cl. 3(5)
amended by
No. 58/2007
s. 46(1)(d).

4 Acting appointments

- (1) The Minister may appoint a person to act in the place of a member who is absent or who is, for any other reason, unable to perform the duties of the office.
- (2) If there is a vacancy in the office of a member of the Adult, Community and Further Education Board, the Victorian Registration and Qualifications Authority or the Victorian Skills Commission, the Minister may appoint a person to act in the place of that member until the vacancy is filled.
- (3) A person appointed under subclause (1) or (2)—
- (a) has all the powers and may perform all the duties of the member for whom he or she is acting;

- (b) is entitled to the remuneration and allowances (if any) to which the member for whom he or she is acting would have been entitled for performing those duties;
 - (c) subject to this clause, is subject to the same terms and conditions of appointment as the member for whom he or she is acting.
- (4) This clause does not apply to the Victorian Institute of Teaching.

5 Meetings of authority

- (1) Meetings of the authority are to be held at the times and places determined by the authority or directed by the chairperson of the authority.
- (2) The chairperson must preside at any meeting of the authority at which he or she is present.
- (3) If the chairperson and any person nominated by the chairperson to act in the chairperson's absence is absent, a member elected by the members present must preside.
- (4) A majority of the members in office at the time constitutes a quorum for a meeting of the authority.
- (5) A question arising at a meeting of the authority must be determined by a majority of votes of the members present and voting on that question and, if the votes are equal, the person presiding has a casting vote as well as a deliberative vote.
- (6) Meetings of the authority are to be held at the times and places determined by the authority or as directed by the Chairperson.
- (7) The authority must keep a record of the decisions and full and accurate minutes of its meetings.
- (8) Subject to this Act, the authority may regulate its own meeting procedure.

6 Member's interests

- (1) A member who has a pecuniary or other interest in any matter in which the authority is concerned must—
 - (a) if the member is present at a meeting of the authority 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 authority at which the member does not intend to be present, disclose the nature of the interest to the chairperson or deputy chairperson of the authority 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.

7 Resolutions without meetings

- (1) If—
 - (a) the authority has taken reasonable steps to give notice to each member setting out the terms of a proposed resolution; and
 - (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 authority 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 subclause (1), deemed to have been passed at a meeting of the authority, each member must as soon as practicable be advised of the matter and given a copy of the resolution.
- (3) For the purposes of subclause (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 subclause (1)(b) must not include a member who, because of clause 6, is not entitled to vote on the resolution.

8 Approved methods of communication for authority

- (1) If not less than two-thirds of the members of the authority for the time being holding office so agree, a meeting of the authority 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 authority for the purposes of that meeting.
- (2) For the purposes of this Act, a member of the authority who participates in a meeting held as permitted by subclause (1) is present at the meeting even if he or she is not physically present 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 any disciplinary proceedings.

9 Chief Executive's responsibilities

- (1) A chief executive officer of the authority (by whatever name called) employed for the purposes of this Act is responsible to the authority for policy and operational matters and to the Secretary for budgetary, personnel and other administrative matters.
- (2) This clause does not apply to the governing board of an adult education institution, the Institute or the board of a TAFE institute.

10 Establishment of committees

- (1) An authority may, to facilitate its functioning, establish any committee and appoint members to it including any person who is not a member of the authority.
- (2) A committee may exercise any power or perform any function delegated to it by the authority.

Sch. 2 cl. 10(1)
amended by
No. 58/2007
s. 46(2).

11 Delegation of Authority's power

The authority may, by instrument under its common seal, delegate to the members of a committee established by the authority, a member of the authority, the chief executive officer of the authority, or to any other person employed in the Department or by the authority in the administration or execution of this Act any power of the authority, other than this power of delegation.

Sch. 2 cl. 11
amended by
No. 58/2007
s. 46(2).

12 Effect of vacancy or defect

An act or decision of an authority 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.

13 Authority Funds

- (1) An authority continued in operation under this Act must continue to maintain any fund established in the name of the authority.
- (2) There must be paid into the fund—
 - (a) any investment income received by the authority; and
 - (b) the proceeds of the sale of any investment made by the authority; and
 - (c) any fees or other money received by the authority.
- (3) There must be paid out of the fund any payment that is authorised by the authority 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 authority.

