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Authorised Version No. 099
Education and Training Reform Act 2006
No. 24 of 2006

Authorised Version incorporating amendments as at
1 July 2023

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, school boarding premises and home schooling;
 - (ca) the protection of members of school communities from harmful, threatening or abusive behaviour;

S. 1.1.1(2)(c)
amended by
No. 33/2020
s. 4.

S. 1.1.1(2)(ca)
inserted by
No. 24/2021
s. 4.

S. 1.1.1(2)(f)
substituted by
No. 27/2010
s. 4.

- (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 and regulation of the teaching profession and the maintenance of standards of professional practice for that 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;

accommodation services means services that
include meal, laundry and cleaning services;

S. 1.1.3(1)
def. of *accom-
modation
services*
inserted by
No. 33/2020
s. 5(2).

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 AMES Australia or a community
based organisation which is not a TAFE
institute, a commercial provider or an
industry provider;

S. 1.1.3(1)
def. of *adult,
community
and further
education*
amended by
No. 32/2022
s. 4(a).

* * * * *

S. 1.1.3(1)
def. of *adult
education
institution*
amended by
No. 31/2018
s. 37(a),
repealed by
No. 32/2022
s. 4(b).

AMES Australia means AMES Australia
established by section 3.3.26(1);

S. 1.1.3(1)
def. of *AMES*
substituted as
*AMES
Australia* by
No. 32/2022
s. 4(c).

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

S. 1.1.3(1)
def. of *AQF*
amended by
No. 13/2022
s. 64(1).

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;

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(1)
def. of
Catholic Education Commission
inserted by
No. 28/2010
s. 4.

Catholic Education Commission means the Catholic Education Commission of Victoria Limited ACN 119 459 853;

S. 1.1.3(1)
def. of *Centre for Adult Education*
repealed by
No. 31/2018
s. 37(b).

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S. 1.1.3(1)
def. of *child abuse*
inserted by
No. 7/2015
s. 4(2),
substituted by
No. 63/2015
s. 15.

child abuse has the same meaning as it has in the **Child Wellbeing and Safety Act 2005**;

S. 1.1.3(1)
def. of *Child Safe Standards*
inserted by
No. 23/2021
s. 54.

Child Safe Standards has the same meaning as in the **Child Wellbeing and Safety Act 2005**;

Education and Training Reform Act 2006
No. 24 of 2006
Part 1.1—Preliminary

| | | | | | |
|---|---|---|---|---|---|
| * | * | * | * | * | S. 1.1.3(1) def. of <i>Commission</i> repealed by No. 73/2012 s. 3. |
| | | | | <p><i>compulsory school age</i> means not less than 6 nor more than 17 years of age;</p> | S. 1.1.3(1) def. of <i>compulsory school age</i> amended by No. 62/2009 s. 4(1). |
| | | | | <p><i>declared composite program</i> means a preschool program—</p> <p>(a) referred to in paragraph (b) of the definition of <i>education and care service</i> in section 5 of the Education and Care Services National Law (Victoria); and</p> <p>(b) declared by Ministerial Order to be an early childhood service for the purposes of this Act;</p> | S. 1.1.3(1) def. of <i>declared composite program</i> inserted by No. 19/2014 s. 35(a). |
| | | | | <p><i>Department</i> means the Department of Education and Training;</p> | S. 1.1.3(1) def. of <i>Department</i> amended by Nos 28/2007 s. 3(Sch. item 19.1), 39/2012 s. 62(1), 31/2018 s. 65(1)(a). |
| | | | | <p><i>dual sector university</i> means the Federation University Australia, Royal Melbourne Institute of Technology, Swinburne University of Technology or Victoria University;</p> | S. 1.1.3(1) def. of <i>dual sector university</i> inserted by No. 76/2013 s. 3(d). |

Education and Training Reform Act 2006
No. 24 of 2006
Part 1.1—Preliminary

S. 1.1.3(1)
def. of
*early
childhood*
inserted by
No. 19/2008
s. 4,
repealed by
No. 19/2014
s. 35(d).

* * * * *

S. 1.1.3(1)
def. of *early
childhood
service*
inserted by
No. 19/2014
s. 35(a).

early childhood service means—

- (a) an education and care service within the meaning of the Education and Care Services National Law (Victoria); or
- (b) a children's service within the meaning of the **Children's Services Act 1996**; or
- (c) a declared composite program;

S. 1.1.3(1)
def. of *further
education*
amended by
No. 76/2013
s. 3(a).

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 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
*Government
school
boarding
premises*
inserted by
No. 33/2020
s. 5(2).

Government school boarding premises means a school boarding premises at which school boarding services are provided by or on behalf of a Government school;

S. 1.1.3(1)
def. of *harm*
inserted by
No. 24/2021
s. 5.

harm means harm of any kind, including physical or mental harm;

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;

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

* * * * *

S. 1.1.3(1)
def. of
*industry
training board*
repealed by
No. 73/2012
s. 3.

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

integrated sector regulator has the same meaning as in the **Child Wellbeing and Safety Act 2005**;

S. 1.1.3(1)
def. of
*integrated
sector
regulator*
inserted by
No. 23/2021
s. 54.

* * * * *

S. 1.1.3(1)
def. of *interim
negative
notice*
inserted by
No. 31/2018
s. 4(2),
repealed by
No. 34/2020
s. 207(d).

interim WWC exclusion has the same meaning as in the **Worker Screening Act 2020**;

S. 1.1.3(1)
def. of *interim
WWC
exclusion*
inserted by
No. 34/2020
s. 207(a).

S. 1.1.3(1)
def. of *ISV*
inserted by
No. 1/2015
s. 3.

ISV means Independent Schools Victoria Inc., a body incorporated under the **Associations Incorporation Reform Act 2012**;

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;

S. 1.1.3(1)
def. of
Ministerial Council
inserted by
No. 31/2018
s. 46,
amended by
No. 13/2022
s. 64(2).

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;
- (b) in respect of the period beginning on or after 24 August 2005 and ending on 30 June 2009, the Ministerial Council within the meaning of the Skilling Australia's Workforce Act 2005 of the Commonwealth as in force during that period;
- (c) in respect of the period beginning on 1 July 2009 and ending on 23 October 2020, any successor Ministerial Council to the Ministerial Council referred to in paragraph (b), which was responsible, or principally responsible, for the matters for which the Ministerial Council referred to in paragraph (b) was responsible or principally responsible;

- (d) in respect of the period beginning on 24 October 2020, a body (however described) that consists of the Minister of the Commonwealth, and the Minister of each State and Territory, who is responsible, or principally responsible, for the matters that are the subject of any provision of this Act that refers to a Ministerial Council;

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

municipal council has the same meaning as ***Council*** has in section 3(1) of the **Local Government Act 2020**;

S. 1.1.3(1)
def. of
municipal council
inserted by
No. 7/2015
s. 4(1),
amended by
No. 9/2020
s. 390(Sch. 1
item 29).

national criminal history check, in relation to a person, means a check of the criminal history of the person in or outside of Australia with or through a police force or other authority of Victoria, another State, a Territory or the Commonwealth;

S. 1.1.3(1)
def. of
national criminal history check
inserted by
No. 19/2014
s. 4(1).

Note

See section 1.1.3(4) for an interpretive provision relating to the meaning of the criminal history of a person.

national regulations means the regulations made under the Education and Care Services National Law (Victoria);

S. 1.1.3(1)
def. of
national regulations
inserted by
No. 19/2014
s. 35(a).

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

Education and Training Reform Act 2006
No. 24 of 2006
Part 1.1—Preliminary

S. 1.1.3(1)
def. of
*negative
notice*
inserted by
No. 31/2018
s. 4(2),
repealed by
No. 34/2020
s. 207(d).

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S. 1.1.3(1)
def. of *non-
conviction
charge*
inserted by
No. 31/2018
s. 4(2),
amended by
No. 34/2020
s. 207(b).

non-conviction charge means a charge against a person for a category A offence or category B offence that has been finally dealt with (within the meaning of section 6(1) of the **Worker Screening Act 2020**) other than by way of a conviction or a finding of guilt;

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

S. 1.1.3(1)
def. of *non-
government
school
boarding
premises*
inserted by
No. 33/2020
s. 5(2).

non-government school boarding premises means a school boarding premises other than a Government school boarding premises;

Note

These school boarding premises include premises at which school boarding services are provided by or on behalf of a non-Government school or by a person that is not a school.

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;

parents' club means an association (by whatever name called) of parents of a Government school, whether or not the association also includes teachers and friends of the school;

S. 1.1.3(1)
def. of
parents' club
inserted by
No. 37/2015
s. 4

police officer has the same meaning as in the **Victoria Police Act 2013**;

S. 1.1.3(1)
def. of
police officer
inserted by
No. 37/2014
s. 10(Sch.
item 49.1).

post-compulsory education means education of persons 17 years of age or over;

S. 1.1.3(1)
def. of
post-compulsory education
amended by
No. 62/2009
s. 4(2).

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;

S. 1.1.3(1)
def. of
*post-
secondary
education
institution*
amended by
No. 32/2022
s. 56(1)(a).

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;

Note

See section 1.1.3(5).

S. 1.1.3(1)
def. of
*post-
secondary
education
provider*
amended by
No. 32/2022
s. 56(1)(b).

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;

Note

See section 1.1.3(5).

Examples of a person or body providing or offering to provide post-secondary education include the following—

- (a) a RTO;
- (b) a vocational education and training organisation that is registered under section 17 of the National Vocational Education and Training Regulator Act 2011 of the Commonwealth and operating in Victoria.