14 Investment powers

An authority has any of the investment powers that are conferred on it by the **Borrowing and Investment Powers Act 1987**.

SCHEDULE 3

Section 3.1.25

EMPLOYMENT OF STAFF

PART 1—GENERAL

1 Superannuation

- (1) A person who, immediately before being employed by a TAFE college council or a TAFE institute board or being employed in the TAFE division of a university with a TAFE division 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 TAFE institute board or employed in the TAFE division of one of those universities.
- (2) 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 subclause (1) apply to that person, for so long as he or she is employed by a TAFE institute board or employed in a TAFE division of a university with a TAFE division as if there had been no change of employer.

PART 2—EXECUTIVE OFFICERS

2 Contracts for executive officers

The employment of an executive officer shall be governed by a contract of employment between the officer and his or her employer.

3 Contracts to be in writing

- (1) The contract must be in writing and be signed by or on behalf of the employer and the officer.
- (2) The parties to a contract must not include a right of return to the public sector in that contract.

4 Superannuation

The **Superannuation (Public Sector) Act 1992** applies to an executive officer who is a member of a statutory superannuation scheme within the meaning of Part 2 of that Act as if—

- (a) any reference to Part 3, Division 5 of the **Public Administration Act 2004** were a reference to this Schedule;
 - (b) any reference to an employer were a reference to—
 - (i) in the case of staff of a TAFE institute, the board of the institute; and
 - (ii) in the case of staff of the TAFE division of a university, the council of that university.
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SCHEDULE 4

Sections 5.5.4, 5.5.5

STATE TRAINING AND EMPLOYMENT PROVISIONS

1 Definitions

In this Schedule—

approved training means training undertaken (both on or off the job) under an approved training scheme;

training contract means a training contract entered into under an approved training scheme.

2 Application

The Commission may, by notice published in the Government Gazette, declare any class of training contract to be a class of training contract to which this Schedule does not apply.

3 Objective

The objective of this Schedule is to assist in the establishment of a system of apprenticeships which provides approved training in conjunction with employment in order to enhance the skill levels and future employment prospects of apprentices, particularly young people and the long term unemployed. The system is neither designed nor intended for those who are already trained and job ready. It is not intended that existing employees shall be displaced from employment by apprentices.

4 Training conditions

- (1) The employer must during the duration of the training contract provide a level of supervision that is in accordance with that agreement and the approved training scheme.
- (2) Training must be directed at enabling the apprentice to attain the standards of skill and knowledge required by the approved training scheme to be attained by persons undertaking the scheme.

5 Employment conditions

- (1) An employer must not terminate the employment of an apprentice without having provided written notice of termination in accordance with the training contract—
 - (a) to the apprentice, before the termination; and
 - (b) to the Commission, within 5 working days after the termination.
 - (2) An employer who decides not to continue the employment of an apprentice on the completion of the approved training scheme must notify the Commission in writing of that decision.
 - (3) If the employment of an apprentice is continued after the completion of the approved training scheme, that period of training must be regarded as service with the employer for the purposes of any provision made by or under any Act conferring entitlements on an employee having regard to his or her period of service.
 - (4) A training contract may restrict the circumstances under which an apprentice may work overtime or shiftwork in order to ensure that the approved training scheme is satisfactorily completed.
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- (5) An apprentice must not work shiftwork unless the apprentice and the employer have agreed that satisfactory provision is made for approved training under the relevant approved training scheme. Training for shiftwork employees may be applied over a cycle in excess of a week but must average over the relevant period no less than the amount of training required for non-shiftwork apprentices.
 - (6) An apprentice who fails to complete the approved training scheme or who cannot for any reason be placed in full-time employment with the employer on satisfactory completion of the approved training scheme is not entitled to any severance payment payable under any termination, change and redundancy provisions or any similar provisions.

6 Wages

- (1) The weekly wages payable to apprentices shall be as provided by the National Training Wage Award made by the Australian Industrial Relations Commission as varied from time to time.
 - (2) For the purposes of applying subclause (1) the appropriate industry or skill level in relation to an apprentice is as specified in the relevant determination made by the Commission under section 5.5.2.
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SCHEDULE 5

Section 5.10.1(2)

REGULATIONS

1 Government schools

- 1.1 The admission to Government schools.
- 1.2 Safeguarding health and maintaining order and discipline in Government schools.
- 1.3 The conveyance of students to Government schools and classes and the arrangement or approval of transport services for that purpose and the conditions under which students attending non-Government schools may be conveyed by a transport service.
- 1.4 The granting of allowances in respect of students travelling to schools and classes.
- 1.5 The granting of educational allowances and allowances for maintenance in respect of students attending Government and non-Government schools and classes or holding scholarships under this Act.
- 1.6 Fees to be paid by students attending Government schools and the conditions under which exemptions from payment of fees may be granted.
- 1.7 The management, control, care and development of forest plantations established on Government school land.

Sch. 5 cl. 1.3
amended by
No. 58/2007
s. 47.

Sch. 5 cl. 1.5
amended by
No. 58/2007
s. 47.

2 Age requirements for attending Government schools

- 2.1 Age requirements for persons to enrol at or attend a Government school.
- 2.2 Age requirements for persons to enrol in, attend or participate in any program or course of study offered, conducted or provided by a Government school.
- 2.3 Age requirements for persons to continue to be so enrolled or so attend or participate.
- 2.4 Prohibiting or regulating that enrolment or attendance at a Government school or participation in any program or course of study offered, conducted or provided by a Government school or the continuation of that enrolment, attendance or participation on the basis of those age requirements.

3 School councils

- 3.1 Prescribing the manner in which any election or appointment of a person to be a member of a council is to be made if the Order constituting the council requires the election or appointment to be made in accordance with the regulations.
- 3.2 Prescribing the manner in which meetings of councils are to be called and conducted, and minutes of the business conducted at those meetings are recorded.
- 3.3 Regulating the raising, control and disbursing of money for school purposes by school councils and the keeping of accounts by school councils.
- 3.4 Regulating the employment of staff and the entering into of contracts by school councils.
- 3.5 The constitution, duties or powers of any parents' club or association or other body organised to promote the wellbeing of a Government school.

- 3.6 Regulating the raising, control and disbursing of money for Government school purposes by any club, association or body organised to promote the wellbeing of a Government school and the keeping of accounts by the club, association or body.
- 3.7 Conferring or imposing upon school councils any powers, duties or functions in addition to those conferred or imposed by or under this Act or a Ministerial Order.
- 3.8 Regulating the exercise of the powers and the discharge of the duties or functions of school councils.
- 3.9 Regulating—
- (a) the formation and the activities of sub-committees of school councils;
 - (b) delegations and the exercise of delegated powers and performing of delegated duties by sub-committees; and
 - (c) the ratification of acts of sub-committees by a school council if the acts are within the powers, duties or functions conferred or imposed on the school council by or under this Act, the regulations or a Ministerial Order.
- 3.10 The accountability of the school council to the Minister in respect of the performance by the council of its functions including but not limited to the means by which accountability is to be achieved or enforced generally or in relation to specified matters.
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4 Teaching service

- 4.1 The organisation, management or discipline of the teaching service.
- 4.2 Records to be kept or published.
- 4.3 Appeals and reviews under Part 2.4.
- 4.4 The procedures to be followed by a Merit Protection Board or a Disciplinary Appeals Board in disposing of appeals or reviews.

5 Registration of teachers in schools

- 5.1 The registration and renewal of registration or permission to teach of teachers in schools in Victoria.
- 5.2 Certificates of registration for teachers who are registered to, or have permission to, teach in schools in Victoria.
- 5.3 The register of teachers who are registered to, or have permission to, teach in schools in Victoria.

6 Council of VIT

Requirements relating to the conduct of elections for members of the Council of the Victorian Institute of Teaching including provisions for voting at those elections, the method of voting and the counting of the votes.

7 Higher education fees

Exempting a governing body of a post-secondary education institution or class of governing body of a post-secondary education institution from complying with any requirement of Division 1 of Part 3.2 relating to membership of an organisation of students, the payment of fees, subscriptions or charges of the institution or the holding or use of those fees by the institution.