S. 1.1.3(1)
def. of
*prescribed
minimum
standards for
registration of
school
boarding
premises*
inserted by
No. 33/2020
s. 5(2).

prescribed minimum standards for registration of school boarding premises means the minimum standards prescribed by the regulations under section 4.3.8C(1)(b) or prescribed by section 4.3.8C(2) relating to school boarding premises and the school boarding services provided at those premises;

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

provider of school boarding services means a person who conducts a school boarding premises including the provision of school boarding services at the premises;

S. 1.1.3(1)
def. of
provider of school boarding services
inserted by
No. 33/2020
s. 5(2).

public sector body has the same meaning as in section 4(1) of the **Public Administration Act 2004**;

S. 1.1.3(1)
def. of ***public sector body***
inserted by
No. 7/2015
s. 4(1).

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

Register of Registered Teachers means the Register of Registered Teachers established under section 2.6.24;

S. 1.1.3(1)
def. of
Register of Registered Teachers
inserted by
No. 19/2014
s. 16(1).

registered early childhood teacher means a person registered under Division 3A of Part 2.6 as an early childhood teacher;

S. 1.1.3(1)
def. of
registered early childhood teacher
inserted by
No. 19/2014
s. 35(b).

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;

S. 1.1.3(1)
def. of
*registered
school*
amended by
No. 33/2020
s. 5(1)(a).

registered school means a school registered under
Division 1 of Part 4.3;

S. 1.1.3(1)
def. of
*registered
school
boarding
premises*
inserted by
No. 33/2020
s. 5(2).

registered school boarding premises means a
school boarding premises registered under
Division 1A of Part 4.3;

S. 1.1.3(1)
def. of
*registered
teacher*
amended by
No. 19/2014
s. 35(c).

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

registration includes permission to teach under
Part 2.6;

S. 1.1.3(1)
def. of
relevant entity
inserted by
No. 23/2021
s. 54.

relevant entity has the same meaning as in the
Child Wellbeing and Safety Act 2005;

S. 1.1.3(1)
def. of
RTO
inserted by
No. 71/2010
s. 4(1).

RTO has the same meaning as in section 4.1.1(1);

S. 1.1.3(1)
def. of *school*
amended by
No. 33/2020
s. 5(1)(b).

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;

- (ab) a school boarding premises;
- (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 notice means a notice issued under section 2.1.16;

S. 1.1.3(1)
def. of
school attendance notice
inserted by
No. 47/2013
s. 4.

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

school boarding premises means a premises at which school boarding services are provided or intended to be provided by a person for a fee or reward but does not include any of the following premises—

S. 1.1.3(1)
def. of ***school boarding premises***
inserted by
No. 33/2020
s. 5(2).

- (a) a premises at which accommodation services are provided under homestay arrangements by a person who resides at the premises to no more than 3 students who are enrolled at or attend or intend to enrol at or attend a registered school;
- (b) a premises or place at which camping facilities, including accommodation services, are provided on a short-term basis to students of a registered school who are required by the school to attend the premises or place as part of

instruction in a key learning area or an extracurricular activity of the school;

- (c) a premises that is prescribed not to be a school boarding premises;
- (d) a premises at which accommodation services are provided by a prescribed person or body;

Note

Premises will not fall within the definition of *school boarding premises* if the accommodation services provided at the premises are not provided for the primary purpose of enabling or facilitating a person to enrol at or attend a registered school. Examples of accommodation services that are not provided primarily for that purpose include the following—

- (a) accommodation services provided by a parent (see the wide definition of *parent* in section 1.1.3(1));
- (b) accommodation services provided at a youth justice centre or a youth residential centre within the meaning of the **Children, Youth and Families Act 2005**;
- (c) accommodation services that are provided as part of respite care within the meaning of the Aged Care Act 1997 of the Commonwealth;
- (d) accommodation services that are facilitated, provided or regulated by the Department of Health and Human Services including the following—
 - (i) out of home care services or secure welfare services within the meaning of the **Children, Youth and Families Act 2005**;
 - (ii) accommodation provided at an NDIS dwelling within the meaning of the **Disability Act 2006**;
 - (iii) accommodation that is a residential service within the meaning of the **Disability Act 2006**;

- (iv) accommodation services provided at a residential care service within the meaning of the **Health Services Act 1988**.

school boarding services means accommodation services provided for the primary purpose of enabling or facilitating a person to enrol at or attend a registered school;

S. 1.1.3(1)
def. of *school boarding services*
inserted by
No. 33/2020
s. 5(2).

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;

school enrolment notice means a notice issued under section 2.1.15;

S. 1.1.3(1)
def. of *school enrolment notice*
inserted by
No. 47/2013
s. 4.

School Policy and Funding Advisory Council means the advisory council established by section 2.7.9;

S. 1.1.3(1)
def. of *School Policy and Funding Advisory Council*
inserted by
No. 1/2015
s. 3.

Secretary means Secretary to the Department;

Education and Training Reform Act 2006
No. 24 of 2006
Part 1.1—Preliminary

S. 1.1.3(1)
def. of
*sexual
offence*
amended by
Nos 14/2013
s. 3, 74/2014
s. 30 (as
amended by
No. 20/2015
s. 50(1)),
42/2015 s. 25,
42/2016 s. 4,
47/2016 s. 38,
repealed by
No. 31/2018
s. 4(1).

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S. 1.1.3(1)
def. of *State
police record
check*
inserted by
No. 19/2014
s. 4(1).

State police record check, in relation to a person,
means a check of the records held by
Victoria Police in relation to that person;

S. 1.1.3(1)
def. of *student*
inserted by
No. 33/2020
s. 5(2).

State Register means the State Register
maintained under Part 4.6;

student in Division 1A of Part 4.3 means a person
who is enrolled at or who attends a registered
school or who intends to enrol at or attend a
registered school;

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

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

S. 1.1.3(1)
def. of
TAFE institute
amended by
No. 76/2013
s. 3(b).

TAFE means technical and further education;

TAFE institute means an institution created under
section 3.1.11;

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

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

temporary approval means a temporary approval
granted under section 2.6.60C;

S. 1.1.3(1)
def. of
*temporary
approval*
inserted by
No. 19/2014
s. 35(b).

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;

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S. 1.1.3(1)
def. of
*university
with a TAFE
division*
amended by
No. 76/2013
s. 3(c).

VCAL means the Victorian Certificate of Applied
Learning;

VCE means the Victorian Certificate of
Education;

S. 1.1.3(1)
def. of
*VET funding
contract*
inserted by
No. 73/2012
s. 9.

VET funding contract means a vocational education and training funding contract made under Division 1 of Part 3.1;

S. 1.1.3(1)
def. of
Victoria Police
inserted by
No. 37/2014
s. 10(Sch.
item 49.1).

Victoria Police has the same meaning as in the **Victoria Police Act 2013**;

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

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

S. 1.1.3(1)
def. of
*vocational
education and
training*
amended by
Nos 34/2020
s. 207(c),
32/2022
s. 4(d).

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
- (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 AMES Australia or a community based organisation which is not a TAFE institute, a commercial provider or industry provider;

S. 1.1.3(1)
def. of *VPC*
inserted by
No. 45/2021
s. 12.

VPC means the Victorian Pathways Certificate;

WWC clearance has the same meaning as in the
Worker Screening Act 2020;

S. 1.1.3(1)
def. of *WWC
clearance*
inserted by
No. 34/2020
s. 207(a).

WWC exclusion has the same meaning as in the
Worker Screening Act 2020.

S. 1.1.3(1)
def. of *WWC
exclusion*
inserted by
No. 34/2020
s. 207(a).

(2) If under the **Public Administration Act 2004** the name of the Department of Education and Training 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.

S. 1.1.3(2)
amended by
Nos 28/2007
s. 3(Sch.
item 19.2),
31/2018
s. 65(1)(b).

(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.

(4) For the purposes of the definition of ***national criminal history check***, the criminal history of a person includes any of the following—

S. 1.1.3(4)
inserted by
No. 19/2014
s. 4(2).

(a) findings of guilt against the person with or without conviction;

(b) any charges outstanding against the person;

(ba) a non-conviction charge against the person;

S. 1.1.3(4)(ba)
inserted by
No. 31/2018
s. 4(3).

(c) convictions recorded against the person when the person was a juvenile;

(d) convictions against the person that are spent.

S. 1.1.3(5)
inserted by
No. 32/2022
s. 56(2).

- (5) For the purposes of the definitions of *post-secondary education institution* and *post-secondary education provider*, a post-secondary education institution and a post-secondary education provider may provide education to persons who are of compulsory school age.

S. 1.1.3A
inserted by
No. 31/2018
s. 5.

1.1.3A Meaning of *category A offence*

- (1) A *category A offence* means any of the following offences—

S. 1.1.3A(1)(a)
amended by
No. 34/2020
s. 208(a).

- (a) an offence specified in clauses 1 and 2 of Schedule 2 to the **Worker Screening Act 2020** if the conduct constituting or alleged to constitute that offence occurred when the person was an adult;

S. 1.1.3A(1)(b)
amended by
No. 34/2020
s. 208(b).

- (b) an offence specified in clauses 3 to 10 of Schedule 2 to the **Worker Screening Act 2020**;
- (c) an offence against any of the following sections of the Criminal Code of the Commonwealth—
- (i) section 270.7B (forced marriage), involving a person under 18 years of age;
 - (ii) section 474.25A (using a carriage service for sexual activity with person under 16 years of age);
 - (iii) section 474.27A (using a carriage service to transmit indecent communication to person under 16 years of age);

- (d) 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 (c).
- (2) For the purposes of subsection (1)(a), if the conduct constituting or alleged to constitute an offence occurs between 2 dates, one on which the person was a child and one on which the person was an adult, that conduct occurs when the person was an adult.

1.1.3B Meaning of *category B* offence

- (1) A *category B* offence means any of the following offences—
 - (a) an offence specified in clause 2, 8, 9 or 15 of Schedule 4 to the **Worker Screening Act 2020**, if the conduct constituting or alleged to constitute that offence occurred when the person was an adult;
 - (b) an offence specified in clauses 1, 3 to 7, 10 to 14 or 16 to 20 of Schedule 4 to the **Worker Screening Act 2020**;
 - (c) an offence specified in clauses 1 and 2 of Schedule 2 to the **Worker Screening Act 2020**, if the conduct constituting or alleged to constitute that offence occurred when the person was a child.
- (2) For the purposes of this section, if the conduct constituting or alleged to constitute an offence occurs between 2 dates, one on which the person was a child and one on which the person was an adult, that conduct occurs when the person was an adult.

S. 1.1.3B
inserted by
No. 31/2018
s. 5.

S. 1.1.3B(1)(a)
amended by
No. 34/2020
s. 209(a).

S. 1.1.3B(1)(b)
amended by
No. 34/2020
s. 209(b).

S. 1.1.3B(1)(c)
amended by
No. 34/2020
s. 209(c).

S. 1.1.3C
inserted by
No. 31/2018
s. 5.

1.1.3C Meaning of *category C conduct*

(1) *Category C conduct* means any of the following—

S. 1.1.3C(1)(b)
amended by
No. 34/2020
s. 210.

- (a) a conviction or finding of guilt of an indictable offence, whether committed in Victoria or elsewhere (other than a category A offence or a category B offence), the necessary elements of which consist of elements that constitute the indictable offence;
- (b) a conviction or finding of guilt of an offence specified in clause 2, 8, 9 or 15 of Schedule 4 to the **Worker Screening Act 2020** if the conduct constituting that offence occurred when the person was a child;
- (c) a conviction or finding of guilt of an offence against section 23 or 24 of the **Summary Offences Act 1966** or an offence under a law of a jurisdiction other than Victoria that, if it had been committed in Victoria, would have constituted an offence against section 23 or 24 of the **Summary Offences Act 1966**;
- (d) conduct that forms the basis of a non-conviction charge;
- (e) conduct that forms the basis of any disciplinary action taken against a registered teacher by an employer that is notified by the employer to the Institute under section 2.6.31;

- (f) conduct that forms the basis of any disciplinary action that has been taken against a person by an entity for which the person works (including as a volunteer), of which the Institute becomes aware under the reportable conduct scheme in Part 5A of the **Child Wellbeing and Safety Act 2005**;
 - (g) conduct that forms the basis of a finding by a Suitability Panel under Division 5 of Part 3.4 of the **Children, Youth and Families Act 2005** that a person should be disqualified from registration under Part 3.4 of that Act;
 - (h) conduct that forms the basis of a prescribed kind of disciplinary action taken against a person.
- (2) For the purposes of this section, if the conduct constituting or alleged to constitute an offence occurs between 2 dates, one on which the person was a child and one on which the person was an adult, that conduct occurs when the person was an adult.