8 Scholarships

- 8.1 The conditions under which scholarships may be granted.
- 8.2 The privileges and allowances that may be granted in respect of any scholarships or class of scholarships.
- 8.3 Authorising the Minister to enter into agreements with persons to whom scholarships are granted and with sureties for those persons.
- 8.4 Prescribing forms for use in respect of those agreements.
- 8.5 Generally any matter in connection with applications for and the granting of scholarships.

Sch. 5 cl. 8A
inserted by
No. 19/2008
s. 12.

8A Victorian student numbers

The procedures and requirements relating to the allocation of Victorian student numbers to students, including students that are home schooled.

9 Principles

- 9.1 The obligations of education providers to implement the principles in section 1.2.1(a), (c), (e) and (f).
- 9.2 The inclusion of the principles in section 1.2.1(a), (c), (e) and (f) as part of the minimum standards prescribed under section 4.3.1(6)(b).
- 9.3 The role of the Authority in investigating any complaints from the public alleging any breach of the obligations to implement the principles in section 1.2.1(a), (c), (e) and (f).

Sch. 5 cl. 9.2
amended by
No. 3/2008
s. 7.

10 General

- 10.1 Forms for the purposes of this Act.
- 10.2 Prescribing fees.

10.3 Penalties not exceeding in any case 10 penalty
units for any contravention of the regulations.

SCHEDULE 6

Section 5.10.4(2)

MINISTERIAL ORDERS

- 1 Work experience arrangements**
 - 2 Structured workplace learning**
 - 3 Fees payable under this Act**
 - 4 Discipline in Government schools**
 - 4.1 The suspension or expulsion of students from Government schools.
 - 4.2 The grounds on which a student may be suspended or expelled.
 - 4.3 The procedures to be followed before a student may be suspended or expelled.
 - 4.4 The period for which a student may be suspended.
 - 4.5 The grounds on which a student may appeal to the Secretary against his or her expulsion and the procedures to be followed on such an appeal.
 - 4.6 The means by which a student expelled from a Government school is to be given an opportunity to continue his or her education while of compulsory school age.
 - 4.7 The circumstances in which the Secretary may prohibit a student expelled from a Government school from attending any other Government school.
 - 5 Councils of Government schools**
 - 5.1 Constitution of school councils.
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6 Government school plans

- 6.1 The period within which a school plan must be submitted to the Secretary for approval.
- 6.2 The matters which must be contained in a school plan.
- 6.3 The role of the Secretary in assisting with the preparation and implementation of a school plan.
- 6.4 The period for which a school plan is to remain in force.
- 6.5 The manner in which a school plan may be amended or terminated.
- 6.6 The procedure for reviewing a school plan.
- 6.7 The consequences of non-compliance with a school plan.

7 Annual reports of school councils

- 7.1 Details of the implementation by the council of the school plan.
- 7.2 School performance data.
- 7.3 Details of any contracts, agreements or arrangements entered into by the council.
- 7.4 Details of programs offered for overseas students.

8 Employment in the teaching service

- 8.1 Specifying or providing for ranges of remuneration packages for—
 - (a) members of the Principal Class or a class of members of the Principal Class; or
 - (b) members of the Executive Class or a class of members of the Executive Class.

Sch. 6 cl. 8.1
substituted by
No. 70/2008
s. 40(1).

Sch. 6

Sch. 6 cl. 8.1A
inserted by
No. 70/2008
s. 40(2).

- 8.1A Fixing a range of remuneration for executives, including a different range for each grade or class of executive.
- 8.2 Authorising payments to employees appointed as Government representatives on bodies established for the purposes of this Act.
- 8.3 Specifying the qualifications of experience necessary for employment, promotion or transfer to any position or class or grade of position.
- 8.4 Declaring any position or class of position in the teaching service to be a position in the Principal Class or the Executive Class.
- 8.5 Providing for long service leave and sick leave entitlements of persons employed in special developmental schools to be calculated having regard to employment at a day training centre that was registered under the **Mental Health Act 1959**.
- 8.6 Generally providing for employment in the teaching service, including salaries and allowances and the terms and conditions of employment.

Sch. 6 cl. 8.4
amended by
No. 70/2008
s. 40(3).

9 TAFE teaching staff

Declaring a position or class of positions on the staff of a TAFE institute or the TAFE division of a university with a TAFE division to be part of the management staff of the TAFE institute or TAFE division.

10 Training agents

Appointing any person or body to be an approved training agent for the purposes of this Act.

Sch. 6

11 Anaphylaxis management policy

The matters to be included in an anaphylaxis management policy, including—

- (a) plans and procedures for anaphylaxis management; and
- (b) the training of relevant staff.

Sch. 6 cl. 11
inserted by
No. 3/2008
s. 8.

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Sch. 7
repealed by
No. 19/2008
s. 13.

SCHEDULE 8

Section 6.1.3

TRANSITIONAL AND SAVING PROVISIONS

1.1 Definitions

In this Schedule—

repealed Act means an Act repealed by section 6.1.1.

1.2 General transitional provisions

- (1) Unless the contrary intention appears, this Schedule does not affect or limit the operation of the **Interpretation of Legislation Act 1984**.
- (2) On and after the commencement of section 6.1.1(e), any reference in any Act (other than this Act), regulation, subordinate instrument or other document whatsoever to a repealed Act is to be construed as a reference to this Act, unless the contrary intention appears.
- (3) If a provision of a repealed Act continues to apply by force of this Schedule, the following provisions also continue to apply in relation to the provision—
 - (a) any other provisions of the repealed Act necessary to give effect to that continued provision; and
 - (b) any regulation made under the repealed Act for the purposes of that continued provision.
- (4) On the repeal of a provision in a repealed Act that is of a savings or transitional nature or that validates anything that is or may otherwise be invalid, the repeal of that provision does not, unless the contrary intention expressly appears, affect the operation of the savings or transitional

provision or end the validating effect of the provision, as the case requires.

1.3 Savings and transitional regulations

The regulations may contain provisions of a savings and transitional nature consequent on the repeal of a repealed Act.

1.4 Registered teachers

1.4.1 A teacher who was registered under the **Victorian Institute of Teaching Act 2001**, immediately before the commencement of section 6.1.1(k), continues to be registered by the Institute under and subject to this Act.

1.4.2 The Secretary must transfer to the Institute all records and all information on a register maintained by the Registered Schools Board under Part III of the **Education Act 1958** that relates to registration of teachers under Part III of the **Education Act 1958**.

1.5 Registered schools

1.5.1 A State school established under section 21 of the **Education Act 1958** that was being conducted immediately before the commencement of section 6.1.1(l) is deemed to be established, conducted and registered as a Government school under this Act.

1.5.2 The Authority must note on the State Register in the division of registered schools with the year levels of schooling that a Government school referred to in clause 1.5.1 is established to offer that are notified to the Authority by the Secretary.

Sch. 8 cl. 1.5.2
amended by
No. 58/2007
s. 48(1)(a).

1.5.3 A school that was registered under Part III of the **Education Act 1958** immediately before the commencement of section 6.1.1(1) is deemed to be registered as—

- (a) a non-Government school under this Act;
and
- (b) a primary school, secondary school, special school or a combination of those schools as it was registered on the register of schools under Part III immediately before that commencement—

subject to any terms and conditions of the registration under that provision.

1.6 Higher education

On the commencement of section 6.1.1(i)—

- (a) an institution that was approved by the Minister to operate as a university immediately before the commencement of section 6.1.1(i) is deemed to be approved by the Authority under this Act to operate as a university, subject to any terms and conditions of the approval under that provision;
- (b) an institution that was deemed to have the approval of the Minister to operate as a university under section 10 of the **Tertiary Education Act 1993** immediately before the commencement of section 6.1.1(i) is deemed to have the deemed approval of the Authority under this Act to operate as a university, subject to any terms and conditions of the deemed approval under that provision;