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;

S. 1.2.2(2)(d)
amended by
No. 71/2010
s. 3(1).

(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;

S. 1.2.2(2)(e)
inserted by
No. 71/2010
s. 3(2).

(e) a student has a guaranteed vocational education and training place for a government-subsidised course if—

- (i) the student is under 20 years of age on 1 January in the year the study is undertaken; or
- (ii) the student is 20 years of age or older on 1 January in the year the study is undertaken, and the study leads to a higher vocational education and training qualification than the highest such qualification already obtained by the student—

in the following circumstances—

- (iii) the course of study is available and has been approved to receive a Government subsidy; and
- (iv) the student meets the admission requirements for the course of study; and
- (v) the student meets any citizenship or residency requirements to undertake the course of study and the student is not an overseas student.

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

S. 2.1.1
amended by
No. 62/2009
s. 5.

2.1.1 Attendance at school

It is the duty of the parent of a child of not less than 6 nor more than 17 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.

S. 2.1.2
(Heading)
substituted by
No. 47/2013
s. 5(1).
S. 2.1.2
amended by
No. 47/2013
s. 5(2).

2.1.2 Parent must 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.

S. 2.1.2A
inserted by
No. 47/2013
s. 6.

2.1.2A Offence for parent not to provide instruction to child registered for home schooling

A parent of a child registered for home schooling in accordance with the regulations must not without reasonable excuse fail to ensure that the child receives instruction in accordance with the registration.

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, section 2.1.2A and Division 3, it is a reasonable excuse for the purposes of those sections and that Division, 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;

S. 2.1.3 amended by No. 47/2013 s. 7(a)(b).

S. 2.1.3(a)(ii) amended by No. 47/2013 s. 7(c).

* * * * *

S. 2.1.3(a)(iii) repealed by No. 47/2013 s. 7(d).

- (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 participating in education or training, or employment, or both, in accordance with an Order made by the Minister for the purposes of this paragraph;
- (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;

S. 2.1.3(c) substituted by No. 62/2009 s. 6.

S. 2.1.3(fa)
inserted by
No. 47/2013
s. 7(e).

(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;

(fa) the parent of the child has provided another excuse for the failure and the principal of the school accepts the excuse as a reasonable excuse;

S. 2.1.3(g)
amended by
No. 47/2013
s. 7(f).

(g) the child is exempted from enrolment at school, attendance at school or both enrolment and 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.

S. 2.1.5
(Heading)
amended by
No. 47/2013
s. 8(1).

2.1.5 Exemption from enrolment or attendance at school

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

S. 2.1.5
amended by
No. 47/2013
s. 8(2).

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, other than a power under Division 3; or
- (b) at any time during the exercise of a power under this Part, other than a power under Division 3, if asked to do so.

S. 2.1.9(a)
amended by
No. 47/2013
s. 9.

S. 2.1.9(b)
amended by
No. 47/2013
s. 9.

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.
- (3) A principal must, on the request of the school attendance officer, provide the officer with any information regarding the enrolment or attendance of students that the officer may reasonably require for carrying out the officer's functions and powers under this Part.
- (4) A school attendance officer is authorised to access, use or disclose information recorded in the Student Register for the purpose of carrying out the officer's functions and powers under this Part.
- (5) An authorisation under subsection (4) is taken to be an authorisation by the Secretary under section 5.3A.9 for the purpose of monitoring and ensuring student enrolment and attendance.

S. 2.1.10(3)
inserted by
No. 47/2013
s. 10.

S. 2.1.10(4)
inserted by
No. 47/2013
s. 10.

S. 2.1.10(5)
inserted by
No. 47/2013
s. 10.

Note to
s. 2.1.10
inserted by
No. 47/2013
s. 10.

Note

Section 5.8.5 provides for the circumstances in which the Authority must provide information to a school attendance officer in relation to the registration of students for home schooling.

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.

S. 2.1.12
amended by
No. 47/2013
s. 11.

2.1.12 Power to bring proceedings

A school attendance officer may bring proceedings for any offence under Division 1 or Division 3.

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.

* * * * *

S. 2.1.14 amended by No. 68/2009 s. 97(Sch. item 48.1), repealed by No. 47/2013 s. 12.

Division 3—School enrolment notices and school attendance notices

Pt 2.1 Div. 3 (Heading and ss 2.1.15–2.1.24) inserted by No. 47/2013 s. 13.

2.1.15 School enrolment notice

- (1) This section applies if a school attendance officer, after making enquiries, has reasonable grounds to believe that a child of compulsory school age is not, at the time of making the enquiries, enrolled at a registered school and is not registered for home schooling in accordance with the regulations.
- (2) A school attendance officer may issue a school enrolment notice to a parent.
- (3) For the purposes of subsection (1), the enquiries made by the school attendance officer may include—
 - (a) ascertaining whether the child is registered for home schooling on the State Register;

S. 2.1.15 inserted by No. 47/2013 s. 13.

- (b) ascertaining whether the child is included on the Student Register and ascertaining any details contained on the Student Register regarding the child;
- (c) ascertaining whether the child is included on the register of students kept by the child's designated neighbourhood Government school.

S. 2.1.16
inserted by
No. 47/2013
s. 13.

2.1.16 School attendance notice

- (1) This section applies if a school attendance officer has reasonable grounds to believe—
 - (a) a child who is enrolled at a registered school has been absent from the school on at least 5 separate days (whether or not the absence was for a full day or part day) in the previous 12 months; and
 - (b) no reasonable excuse has been given for the absences; and
 - (c) measures to improve the student's attendance—
 - (i) have been undertaken in accordance with any guidelines issued by the Minister and have been unsuccessful; or
 - (ii) are considered to be inappropriate in the circumstances.
- (2) A school attendance officer may issue a school attendance notice to a parent.

S. 2.1.17
inserted by
No. 47/2013
s. 13.

2.1.17 Content of school enrolment notice

A school enrolment notice must be in the prescribed form and include the following—

- (a) the full name and address of the parent to whom the notice is addressed;

- (b) the full name and date of birth of the child to whom the notice relates;
- (c) a statement that the notice may be complied with by enrolling or conditionally enrolling the child at a registered school or registering the child for home schooling in accordance with the regulations;
- (d) a request that the parent complete the reply form forwarded with the notice;
- (e) the date by which the parent must respond to the notice, being a date no less than 21 days after the date of the notice.

2.1.18 Content of school attendance notice

A school attendance notice must be in the prescribed form and include the following—

- (a) the full name and address of the parent to whom the notice is addressed;
- (b) the full name and date of birth of the child to whom the notice relates;
- (c) the dates that the school attendance officer reasonably believes the child did not attend school;
- (d) a request that the parent complete the reply form forwarded with the notice;
- (e) the date by which the parent must respond to the notice, being a date no less than 21 days after the date of the notice.

**S. 2.1.18
inserted by
No. 47/2013
s. 13.**

S. 2.1.19
inserted by
No. 47/2013
s. 13.

2.1.19 Parent must respond to school enrolment notice

A parent who has received a school enrolment notice must—

- (a) complete the reply form forwarded with the notice by stating in it—
 - (i) the true reason why the child is not enrolled at school; or
 - (ii) that the child has been enrolled or conditionally enrolled at a registered school or registered for home schooling in accordance with the regulations, and details of the enrolment or registration; or
 - (iii) that the parent is unable to provide a reason because the parent does not have parental responsibility for the child within the meaning of the Family Law Act 1975 of the Commonwealth; and
- (b) sign the reply form; and
- (c) post or deliver the form so as to reach the school attendance officer no later than the date specified in the notice.

S. 2.1.20
inserted by
No. 47/2013
s. 13.

2.1.20 Parent must respond to school attendance notice

A parent who has received a school attendance notice must—

- (a) complete the reply form forwarded with the notice by stating in it—
 - (i) the true reason why the child did not attend school on each of the dates specified in the notice; or
 - (ii) that the child was not living with the parent on some or all of the dates specified in the notice, and details of

the parent with whom the child was living on the relevant dates; and

- (b) sign the reply form; and
- (c) post or deliver the form so as to reach the school attendance officer no later than the date specified in the notice.

2.1.21 Offences for failing to comply with school enrolment notice or school attendance notice

S. 2.1.21
inserted by
No. 47/2013
s. 13.

- (1) A person who has received a school enrolment notice must respond to the notice in accordance with section 2.1.19.

Penalty: 5 penalty units.

- (2) A person who has received a school attendance notice must respond to the notice in accordance with section 2.1.20.

Penalty: 5 penalty units.

- (3) A person who responds to a school enrolment notice but fails to provide a reasonable excuse as to why the child is not enrolled in a registered school or registered for home schooling in accordance with the regulations is guilty of an offence and liable to a penalty not exceeding 5 penalty units.

- (4) A person who responds to a school attendance notice but fails to give a reasonable excuse for 5 or more of the dates specified in the notice is guilty of an offence and liable to a penalty not exceeding 5 penalty units.

- (5) Nothing in this section makes the following people liable to a pecuniary penalty or to be prosecuted for an offence—

- (a) the Secretary, Department of Health and Human Services carrying out parental responsibilities for a child under an order

S. 2.1.21(5)(a)
amended by
No. 31/2018
s. 65(2).

made under the **Children, Youth and Families Act 2005**; or

S. 2.1.21(5)(b)
amended by
No. 31/2018
s. 65(2).

- (b) a person carrying out parental responsibilities for a child on behalf of the Secretary, Department of Health and Human Services.

S. 2.1.22
inserted by
No. 47/2013
s. 13.

2.1.22 Offence to provide false information

A person who responds to a school enrolment notice or school attendance notice must not give any information in the reply form that the person knows is false or misleading in a material detail.

Penalty: 5 penalty units.

S. 2.1.23
inserted by
No. 47/2013
s. 13.

2.1.23 Infringement notices, penalties and offences

- (1) A school attendance officer may serve an infringement notice on a person who the school attendance officer has reason to believe has committed an offence against section 2.1.21.
- (2) An offence against section 2.1.21 is an infringement offence within the meaning of the **Infringements Act 2006**.
- (3) The infringement penalty for an offence against section 2.1.21 is 0.5 penalty units.

S. 2.1.24
inserted by
No. 47/2013
s. 13.

2.1.24 Minister may issue guidelines

- (1) The Minister may from time to time issue guidelines about—
 - (a) matters relating to measures that may be undertaken to encourage and support the enrolment of a child;
 - (b) matters relating to measures that may be undertaken to improve a student's attendance at school.
- (2) Any guidelines issued must not be inconsistent with this Act or the regulations.