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- (c) an Order that was made by the Minister under section 10 of the **Tertiary Education Act 1993** approving an institution to operate as a university and in operation immediately before the commencement of section 6.1.1(i) is deemed to be an Order made by the Authority under section 4.3.30 and the Authority may suspend or revoke or impose conditions on the approval under this Act as if it were an Order made by the Authority;
 - (d) an accreditation of a course of study by the Minister under section 11 of the **Tertiary Education Act 1993** is deemed to be an accreditation of the course of study by the Authority under section 4.3.32, subject to any terms and conditions of the accreditation under that provision;
 - (e) an authorisation of an institution to conduct a course of study by the Minister under section 11 of the **Tertiary Education Act 1993** is deemed to be an authorisation of the institution to conduct a course of study by the Authority under section 4.3.32, subject to any terms and conditions of authorisation under that provision;
 - (f) all records kept by the Secretary to the Department relating to approvals, accreditations and authorisations of the Minister under the **Tertiary Education Act 1993** immediately before the commencement of section 6.1.1(i) become records of the Victorian Registration and Qualifications Authority.
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1.7 Overseas students

- 1.7.1 A school that was endorsed as suitable to accept students from overseas for a course by an authorised officer under section 65 of the **Education Act 1958** immediately before the commencement of section 6.1.1(l) is deemed to be approved by the Authority to provide that course as a specified course to students from overseas under Part 4.5.
- 1.7.2 The Department is deemed to be approved by the Authority to provide a course as a specified course to students from overseas under Part 4.5 for 3 years after the commencement of section 6.1.1(l).
- 1.7.3 If a course of study offered by a provider or institution was, immediately before the commencement of section 6.1.1(i), endorsed by the Minister under section 6 of the **Tertiary Education Act 1993** as suitable for students from overseas, the provider or institution is deemed to be approved by the Authority to provide that course as a specified course to students from overseas under Part 4.5.
- 1.7.4 A person or body that was approved to provide a course to students from overseas by the Victorian Qualifications Authority under section 27 of the **Victorian Qualifications Authority Act 2000** immediately before the commencement of section 6.1.1(l) is deemed to be approved by the Authority to provide that course as a specified course to students from overseas under Part 4.5.

Sch. 8 cl. 1.7.2
substituted by
No. 58/2007
s. 48(2).

1.8 State Register

The State Register, on the commencement of section 6.1.1(1), consists of—

- (a) the State Register established and maintained under section 19 of the **Victorian Qualifications Authority Act 2000** by the Victorian Qualifications Authority as in force immediately before that commencement; and
- (b) the Register of Higher Education established and maintained by the Minister under section 12 of the **Tertiary Education Act 1993**;
- (c) government and non-government schools deemed to be registered under clause 1.5.

Sch. 8
cl. 1.8(c)
amended by
No. 58/2007
s. 48(1)(b).

1.9 VRQA

1.9.1 On the commencement of section 6.1.1(1)—

- (a) the Victorian Qualifications Authority established under the **Victorian Qualifications Authority Act 2000** is abolished and its members go out of office; and
- (b) the Victorian Registration and Qualifications Authority is the successor in law of the Victorian Qualifications Authority; and
- (c) all rights, assets, liabilities and obligations of the Victorian Qualifications Authority, immediately before its abolition, become rights, assets, liabilities and obligations of the Victorian Registration and Qualifications Authority; and

Sch. 8

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- (d) the Victorian Registration and Qualifications Authority is substituted for the Victorian Qualifications Authority as a party in any proceeding, contract, agreement or arrangement commenced or made by, against or in relation to the Victorian Qualifications Authority; and
- (e) the Victorian Registration and Qualifications Authority may continue and complete any other continuing matter or thing commenced by, against or in relation to the Victorian Qualifications Authority; and
- (f) any reference to the Victorian Qualifications Authority in—
- (i) an Act other than this Act; or
 - (ii) a subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984**; or
 - (iii) any document whatever—
- must, so far as it relates to any period on or after the commencement of section 6.1.1(l), and if not inconsistent with the context or subject matter, be taken to be a reference to the Victorian Registration and Qualifications Authority.
- (2) On and from the commencement of section 6.1.1(l), any authorisation, accreditation or approval granted by the Victorian Qualifications Authority under the **Victorian Qualifications Authority Act 2000** is deemed to be an authorisation, accreditation or approval granted by the Victorian Registration and Qualifications Authority under Part 4.3 of this Act subject to any terms and conditions of that authorisation, accreditation or approval under the **Victorian Qualifications Authority Act 2000**.
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- (3) On and from the commencement of section 6.1.1(l), the assets that become assets of the Victorian Registration and Qualifications Authority under subsection (1)—
- (a) if they are moneys or amounts standing to the credit of the Victorian Qualifications Authority Fund or any other fund or account of the Victorian Qualifications Authority, must be taken to form part of the Victorian Registration and Qualifications Authority Fund; and
 - (b) if they are assets in which the funds of the Victorian Qualifications Authority have been invested, must be taken to be investments of the Victorian Registration and Qualifications Authority Fund.
- (4) On and from the commencement of section 6.1.1(l), any unpaid fees, fines or penalties that become payable to the Victorian Registration and Qualifications Authority under subclause (1) must be paid into the Victorian Registration and Qualifications Authority Fund.

1.10 Victorian Skills Commission

The Victorian Learning and Employment Skills Commission established under the **Vocational Education and Training Act 1990** and continued in operation and renamed the Victorian Skills Commission by section 3.1.1 is to be treated as the same body after as before it was renamed under that section.

Sch. 8 cl. 1. 10
amended by
No. 58/2007
s. 48(1)(c).

1.11 Registered Schools Board

On the commencement of section 6.1.1(l)—

- (a) the Registered Schools Board established under Part III of the **Education Act 1958** is abolished and its members go out of office; and

- (b) all records relating to the registration of schools of the Registered Schools Board, immediately before its abolition, become records of the Victorian Registration and Qualifications Authority.

1.12 Continued bodies

On the commencement of section 6.1.1(a)—

- (a) a person or body established by or under an Act repealed by section 6.1.1(a), (e), (h), (i), (j), (k) or (m) (whether incorporated or not) except the Registered Schools Board continues in operation under and subject to this Act and its members remain in office for the period of their appointment to that office; and
 - (b) any rights, assets, liabilities and obligations of the person or body under a repealed Act, immediately before the commencement of section 6.1.1(a), become rights, assets, liabilities and obligations of the person or body under this Act; and
 - (c) the person or body continues to be a party in any proceeding, contract, agreement or arrangement commenced or made by, against or in relation to the board under the repealed Act referred to in paragraph (a); and
 - (d) the person or body may continue and complete any other continuing matter or thing commenced by, against or in relation to that person or body under the repealed Act referred to in paragraph (a); and
 - (e) the funds administered in the name of a person or body under that Act immediately before the commencement of section 6.1.1(a) continue to be funds administered by that person or body; and
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- (f) any moneys or amounts standing to the credit of any fund or account of the person or body, immediately before the repeal of the Act, continue to form part of the fund or account administered by the person or body under this Act.
- (2) An industry training board established or declared by the Governor in Council under the **Vocational and Education Training Act 1990** immediately before the commencement of section 6.1.1(m) is deemed to be an industry training board established or declared by the Minister under and subject to this Act.
- (3) A training agent approved by the Governor in Council under the **Vocational and Education Training Act 1990** immediately before the commencement of section 6.1.1(m) is deemed to be a training agent approved by the Minister under and subject to this Act.
- (4) A TAFE college established by the Governor in Council under the **Vocational and Education Training Act 1990** immediately before the commencement of section 6.1.1(m) is deemed to be a TAFE institute under and subject to this Act.
- (5) The council of a TAFE college established under the **Vocational and Education Training Act 1990** immediately before the commencement of section 6.1.1(m) is deemed to be the board of a TAFE institute under and subject to this Act.
- (6) The members of the board of a TAFE college appointed under the **Vocational and Education Training Act 1990** immediately before the commencement of section 6.1.1(m) are deemed to be the directors of the board of a TAFE institute under and subject to this Act.
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- (7) A person employed, immediately before the commencement of 6.1.1(e), by a school council continued in operation under subclause (1) continue to be employed under this Act subject to the terms and conditions of that employment
- (8) The assets that become assets of the person or body under subclause (1)—
 - (a) if they are moneys or amounts standing to the credit of any fund or account of the person or body, must be taken to form part of the fund administered by the person or body under this Act; and
 - (b) if they are assets in which the funds of the person or body have been invested, must be taken to be investments of the fund administered by the person or body under this Act.
- (9) A reference in any Act (other than this Act) or in any subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984** to a person or body established by or under a repealed Act referred to in paragraph (a) must, on and after the commencement of section 6.1.1(a), be construed as a reference to that person or body continued in operation under this Act unless the context otherwise requires.