- (3) The guidelines may apply, adopt or incorporate any matter contained in any document issued or published by a body or person whether—
 - (a) wholly or partially or as amended by the guidelines; or
 - (b) as issued or published at the time that the guidelines are issued or at any time before then; or
 - (c) as amended from time to time.
- (4) The regulations may require a person, body or school to comply with any guidelines issued under this section.

Pt 2.1A
(Headings
and
ss 2.1A.1–
2.1A.44)
inserted by
No. 24/2021
s. 6.

Part 2.1A—Protection of school communities

Division 1—General provisions relating to school community safety orders

S. 2.1A.1
inserted by
No. 24/2021
s. 6.

2.1A.1 Definitions

In this Part—

authorised person means a person who is an
authorised person under section 2.1A.2;

immediate school community safety order means
an order under section 2.1A.3;

member of the school community means any of
the following persons in relation to a
school—

- (a) a student enrolled at the school;
- (b) a parent of a student enrolled at the
school;
- (c) a staff member of the school;
- (d) a person other than a person referred to
in paragraphs (a), (b) or (c) who is
present at a school-related place of the
school for a reason connected with the
school;

ongoing school community safety order means an
order under section 2.1A.15;

proprietor means—

- (a) the person or body that is specified in
the registration of the school as the
proprietor of the school; or

- (b) if there is no person or body to whom paragraph (a) applies, the person or body who is responsible for the governance of the school;

relevant school, in relation to a school community safety order, means the school in respect of which the order is made or proposed to be made;

reviewer, in relation to an ongoing school community safety order, means—

- (a) the Secretary, if the order relates to a Government school; or
- (b) a person nominated by the principal or the proprietor of the school, if the order relates to a non-Government school;

school community safety order means the following—

- (a) an immediate school community safety order;
- (b) an ongoing school community safety order;

school-related place, in relation to a school, means the following—

- (a) any premises of the school and an area that is within 25 metres of the boundary of those premises;
- (b) any premises (other than a premises described in paragraph (a)) on which there is an activity conducted by or in connection with the school and an area that is within 25 metres of the boundary of those premises;

Example

An example of an activity is a camp.

- (c) for an activity conducted by or in connection with a school, if the activity or part of the activity is not conducted at a place described in paragraph (a) or (b), any place where the activity is conducted and an area that is within 25 metres of the boundary of that place;
- (d) any prescribed place;

staff member means—

- (a) in relation to a Government school, a person (including a registered teacher) employed by one of the following persons to perform work for, or at, that school—
 - (i) the Secretary;
 - (ii) the Department;
 - (iii) the school council; or
- (b) in relation to a non-Government school, a person (including a registered teacher) employed by the school or the proprietor of the school to perform work for, or at, the school; or
- (c) any other prescribed person or member of a class of prescribed person;

vexatious communication, in relation to a staff member of a school, means a communication that a reasonable person would consider unreasonable, having regard to the circumstances, in one or more of the following forms—

- (a) a person approaching, telephoning, sending messages to or otherwise contacting (whether by electronic means or otherwise) the staff member;

- (b) a person publishing (whether on the internet, by email or by any other form of written communication) material about the staff member;
- (c) a person causing someone else to engage in a behaviour set out in paragraph (a) or (b) on the person's behalf;
- (d) any prescribed communication.

2.1A.2 Who are authorised persons?

**S. 2.1A.2
inserted by
No. 24/2021
s. 6.**

- (1) Each of the following persons is an authorised person—
 - (a) the principal of a registered school;
 - (b) for a Government school, the Secretary;
 - (c) for a non-Government school, the proprietor of the school, or, if the proprietor of the school is not an individual, a person authorised by the Secretary for that school;
 - (d) any other person or member of a class of person authorised by the Secretary.
- (2) For the purposes of subsection (1)(c) and (d), the Secretary may authorise a person or any member of a class of person in accordance with the guidelines made under section 2.1A.37 if—
 - (a) the Secretary considers that the person or members of the class of person has the necessary skills, qualifications and experience; and
 - (b) the person or member of the class of person is associated with, or involved in, the administration or management of one or more schools.

Division 2—Immediate school community safety orders

S. 2.1A.3
inserted by
No. 24/2021
s. 6.

2.1A.3 Authorised person may make immediate order

- (1) Subject to this Division, an authorised person may make an immediate school community safety order that prohibits a person from entering or remaining on any school-related place of the relevant school specified in the order.
- (2) An immediate school community safety order must not be made in respect of a person—
 - (a) who is under the age of 18 years; or
 - (b) who is a staff member at the relevant school; or
 - (c) who is a student at the relevant school.

S. 2.1A.4
inserted by
No. 24/2021
s. 6.

2.1A.4 Process for giving immediate order

- (1) An immediate school community safety order may be made either orally or by written notice given to the person to whom the order applies.
- (2) If an authorised person makes an immediate school community safety order orally, the authorised person must give the person to whom the order applies written notice of the order as soon as is practicable.
- (3) For the purposes of subsections (1) and (2), written notice is given to the person to whom the order applies if the notice is—
 - (a) personally handed to the person; or
 - (b) sent to the postal address or email address of the person.
- (4) If the authorised person is not able to give the written notice under this section to the person to whom the order applies, the authorised person must keep a written record of the following—

- (a) the order that was made;
 - (b) the reason a written notice was not able to be given to the person to whom the order applies;
 - (c) a description of the person to whom the order applies.
- (5) An order that is given orally is not invalid merely because the authorised person has not given the written notice under this section to the person to whom the order applies.

Example

If a person to whom an order applies refuses to give their name or contact details to the authorised person, the authorised person may not be able to give the written notice to the person.

2.1A.5 Grounds and other requirements for making immediate order

**S. 2.1A.5
inserted by
No. 24/2021
s. 6.**

- (1) An authorised person may make an immediate school community safety order in respect of a person if the authorised person reasonably believes that—
- (a) the person poses an unacceptable and imminent risk of harm—
 - (i) to another person at any school-related place of the relevant school to which paragraph (a) of the definition of *school-related place* applies; or
 - (ii) to a member of the school community at any school-related place of the relevant school to which paragraph (b), (c) or (d) of the definition of *school-related place* applies, if the member of the school community is at that place for a reason that is connected with the school; or

- (b) the person poses an unacceptable and imminent risk of causing significant disruption to the relevant school or activities carried on by the relevant school; or
 - (c) the person poses an unacceptable and imminent risk of interfering with the wellbeing, safety or educational opportunities of students enrolled at the relevant school.
- (2) The authorised person must consider the following before making an immediate school community safety order in respect of a person—
- (a) any vulnerability of the person of which the authorised person is aware;
 - (b) whether the order is the least restrictive means available to address the grounds on which the order is proposed to be made.
- (3) An authorised person must not make an immediate school community safety order unless it is reasonably necessary to address the grounds on which the order is proposed to be made.

S. 2.1A.6
inserted by
No. 24/2021
s. 6.

2.1A.6 Coming into effect of immediate order

An immediate school community safety order comes into effect when it is given to the person to whom the order applies.

S. 2.1A.7
inserted by
No. 24/2021
s. 6.

2.1A.7 Matters that must be stated in an immediate order

- (1) Written notice of an immediate school community safety order must state the following—
- (a) the name of the person to whom the order applies;
 - (b) the school in respect of which the order is made;
 - (c) the terms of the order in accordance with section 2.1A.3(1);

- (d) the school-related places of the relevant school to which the order applies, as determined under section 2.1A.8(1);
 - (e) the grounds on which the order is made;
 - (f) the period for which the order remains in force, as determined under section 2.1A.8(1);
 - (g) any conditions attached to the order, as determined under section 2.1A.8(1);
 - (h) any actions that are specified under section 2.1A.8(2);
 - (i) the effect of section 2.1A.14;
 - (j) the orders that may be made by the Magistrates' Court if the person fails to comply with the order;
 - (k) any prescribed information.
- (2) An authorised person who makes an immediate school community safety order orally must state the following to the person to whom the order applies—
- (a) the school in respect of which the order is made;
 - (b) the grounds on which the order is made;
 - (c) the period for which the order remains in force, as determined by the authorised person under section 2.1A.8(1).

2.1A.8 Conditions and other matters for immediate orders

- (1) In making an immediate school community safety order an authorised person—
- (a) must determine the school-related places of the relevant school to which the order applies; and

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- (b) must determine the period for which the order is to remain in force, which is subject to any provisions of this Part as to the duration, revocation or expiry of immediate school community safety orders; and
- (c) may determine conditions to be attached to the order, including but not limited to times when the order does not apply or areas where the order does not apply.

Example

An immediate school community safety order may prohibit the person to whom the order applies from entering on school premises, subject to a condition that the person may enter the premises in particular circumstances, such as for a particular school event.

- (2) An authorised person, in making an immediate school community safety order, may specify in the order any reasonable and appropriate actions that the person to whom the order applies may take to have the order revoked.

Examples

The following are examples of actions that may be specified in the order—

- (a) participating in a specified course;
- (b) participating in a nominated alternative dispute resolution process;
- (c) apologising or retracting a statement;
- (d) participating in an assessment by an independent expert.

S. 2.1A.9
inserted by
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s. 6.

2.1A.9 Duration of immediate orders

- (1) An immediate school community safety order remains in force until whichever is the earlier of—
 - (a) the end of the period specified in the order;or

- (b) 14 days after the day on which the order is made; or
 - (c) as a result of a review under section 2.1A.12—
 - (i) the coming into force of an ongoing school community safety order; or
 - (ii) the revocation of the immediate school community safety order.
- (2) If an application for an extension of time to make submissions under section 2.1A.22 is approved, any time taken by the applicant within the extension of time period to make submissions is not counted towards the period referred to in subsection (1)(a) or (b).

2.1A.10 Revocation of immediate orders

- (1) An authorised person may revoke an immediate school community safety order—
- (a) if the order specifies actions under section 2.1A.8(2) and the person to whom the order applies—
 - (i) undertakes the actions specified in the order; and
 - (ii) provides evidence of the completion of the actions to the authorised person, in a form specified in the order; or
 - (b) for any other reason.
- (2) Revocation of an immediate school community safety order under subsection (1) may be made either orally or by written notice given to the person to whom the order applies.
- (3) If an authorised person revokes an immediate school community safety order orally, the authorised person must give the person to whom

S. 2.1A.10
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the order applies written notice of the revocation as soon as is practicable.

S. 2.1A.11
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s. 6.

2.1A.11 Person to whom immediate order applies may make submissions to authorised person

- (1) A person to whom an immediate school community safety order applies may make submissions to the authorised person at any time regarding the continuation of the immediate school community safety order.
- (2) Submissions under subsection (1) must be made in writing unless the person who is the subject of the order has written permission from the authorised person to make oral submissions.

S. 2.1A.12
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No. 24/2021
s. 6.

2.1A.12 Review of immediate order

- (1) As soon as practicable after making an immediate school community safety order, the authorised person must review the order and—
 - (a) make an ongoing school community safety order in accordance with Division 3; or
 - (b) revoke the immediate school community safety order.
- (2) A review under subsection (1) must take place no later than whichever of the following first occurs—
 - (a) the end of the period described in section 2.1A.9(1)(a);
 - (b) the end of the period described in section 2.1A.9(1)(b).
- (3) If, on reviewing the order under subsection (1), the authorised person decides that grounds do not exist for making the order, the authorised person must revoke the order.

- (4) In reviewing an immediate school community safety order under subsection (1), the authorised person must consider any submissions received under section 2.1A.11 before the review is completed.

2.1A.13 Communication and access arrangements

S. 2.1A.13
inserted by
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- (1) If an immediate school community safety order is made in respect of a person who is a parent of a child at the school, the authorised person must prepare a communication and access protocol.
- (2) A communication and access protocol must set out—
- (a) the measures to be taken to ensure that the parent may continue to communicate with the school and be informed about the child's education; and

Example

Where a parent is unable to attend a parent and teacher meeting.

- (b) arrangements to ensure the child's continued attendance at and safe access to the school and school activities, if as a result of the order the parent cannot escort the child to or from school or school activities; and
- (c) any matters that are required to be set out by the guidelines.
- (3) The authorised person must advise the parent of the communication and access protocol as soon as is reasonably practicable after the immediate school community safety order is given to the parent in writing.

2.1A.14 Contravention of immediate order

S. 2.1A.14
inserted by
No. 24/2021
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- (1) A person must not contravene an immediate school community safety order.

(2) Subsection (1) is a civil penalty provision.

Division 3—Ongoing school community safety orders

S. 2.1A.15
inserted by
No. 24/2021
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2.1A.15 Authorised person may make ongoing order

- (1) Subject to this Division, an authorised person may make an ongoing school community safety order that prohibits a person from all or any of the following—
- (a) entering or remaining on any school-related place of the relevant school specified in the order;
 - (b) approaching any staff member, or class of staff members, specified in the order to a distance of less than 25 metres, whether or not within any school-related place of the relevant school specified in the order;
 - (c) telephoning, sending a message to or otherwise contacting any staff member, or class of staff members, specified in the order;
 - (d) causing a third person to engage in the behaviour specified in paragraph (b) on the person's behalf;
 - (e) using or communicating on a communication platform or channel specified in the order that is owned or controlled by, or established in relation to, the relevant school specified in the order;
 - (f) any prescribed conduct.
- (2) An ongoing school community safety order must not be made in respect of a person—
- (a) who is under the age of 18 years; or

- (b) who is a staff member at the relevant school;
or
- (c) who is a student at the relevant school.

2.1A.16 Relationship between immediate order and ongoing order

S. 2.1A.16
inserted by
No. 24/2021
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An authorised person may make an ongoing school community safety order in respect of a person, whether or not an immediate school community safety order has been made in respect of that person.

2.1A.17 Grounds and other requirements for making ongoing orders

S. 2.1A.17
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- (1) An authorised person may make an ongoing school community safety order in respect of another person if the authorised person reasonably believes that the other person—
 - (a) poses an unacceptable risk of harm—
 - (i) to anybody at any school-related place of the relevant school to which paragraph (a) of the definition of *school-related place* applies; or
 - (ii) to a member of the school community at any school-related place of the relevant school to which paragraph (b), (c) or (d) of the definition of *school-related place* applies, if the member of the school community is at that place for a reason that is connected with the school; or
 - (b) poses an unacceptable risk of causing significant disruption to the relevant school or activities carried on by the relevant school; or

- (c) poses an unacceptable risk of interfering with the wellbeing, safety or educational opportunities of students enrolled at the relevant school; or
 - (d) has behaved and is likely to behave in a disorderly, offensive, intimidating or threatening manner to a member of the school community of the relevant school—
 - (i) at any school-related place of the relevant school to which paragraph (a) of the definition of *school-related place* applies; or
 - (ii) at any school-related place of the relevant school to which paragraph (b), (c) or (d) of the definition of *school-related place* applies, if the member of the school community is at that place for a reason that is connected with the school; or
 - (e) has engaged in and is likely to engage in vexatious communications with, or regarding, a staff member at the relevant school.
- (2) The authorised person must consider the following before making an ongoing school community safety order in respect of another person—
- (a) any vulnerability of the other person of which the authorised person is aware;
 - (b) whether the order is the least restrictive means available to address the grounds on which the order is proposed to be made.
- (3) An authorised person must not make an ongoing school community safety order unless it is reasonably necessary to address the grounds on which the order is proposed to be made.

2.1A.18 Process for giving ongoing order

- (1) An ongoing school community safety order may be made by giving written notice to the person to whom the order applies.
- (2) For the purposes of subsection (1), written notice is given to the person to whom the order applies if the notice—
 - (a) is personally handed to the person;
 - (b) is sent to the postal address or email address of the person.

S. 2.1A.18
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2.1A.19 Coming into effect of ongoing order

An ongoing school community safety order comes into effect when it is given to the person to whom the order applies.

S. 2.1A.19
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2.1A.20 Form of ongoing order

- (1) Written notice of an ongoing school community safety order must state the following—
 - (a) the name of the person to whom the order applies;
 - (b) the school in respect of which the order is made;
 - (c) the terms of the order in accordance with section 2.1A.15(1);
 - (d) the relevant school-related places to which the order applies, as determined under section 2.1A.24(1);
 - (e) the grounds on which the order has been made;
 - (f) the period for which the order is in force, as determined under section 2.1A.24(1);
 - (g) any conditions that are attached to the order, as determined under section 2.1A.24(1);

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- (h) any actions that are specified under section 2.1A.24(2);
 - (i) the effect of section 2.1A.28;
 - (j) the orders that may be made by the Magistrates' Court;
 - (k) any other prescribed information.
- (2) An ongoing school community safety order must set out the effect of sections 2.1A.29 and 2.1A.33 regarding internal and external review of the decision to issue an ongoing school community safety order.

S. 2.1A.21
inserted by
No. 24/2021
s. 6.

2.1A.21 Procedure before making ongoing order

- (1) An authorised person must not make an ongoing school community safety order unless the authorised person—
- (a) has given notice of the proposal to make the order to the person to whom the order is to apply; and
 - (b) has allowed the person to whom the order is to apply at least 7 days from the giving of the notice in which to make submissions on the proposal to the authorised person.
- (2) In determining whether to make an ongoing school community safety order, the authorised person must consider any submissions received under subsection (1)(b) that are made within the time specified in that paragraph.
- (3) A notice under subsection (1)(a) must attach a copy of the proposed order and must set out the following—
- (a) that the person to whom the order is to apply is entitled under subsection (1) to make written submissions on the proposal to make

the order within 7 days from the giving of the notice;

(b) any other prescribed information.

- (4) Submissions under subsection (1)(b) must be made in writing, unless the person to whom the order is to apply has written permission from the authorised person to make oral submissions.
- (5) The person to whom an ongoing school community safety order is to apply may, with the written permission of the authorised person, nominate another person to make a submission on their behalf under subsection (1)(b).

2.1A.22 Extension of time to make submissions

**S. 2.1A.22
inserted by
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- (1) An authorised person may extend the time within which submissions may be made under section 2.1A.21(1)(b), on application under subsection (2) by the person to whom the ongoing school community safety order is proposed to apply.
- (2) A person to whom the order is to apply may request that the authorised person extend the time within which submissions may be made under section 2.1A.21(1)(b).
- (3) If an authorised person decides to extend the time under subsection (1), the authorised person must give written notice of the extension to the person to whom the order is to apply which sets out—
- (a) the new time within which submissions must be made; and
 - (b) if the order is being made as result of a review under section 2.1A.12, the period as determined under section 2.1A.9 when the immediate school community safety order expires.
- (4) A request under subsection (2) may be made at any time before the order is made.

S. 2.1A.23
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No. 24/2021
s. 6.

2.1A.23 Communication and access arrangements for ongoing orders

- (1) If an ongoing school community safety order is made in respect of a person who is a parent of a child at the school, the authorised person must prepare a communication and access protocol.
- (2) A communication and access protocol must set out—
 - (a) the measures to be taken to ensure that the parent may continue to communicate with the school and be informed about the child's education; and

Example

Where a parent is unable to attend a parent and teacher meeting.

- (b) arrangements to ensure the child's continued attendance at and safe access to the school and school activities, if as a result of the order the parent cannot escort the child to or from the school or school activities; and
 - (c) any matters that are required to be set out by the guidelines.
- (3) The authorised person must advise the parent of the communication and access protocol as soon as is reasonably practicable after the order is given to the parent.

S. 2.1A.24
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No. 24/2021
s. 6.

2.1A.24 Conditions and other matters for ongoing orders

- (1) In making an ongoing school community safety order an authorised person—
 - (a) must determine the school-related places of the relevant school to which the order applies; and

- (b) must determine the period for which the order is to remain in force, which is subject to any provisions of this Part as to the duration, revocation or expiry of ongoing school community safety orders; and
- (c) may determine conditions to be attached to the order, including but not limited to times when the order does not apply or areas where the order does not apply.

Example

An ongoing school community safety order may prohibit the person to whom the order applies from entering on school premises, subject to a condition that the person may enter the premises in particular circumstances, such as for a particular school event. It may prohibit communication with staff members, subject to a condition that particular staff members identified in the order may be communicated with.

- (2) An authorised person, in making an ongoing school community safety order, may specify in the order any reasonable and appropriate actions that the person to whom the order applies may take to have the order revoked.

Examples

The following are examples of actions that may be specified in the order—

- (a) participating in a specified course;
- (b) participating in a nominated alternative dispute resolution process;
- (c) apologising or retracting a statement;
- (d) participating in an assessment by an independent expert.

S. 2.1A.25
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No. 24/2021
s. 6.

2.1A.25 Revocation of ongoing orders

An authorised person may revoke an ongoing school community safety order—

- (a) if the order specifies actions under section 2.1A.24(2) and the person to whom the order applies—
 - (i) undertakes the actions specified in the order; and
 - (ii) provides evidence of the completion of the actions to the authorised person, in a form specified in the order; or
- (b) for any other reason.

S. 2.1A.26
inserted by
No. 24/2021
s. 6.

2.1A.26 Variation of ongoing orders

- (1) An ongoing school community safety order may be varied by the authorised person who made the order—
 - (a) on the authorised person's own motion; or
 - (b) on the application of the person to whom the order applies.
- (2) A variation to an ongoing school community safety order may do any of the following—
 - (a) vary or revoke existing conditions or exceptions;
 - (b) impose new conditions;
 - (c) provide for new exceptions.
- (3) If an authorised person varies an ongoing school community safety order—
 - (a) subject to subsection (4), the authorised person must comply with sections 2.1A.15 to 2.1A.24 as if the application of those sections to the making of an ongoing school community safety order were to the varying

- of an ongoing school community safety order; and
- (b) the authorised person must give a written copy of the order as varied to the person to whom the order applies.
- (4) An authorised person is not required to comply with sections 2.1A.15 to 2.1A.24 in relation to a variation if the proposed variation—
- (a) is the same as the variation that has been requested by the person to whom the order applies; or
 - (b) is otherwise in favour of the person to whom the order applies.