1.13 Instruments

On and from the commencement of section 6.1.1(e)—

- (a) a delegation, other than a delegation by the Victorian Qualifications Authority, is deemed to be an delegation under this Act;

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- (b) an Order, direction or guideline made or issued by the Minister, under a repealed Act is deemed to be an Order, direction or guideline made or issued by the Minister under this Act.
- (c) despite the repeal of a repealed Act, regulations made under a repealed Act (except the Registered Schools Board Regulations 1996), as in force immediately before the repeal of that Act, continue in operation, subject to the **Subordinate Legislation Act 1994** as if made under this Act and may be amended or revoked accordingly.
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SCHEDULE 9

Section 6.1.9

**NAMES OF REGISTERED PROPRIETORS OF LAND
ACQUIRED FOR EDUCATION PURPOSES**

Department of Education.

Minister for Education and Training.

Minister for the Crown administering the **Education
and Training Reform Act 2006**.

Office of the Crown administering the Education
Acts.

The Board of Education.

The Minister of Public Education.

The Minister of Public Instruction.

The Minister of School Education.

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 9 February 2006

Legislative Council: 4 April 2006

The long title for the Bill for this Act was "to reform the law relating to education and training in Victoria to provide for a high standard of education and training for all Victorians and for other purposes."

Constitution Act 1975:

Section 85(5) statement:

Legislative Assembly: 9 February 2006

Legislative Council: 4 April 2006

Absolute majorities:

Legislative Assembly: 30 March 2006

Legislative Council: 5 May 2006

The **Education and Training Reform Act 2006** was assented to on 16 May 2006 and came into operation as follows:

Sections 1.1.1, 1.1.2, 6.1.3(2) and 6.1.3(3) on 16 May 2006: section 1.1.2(1); rest of Act on 1 July 2007: Government Gazette 28 June 2007 page 1304.

2. Table of Amendments

This Version incorporates amendments made to the **Education and Training Reform Act 2006** by Acts and subordinate instruments.

Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006

Assent Date: 10.10.06
Commencement Date: S. 26(Sch. item 30) on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Statute Law Revision Act 2007, No. 28/2007

Assent Date: 26.6.07
Commencement Date: S. 3(Sch. item 19) on 27.6.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Education and Training Reform Miscellaneous Amendments Act 2007, No. 58/2007

Assent Date: 27.11.07
Commencement Date: Ss 6, 8, 38, 44, 48 on 1.7.07: s. 2(2); ss 4, 5, 7, 9–37, 39–43, 45–47 on 28.11.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Children's Services and Education Legislation Amendment (Anaphylaxis Management) Act 2008, No. 3/2008

Assent Date: 4.3.08
Commencement Date: Ss 5–8 on 14.7.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Relationships Act 2008, No. 12/2008

Assent Date: 15.4.08
Commencement Date: S. 73(1)(Sch. 1 item 18) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Education and Training Reform Amendment Act 2008, No. 19/2008

Assent Date: 21.5.08
Commencement Date: Ss 13–15 on 22.5.08: s. 2(1); ss 4–12 on 1.7.08: Special Gazette (No. 186) 1.7.08 p. 1
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Education and Training Reform Act 2006
No. 24 of 2006

Endnotes

Labour and Industry (Repeal) Act 2008, No. 62/2008

Assent Date: 5.11.08
Commencement Date: S. 8 on 6.11.08: s. 2
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Education and Training Reform Further Amendment Act 2008, No. 70/2008

Assent Date: 25.11.08
Commencement Date: Ss 17, 21–23, 25–30, 32, 34–36, 38, 39, 41 on 26.11.08: s. 2(1); ss 4–16, 18–20, 24, 31, 33, 37, 40 on 29.1.09: Special Gazette (No. 16) 29.1.09 p. 1
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Endnotes

3. Explanatory Details

No entries at date of publication.