2.1A.27 Duration of ongoing orders

Unless earlier revoked, an ongoing school community safety order continues in force for the period specified in the order, being a period not exceeding 12 months from the day on which the order was given to the person to whom the order applies.

S. 2.1A.27
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2.1A.28 Contravention of ongoing order

- (1) A person must not contravene an ongoing school community safety order.
- (2) Subsection (1) is a civil penalty provision.

S. 2.1A.28
inserted by
No. 24/2021
s. 6.

Division 4—Review of ongoing school community safety order

2.1A.29 Internal review

- (1) A person to whom an ongoing school community safety order applies may apply in writing to the school in respect of which the order was made for internal review of a decision—
 - (a) to make the order; or

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inserted by
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- (b) to vary the order on the authorised person's own motion; or
 - (c) to refuse an application for variation of the order by the person to whom the order applies under section 2.1A.26(1)(b); or
 - (d) to refuse to revoke an order under section 2.1A.25(a).
- (2) An application under subsection (1) must be referred by the school to a reviewer as soon as is practicable.
- (3) A reviewer must conduct a review of the decision in respect of which the application is made in accordance with—
- (a) this Division and any guidelines made by the Minister under Division 5; and
 - (b) the procedures for internal review published on the Internet site of—
 - (i) the Department, if the order relates to a Government school; or
 - (ii) the relevant school, if the order relates to a non-Government school.
- (4) Any internal review procedures determined under subsection (3)(b) must—
- (a) provide the person to whom the order applies with the opportunity to make written submissions or, if permitted by the reviewer to do so, oral submissions; and
 - (b) allow the person to whom the order applies to be represented, accompanied or assisted by another person; and
 - (c) require a written statement of the following to be provided to the person to whom the order applies—

- (i) the outcome of the review;
 - (ii) the reasons for the decision;
 - (iii) information setting out the person's entitlement to seek external review by VCAT; and
 - (d) be consistent with any guidelines made by the Minister under Division 5.
- (5) A reviewer may request the person to whom an ongoing school community safety order applies to provide further relevant information.

2.1A.30 Timelines for internal review

**S. 2.1A.30
inserted by
No. 24/2021
s. 6.**

- (1) An application for internal review must be made within 28 days after the decision that is the subject of the review.
- (2) An internal review decision should be made as soon as is reasonably practicable, and no later than 28 days after the application for internal review.
- (3) If the reviewer requests further information under section 2.1A.29(5), any time taken by the person to whom the order applies to respond to that request is not counted towards the 28 day period in subsection (2).
- (4) The reviewer may extend the 28 day period in subsection (2) for a further period of 28 days—
 - (a) on written application of the person to whom the order applies; or
 - (b) of the reviewer's own motion.
- (5) If a decision is not made within the period required by this section (including, if applicable, the period as extended) the ongoing school community safety order is revoked.

S. 2.1A.31
inserted by
No. 24/2021
s. 6.

2.1A.31 Effect of commencement of review on continuation of ongoing order

An ongoing school community safety order continues in force in accordance with the period specified in the order, despite the commencement of a review under this Division, until the review is completed.

S. 2.1A.32
inserted by
No. 24/2021
s. 6.

2.1A.32 Outcome of internal review

A reviewer may make a decision that affirms, varies or revokes the decision that is the subject of the review.

S. 2.1A.33
inserted by
No. 24/2021
s. 6.

2.1A.33 Review by VCAT

A person to whom an ongoing school community safety order applies that is the subject of a decision under section 2.1A.32 may apply to the Victorian Civil and Administrative Tribunal for review of that decision.

S. 2.1A.34
inserted by
No. 24/2021
s. 6.

2.1A.34 Time period for making application for review

An application for review under section 2.1A.33 must be made within 28 days of the later of—

- (a) the day on which the decision is made; or
- (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.

Division 5—Guidelines

2.1A.35 Authorised person to give effect to guidelines

- (1) An authorised person must give effect to any guidelines made by the Minister under this Division when making, varying or revoking a school community safety order.
- (2) The Secretary must give effect to any guidelines made by the Minister under this Division when authorising a person under section 2.1A.2.
- (3) A decision made by an authorised person is not invalid merely because the authorised person has not complied with guidelines made by the Minister under this Division, but the failure to comply with guidelines may be taken into account if the decision is the subject of internal or external review.

S. 2.1A.35
inserted by
No. 24/2021
s. 6.

2.1A.36 Reviewer to give effect to guidelines

- (1) A reviewer must give effect to any guidelines made by the Minister under this Division when conducting an internal review under Division 4.
- (2) A decision made by a reviewer is not invalid merely because the reviewer has not complied with guidelines made by the Minister under this Division, but the failure to comply with guidelines may be taken into account if the decision made in relation to the internal review is the subject of external review.

S. 2.1A.36
inserted by
No. 24/2021
s. 6.

2.1A.37 Ministerial guidelines

- (1) The Minister, by determination, may make guidelines for or with respect to the following—
 - (a) matters to be considered in determining whether or not to make a school community safety order, including examples that

S. 2.1A.37
inserted by
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illustrate how the requirements of this Act might apply;

Examples

Examples of matters that can be provided for under this paragraph include—

- (a) the considerations to be taken into account with regard to a person's vulnerabilities; and
 - (b) the considerations to be taken into account in determining the least restrictive means to address a risk; and
 - (c) the circumstances in which to obtain police involvement.
- (b) the processes for making submissions and reviewing decisions to make school community safety orders;
 - (c) alternative arrangements that may be made for persons to whom school community safety orders apply or students who may be affected by these orders;
 - (d) circumstances in which school community safety orders should be subject to conditions and the nature of the conditions;
 - (e) circumstances in which ongoing school community safety orders should be varied and the nature of the variations;
 - (f) circumstances in which the grounds for the making of ongoing school community safety orders apply;
 - (g) the length of time for which school community safety orders should remain in force;
 - (h) the circumstances in which school community safety orders should be revoked;
 - (i) enforcement of school community safety orders;

- (j) persons or classes of person the Secretary may authorise to be authorised persons under section 2.1A.2(1)(d);
 - (k) any other related matters;
 - (l) any other prescribed matters.
- (2) Guidelines made under subsection (1) are not a legislative instrument for the purposes of the **Subordinate Legislation Act 1994**.

2.1A.38 Notice and publication of guidelines

S. 2.1A.38
inserted by
No. 24/2021
s. 6.

- (1) Guidelines made by the Minister under section 2.1A.37 must be published on the Internet site of the Department.
- (2) Notice of the making of any guidelines under section 2.1A.37 must be published in the Government Gazette.
- (3) The Minister may amend the guidelines at any time, and must cause an amended version of the guidelines to be published on the Internet site of the Department.
- (4) Notice of the making of an amendment under subsection (3) must be published in the Government Gazette.

Division 6—Civil penalties and enforcement

2.1A.39 Definition

In this Part—

civil penalty means a penalty imposed on a person by the Magistrates' Court under section 2.1A.41.

S. 2.1A.39
inserted by
No. 24/2021
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2.1A.40 Application to the Magistrates' Court

- (1) The Secretary may apply to the Magistrates' Court for an order under this Division.

S. 2.1A.40
inserted by
No. 24/2021
s. 6.

- (2) A nominee of the proprietor of a registered school may apply to the Magistrates' Court for an order under this Division relating to a school community safety order made by an authorised person at the registered school.

S. 2.1A.41
inserted by
No. 24/2021
s. 6.

2.1A.41 Magistrates' Court may order payment of civil penalty

If the Court is satisfied that a person has contravened a civil penalty provision, the Court may order the person to pay a civil penalty of up to 60 penalty units.

S. 2.1A.42
inserted by
No. 24/2021
s. 6.

2.1A.42 Payment of penalty

- (1) Any civil penalty ordered to be paid under section 2.1A.41 is taken to be a debt due to the State and may be recovered by the State in a court of competent jurisdiction.
- (2) Any money paid or recovered under an order under section 2.1A.41 must be paid into the Consolidated Fund.

S. 2.1A.43
inserted by
No. 24/2021
s. 6.

2.1A.43 Magistrates' Court may make other orders

If the Court is satisfied that a person has contravened a term of a school community safety order, the Court may make one or more of the following orders—

- (a) an order compelling the person to comply with the order;
- (b) an order compelling the person to take specified action to comply with the order;
- (c) any other order that the Court considers appropriate.

Division 7—Statutory review

2.1A.44 Statutory review of provisions

The Minister must cause a review of the operation of this Part to be conducted before the second anniversary of the day on which all of the provisions of this Part are in operation.

**S. 2.1A.44
inserted by
No. 24/2021
s. 6.**

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

- (b) before any person acting judicially (within the meaning of the **Evidence (Miscellaneous Provisions) Act 1958**); or

S. 2.2.2(1)(b)
amended by
No. 69/2009
s. 54(Sch. Pt 2
item 20.1).

- (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.
- (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.

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.

- (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;

- (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.

- (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—

early childhood teacher has the meaning given in section 2.6.1;

S. 2.3.1 def. of *early childhood teacher* inserted by No. 19/2014 s. 36(a).

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, but does not include an early childhood teacher.

S. 2.3.1 def. of *teacher* amended by No. 19/2014 s. 36(b).

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S. 2.3.1 def. of *teaching staff* repealed by No. 19/2014 s. 36(c).

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.

- (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
 - (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 and any parents' club of a school in relation to which the council is constituted; 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 made under subsection (6)(a) dissolving a council or a parents' club may make provision for or with respect to any matter of an ancillary, consequential, transitional or savings nature consequent on the making of the Order, including the rights, obligations and assignment of any property or other assets (subject to trusts) of any council or parents' club referred to in the Order.

S. 2.3.2(6)(a)
amended by
No. 37/2015
s. 5(1).

S. 2.3.2(7)
substituted by
No. 37/2015
s. 5(2).

- (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.
- (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.

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;
- (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.

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;
- (ca) subject to subsection (1A), grant a licence in relation to school lands or buildings in accordance with any Ministerial Order and any guidelines issued by the Minister;
- (cb) enter into a licensing arrangement in relation to any other land in accordance with any Ministerial Order and any guidelines issued by the Minister;
- (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.

S. 2.3.6(1)(ca)
inserted by
No. 37/2015
s. 6(1).

S. 2.3.6(1)(cb)
inserted by
No. 37/2015
s. 6(1).

(1A) Subsection (1)(ca) does not apply to a licence granted under section 2.3.21.

S. 2.3.6(1A)
inserted by
No. 37/2015
s. 6(2).

(1B) Subsection (1)(ca) applies despite anything to the contrary in the **Crown Land (Reserves) Act 1978**.

S. 2.3.6(1B)
inserted by
No. 37/2015
s. 6(2).

- (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.

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

- (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. 2.3.9
(Heading)
amended by
No. 19/2014
s. 37(1).

2.3.9 Eligibility of person to be employed as a teacher or an early childhood teacher

S. 2.3.9(1)
amended by
No. 19/2014
s. 37(2),
substituted by
No. 31/2018
s. 33(1),
amended by
No. 34/2020
s. 211.

- (1) A person who has, at any time, been convicted or found guilty of a category A offence in Victoria or an equivalent offence in another jurisdiction or been given a WWC exclusion, is not eligible to be employed by a school council as a teacher or an early childhood teacher.

S. 2.3.9(2)
amended by
No. 19/2014
s. 37(3).

- (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 Division 3 or 4 of that Part.

S. 2.3.9(3)
inserted by
No. 19/2014
s. 37(4),
substituted by
No. 33/2020
s. 15.

- (3) A person is not eligible to be employed by a school council as an early childhood teacher in an early childhood service unless the person is registered as an early childhood teacher under Division 3A of Part 2.6.

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 or an early childhood teacher and who has, at any time, been convicted or found guilty of a category A offence in Victoria or an equivalent offence in another jurisdiction or been given a WWC exclusion. **S. 2.3.10(1) amended by No. 19/2014 s. 38(1), substituted by No. 31/2018 s. 33(2), amended by No. 34/2020 s. 212.**
- (2) If a person who is employed or engaged by a school council as a teacher within the meaning of Part 2.6 or an early childhood teacher 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— **S. 2.3.10(2) amended by No. 19/2014 s. 38(2)(a).**
- (a) suspend the person without pay from duty as a teacher or an early childhood teacher for the period that the person's registration or permission to teach is refused, cancelled or suspended; or **S. 2.3.10(2)(a) amended by No. 19/2014 s. 38(2)(b).**
- (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 or an early childhood teacher— **S. 2.3.10(3) amended by No. 19/2014 s. 38(3).**
- (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
- (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).

S. 2.3.10A
inserted by
No. 19/2014
s. 39.

2.3.10A Employment, dismissal and termination of holders of temporary approvals

S. 2.3.10A(1)
substituted by
No. 31/2018
s. 33(3),
amended by
No. 34/2020
s. 213.

- (1) A person who holds a temporary approval who has, at any time, been convicted or found guilty of a category A offence in Victoria or an equivalent offence in another jurisdiction or been given a WWC exclusion, is not eligible to be employed by a school council under an exemption granted to an early childhood service.
- (2) A school council must dismiss or remove a person who holds a temporary approval if—
 - (a) the person's temporary approval expires or is revoked under section 2.6.60E; or
 - (b) the exemption granted to the early childhood service expires or is revoked under section 2.6.60E.

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.

- (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.
- (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.

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.

- (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

- (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.

- (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.
- (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

S. 2.3.31
amended by
No. 69/2009
s. 54(Sch. Pt 2
item 20.1).

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 (Miscellaneous Provisions) 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—

- (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.

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;

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;

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;

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;

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

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

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

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—

S. 2.4.1 def. of *registered* substituted by No. 19/2014 s. 40.

- (a) a person who holds non-practising registration under that Part; or
- (b) a person who is registered under Division 3A of 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

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

- (b) principals and assistant principals; and
 - (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;
- (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. 2.4.3(3)(f)
amended by
No. 70/2008
s. 5(2).

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.

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

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.

- (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, been convicted or found guilty of a category A offence in Victoria or an equivalent offence in another jurisdiction or been given a WWC exclusion, 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.

S. 2.4.7(2)
substituted by
No. 31/2018
s. 33(4),
amended by
No. 34/2020
s. 214.

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.

- (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.

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.

- (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

- (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

(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)—

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

(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 an on-going 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.

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

(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

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.

- (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.

Division 3A—The Executive Class

Pt 2.4 Div. 3A
(Heading and
ss 2.4.23A–
2.4.23I)
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. 2.4.23A
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. 2.4.23B
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

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

(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.

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

2.4.23D Matters regulated by a contract of employment

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.

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

2.4.23E Travelling and subsistence allowances etc.

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.

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

2.4.23F Termination of a contract of employment

(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

- 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, 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.

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

2.4.23H Contracts prevail in certain circumstances

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.

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

2.4.23I 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 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.
- (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.

- (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.
- (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 Reform Act 2012**.

S. 2.4.30(4)(b)
amended by
No. 20/2012
s. 226(Sch. 5
item 12).

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.

- (2) A person referred to in subsection (1) who satisfies the criteria set out in subsection (2A), 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.

S. 2.4.31(2)
amended by
No. 45/2009
s. 5(1).

- (2A) For the purposes of subsection (2), the criteria for a person to be entitled to be re-employed are as follows—

S. 2.4.31(2A)
inserted by
No. 45/2009
s. 5(2).

- (a) if the person was employed as a teacher immediately before the person's employment to an office of a type specified by Ministerial Order, the person satisfies the eligibility criteria set out in the Ministerial Order referred to in section 2.4.7(1);
- (b) if the person was not employed as a teacher immediately before the person's employment to an office of a type specified by Ministerial Order, the person satisfies the criteria set out in a Ministerial Order made under section 5.10.4 for or with respect to a matter referred to in item 8 of Schedule 6;

S. 2.4.31
(2A)(c)
substituted by
No. 31/2018
s. 33(5),
amended by
No. 34/2020
s. 215.

(c) the person has not, at any time, been convicted or found guilty of a category A offence in Victoria or an equivalent offence in another jurisdiction or been given a WWC exclusion;

(d) if the person is to be re-employed as a teacher, the person is registered under Part 2.6.

(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.

S. 2.4.31(4)
inserted by
No. 45/2009
s. 5(3).

(4) A person may apply to a Merit Protection Board for a review of a decision by the Secretary to refuse to re-employ the person to an on-going position in the teaching service if—

(a) the person is not a member of the teaching service; and

(b) the grounds for the refusal are that the person does not possess the qualifications or experience required by a Ministerial Order necessary for re-employment to an on-going position in the teaching service.

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.
- (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

S. 2.4.37
amended by
No. 6/2014
s. 15.

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 Victorian Public Sector Commission 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
 - (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 9A and 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;

**S. 2.4.44(2)(b)
amended by
No. 27/2010
s. 5.**

- (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
amended by
No. 58/2007
s. 6,
substituted by
No. 27/2010
s. 6.

2.4.45 Membership of Boards

- (1) A Merit Protection Board consists of 3 members of whom—
 - (a) one is to be the chairperson who is to be selected by the senior chairperson from the pool of persons referred to in section 2.4.45A(1)(a); and
 - (b) one is to be selected by the senior chairperson from the pool of persons referred to in section 2.4.45A(1)(b); and
 - (c) one is to be selected by the senior chairperson from the pool of persons referred to in section 2.4.45A(1)(c).
- (2) In this section, *senior chairperson* means the person appointed under section 2.4.45A(2).

S. 2.4.45A
inserted by
No. 27/2010
s. 6.

2.4.45A Pool of appointed persons

- (1) The Governor in Council may appoint to a pool—
 - (a) persons who have been nominated by the Minister to be chairpersons of Merit Protection Boards; and
 - (b) persons who have been nominated by the Secretary; and
 - (c) persons who are employees in the teaching service who have been nominated by the Minister after calling for expressions of interest from all employees in the teaching service.

- (2) The Governor in Council must appoint a person referred to in subsection (1)(a) to be the senior chairperson of the Merit Protection Boards.

2.4.45B Terms and conditions of appointment of pool members

S. 2.4.45B
inserted by
No. 27/2010
s. 6.

- (1) A member of the pool appointed under section 2.4.45A holds office for the period, not exceeding 3 years, specified in the instrument of appointment and is eligible for re-appointment.
- (2) A member other than a public servant or an employee is entitled to the remuneration and allowances (if any) fixed in respect of him or her from time to time by the Minister.
- (3) 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.

2.4.46 Resignation and removal from office of pool members

S. 2.4.46
substituted by
No. 27/2010
s. 6.

- (1) A member of the pool appointed under section 2.4.45A 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 the pool from office.

2.4.47 Acting senior chairperson

- (1) The Minister may appoint a member of the pool appointed under section 2.4.45A to act in the place of the senior chairperson appointed under section 2.4.45A(2) who is absent or for any other reason is unable to perform the duties of office.

S. 2.4.47
repealed by
No. 27/2010
s. 7, new
s. 2.4.47
inserted by
No. 14/2013
s. 4.

- (2) Subject to this section, a person appointed under subsection (1)—
- (a) has all the powers and may perform all the functions and duties of the senior chairperson; and
 - (b) is entitled to the remuneration and allowances (if any) to which the senior chairperson would have been entitled for performing those duties; and
 - (c) is subject to the same terms and conditions of appointment as the senior chairperson.
- (3) A person appointed under subsection (1) may not sit as a member of a Merit Protection Board in place of the senior chairperson at a hearing of a review or an appeal which had commenced but had not concluded before the absence or inability of the senior chairperson commenced.

S. 2.4.48
amended by
No. 27/2010
s. 8.

2.4.48 Allocation of work amongst the Boards

The senior chairperson appointed under section 2.4.45A 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.

2.4.49A Member unable to perform duties

**S. 2.4.49A
inserted by
No. 27/2010
s. 9.**

- (1) If—
- (a) the hearing of a review or an appeal before a Merit Protection 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 review or appeal must be unanimous.

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

2.4.51 Reviews

- (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) 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.

**S. 2.4.51(1)
amended by
Nos 70/2008
s. 10, 37/2015
s. 7.**

- (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—
 - (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.

S. 2.4.53A
inserted by
No. 45/2009
s. 6.

2.4.53A Review of Secretary's decision not to re-employ

- (1) If a Merit Protection Board receives an application under section 2.4.31(4), 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 re-employ the applicant to an on-going position in the teaching service.

2.4.54 Review of appointment of principal

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

- (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—
 - (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—
- (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.
- (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.
- (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 appointed under section 2.4.45A(2) 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.
- (4) A Merit Protection Board may permit an appeal to be instituted out of time if it considers that special circumstances exist.

S. 2.4.57(2)
amended by
No. 14/2013
s. 5.

- (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, been convicted or found guilty of a category A offence in Victoria or an equivalent offence in another jurisdiction or been given a WWC exclusion, the Secretary must dismiss the employee from the teaching service.

**S. 2.4.58
amended by
Nos 31/2018
s. 33(6),
34/2020 s. 216.**

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—

- (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

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.

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

2.4.59D Secretary's options on receiving a report

- (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.

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

2.4.59E Notice to employee relating to determination

- (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. 2.4.59E
inserted by
No. 70/2008
s. 12.

- (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 Division against an employee who—
 - (a) conducts himself or herself in a disgraceful, improper or unbecoming manner in an official capacity or otherwise; or

S. 2.4.60(1)
amended by
No. 42/2016
s. 14(1).

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 Division 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—
 - (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.

S. 2.4.61(1)
amended by
No. 42/2016
s. 14(1).

2.4.61A Secretary may terminate employee for serious misconduct

- (1) The Secretary may terminate the employment of an employee if the Secretary reasonably believes that the employee has engaged in serious misconduct.
- (2) Sections 2.4.60, 2.4.61 and 2.4.66 do not apply in relation to a termination under subsection (1).
- (3) If the Secretary terminates the employment of an employee under this section, the Secretary, by notice in writing, must advise the employee of—
 - (a) the determination of the Secretary to terminate the employment of the employee; and

S. 2.4.61A
inserted by
No. 42/2016
s. 5.

- (b) the right to appeal to a Disciplinary Appeals Board against that determination.

Note

If the Secretary terminates the employment of an employee after holding an inquiry under section 2.4.61(1) the notice provision in section 2.4.61(2) will apply.

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 Setting aside etc. of conviction or finding of guilt

If the Secretary takes action against an employee under section 2.4.61 or 2.4.61A on the ground referred to in section 2.4.60(1)(c) and the conviction or finding of guilt is subsequently quashed or set aside 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.

S. 2.4.63
(Heading)
amended by
No. 68/2009
s. 97(Sch.
item 48.2).
S. 2.4.63
amended by
Nos 68/2009
s. 97(Sch.
item 48.3),
42/2016 s. 6.

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.
- (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.
- (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.
- (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.

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

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

2.4.68 Appeal

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

- (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.
- (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.

2.4.69 Reinstatement and payments after allowance of appeal against termination

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

- (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.
- (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 appointed under section 2.4.45A(2).

S. 2.4.71 def. of *senior chairperson* amended by No. 14/2013 s. 6.

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 2.4.59F, 2.4.61 or 2.4.61A.

S. 2.4.72(2) amended by Nos 27/2010 s. 10, 42/2016 s. 7.

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 are Australian lawyers of at least 5 years standing 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.

S. 2.4.73(2)(a)
substituted by
No. 17/2014
s. 160(Sch. 2
item 34.1).

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.

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

- (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.

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 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, VCAL or the VPC; 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;

S. 2.5.1 def. of
course
amended by
No. 45/2021
s. 13.

S. 2.5.1 def. of
*early
childhood*
inserted by
No. 19/2014
s. 41.

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

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

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

S. 2.5.3(2)(c)
amended by
No. 45/2021
s. 14.

- (ii) courses for students at other school years;
- (c) oversee the delivery of, and conduct assessments for, the VCE, VCAL, the VPC 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).

- (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(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).

- 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;

- (tab) receive information about, and investigate or coordinate the investigation of, alleged breaches of national protocols or guidelines published from time to time pursuant to an Act of the Commonwealth for the conduct of assessments against national standards for measuring and reporting on student performance;
- (tac) report on the outcome of investigations referred to in paragraph (tab) to a person or body approved by the Minister;
- (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)(tab)
inserted by
No. 14/2013
s. 7.

S. 2.5.3(2)(tac)
inserted by
No. 14/2013
s. 7.

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.
- (1A) The Authority may employ staff for a fixed period or on a casual or sessional basis—
- (a) for the purposes of developing and conducting assessments under section 2.5.3(2)(a), (b), (c) and (d); and
 - (b) for any purpose specified in a Ministerial Order.
- (1B) For the purposes of subsection (1A), 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 the Authority as if those employees were employees of the teaching service.
- (2) The Authority may require schools and other persons, bodies or agencies providing accredited courses—
- (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

S. 2.5.5(1A)
inserted by
No. 9/2021
s. 3.

S. 2.5.5(1B)
inserted by
No. 9/2021
s. 3.

S. 2.5.5(3)
substituted by
No. 45/2021
s. 3.

- (ii) any other information specified by the Authority.
- (3) The Authority may license or permit a registered school or other body to provide—
 - (a) an accredited course owned by the Authority or in which the Authority has a proprietary interest; or
 - (b) a component of 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.
- (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).

- (7) A person appointed to a committee, other than a person referred to in subsection (8), is entitled to be paid—
- (a) any remuneration that is fixed from time to time by the Governor in Council; and

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

- (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 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
 - (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.

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

2.5.13 Decision on report

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

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

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

- (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.
- (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.

- (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

- (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.

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.
- (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.

2.5.21A Review of reprimand by nominated appeals committee member

- (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

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

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.
- (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.
- (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.
- (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—

S. 2.6.1 def. of *approved early childhood teaching qualification* inserted by No. 19/2014 s. 42(a).

approved early childhood teaching qualification means—

- (a) a qualification included in the list of approved early childhood teaching qualifications published under the national regulations; or
- (b) a qualification that the National Authority has determined is equivalent to a qualification referred to in paragraph (a);

S. 2.6.1 def. of *Australian Education Union* inserted by No. 9/2016 s. 14.

Australian Education Union means the Australian Education Union Victorian Branch (ABN 44 673 398 674) or any successor in law;

S. 2.6.1 def. of *complaint* substituted by No. 10/2021 s. 4(3)(b).

complaint means a complaint under section 2.6.30A;

S. 2.6.1 def. of *continuing education program* inserted by No. 10/2021 s. 4(1).

continuing education program means a program, unit or course of study providing for the continuing education of teachers or early childhood teachers;

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

early childhood teacher—

- (a) includes a preschool teacher and a kindergarten teacher; and
- (b) does not include an educator (within the meaning of section 5 of the Education and Care Services National Law (Victoria) or within the meaning of section 3 of the **Children's Services Act 1996**) who does not hold an approved early childhood teaching qualification; and
- (c) does not include a teacher;

S. 2.6.1 def. of *early childhood teacher* inserted by No. 19/2014 s. 42(a), amended by No. 9/2021 s. 5.

equivalent pathway program means a program or course of study that offers to provide a pathway to entry into a program or course of study leading to qualifications for entry to teaching as a teacher;

S. 2.6.1 def. of *equivalent pathway program* inserted by No. 10/2021 s. 4(1).

fitness to teach, in relation to a person, means whether the character, reputation and conduct of a person are such that the person should be allowed to teach in a school or in an early childhood service;

S. 2.6.1 def. of *fitness to teach* inserted by No. 27/2010 s. 11, amended by No. 19/2014 s. 42(c).

health information has the same meaning as in section 3(1) of the **Health Records Act 2001**;

S. 2.6.1 def. of *health information* inserted by No. 10/2021 s. 4(2).

hearing panel means—

- (a) a panel appointed under Division 12 to hold an informal or formal hearing into a registered teacher's competence or fitness to teach or the conduct of the registered teacher; or

S. 2.6.1 def. of *hearing panel* inserted by No. 27/2010 s. 11.

- (b) a medical panel appointed under Division 12 to hold a hearing into a registered teacher's ability to practise as a teacher;

S. 2.6.1 def. of *impairment* inserted by No. 27/2010 s. 11.

impairment, in relation to a person, means the person has a physical or mental impairment, disability, condition or disorder including substance abuse or dependence;

S. 2.6.1 def. of *Independent Education Union* inserted by No. 9/2016 s. 14.

Independent Education Union means the Independent Education Union of Australia, Victoria Tasmania Branch trading as the Victorian Independent Education Union (ABN 34 532 902 687) or any successor in law;

S. 2.6.1 def. of *initial teacher education program* inserted by No. 10/2021 s. 4(1).

initial teacher education program means a program or course of study—

- (a) leading to qualifications for entry to teaching as a teacher; and
(b) that is approved by the Institute under Division 2A as an initial teacher education program;

S. 2.6.1 def. of *kindergarten funding guidelines* inserted by No. 19/2014 s. 42(b).

kindergarten funding guidelines means the guidelines in relation to kindergarten funding contained in The Kindergarten Guide published on the Department's website;

S. 2.6.1 def. of *misconduct* inserted by No. 27/2010 s. 11, amended by No. 19/2014 s. 42(d).

misconduct, in relation to a teacher or an early childhood teacher, includes—

- (a) conduct of the teacher or early childhood teacher occurring in connection with the practice of teaching that is of a lesser standard than a member of the public or members of the teaching profession are entitled to

expect from a reasonably proficient teacher; and

- (b) the contravention of, or failure to comply with a condition imposed on the registration of the teacher or early childhood teacher by or under this Part; and
- (c) the breach of an agreement made under this Act between the teacher or early childhood teacher and the Institute;

National Authority has the meaning given in section 5(1) of the Education and Care Services National Law (Victoria);

S. 2.6.1 def. of *National Authority* inserted by No. 19/2014 s. 42(a).

nominating organisation means an organisation that may make nominations under section 2.6.6AB(1);

S. 2.6.1 def. of *nominating organisation* inserted by No. 9/2016 s. 14.

notification, in Divisions 10, 10A and 11, means a notification under section 2.6.30;

S. 2.6.1 def. of *notification* inserted by No. 10/2021 s. 4(3)(a).

pathway program means a program or course of study—

S. 2.6.1 def. of *pathway program* inserted by No. 10/2021 s. 4(1).

- (a) offering to provide a pathway to entry into an initial teacher education program; and
- (b) identified or marketed as offering a pathway specified in paragraph (a); and
- (c) approved by the Institute under Division 2B as a pathway program;

S. 2.6.1 def. of *personal information* inserted by No. 10/2021 s. 4(2).

personal information has the same meaning as in section 3 of the **Privacy and Data Protection Act 2014**;

S. 2.6.1 def. of *preliminary assessment* inserted by No. 10/2021 s. 4(3)(a).

preliminary assessment means an assessment under section 2.6.31;

S. 2.6.1 def. of *Register of Disciplinary Action* inserted by No. 19/2014 s. 16(2).

Register of Disciplinary Action means the Register of Disciplinary Action established under Division 13A;

S. 2.6.1 def. of *sensitive information* inserted by No. 10/2021 s. 4(2).

sensitive information has the same meaning as in Schedule 1 to the **Privacy and Data Protection Act 2014**;

S. 2.6.1 def. of *suitability to teach* inserted by No. 27/2010 s. 11.

suitability to teach in relation to a person means—

- (a) whether the person is fit to teach; and
- (b) whether the person is physically or mentally able to teach;

S. 2.6.1 def. of *teacher* amended by No. 14/2013 s. 8.

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, whether the school was within or outside of Australia, 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—

S. 2.6.3(1)(a)
amended by
No. 27/2010
s. 12(a).

(a) recognise and regulate members of the teaching profession;

S. 2.6.3(1)(ab)
inserted by
No. 10/2021
s. 5(1).

(ab) subject to subsection (1B), recommend for the approval of the Minister under section 2.6.5 requirements, criteria or standards that a program or course of study must satisfy before the Institute approves the program or course as an initial teacher education program;

S. 2.6.3(1)(b)
substituted by
No. 10/2021
s. 5(1).

(b) approve programs or courses of study as initial teacher education programs;

S. 2.6.3(1)(ba)
inserted by
No. 10/2021
s. 5(1).

(ba) set requirements, criteria or standards that a program or course of study must satisfy before the Institute approves the program or course as a pathway program;

S. 2.6.3(1)(bb)
inserted by
No. 10/2021
s. 5(1).

(bb) approve programs or courses of study as pathway programs;

S. 2.6.3(1)(c)
amended by
Nos 28/2010
s. 5(1),
10/2021
s. 5(2).

(c) recommend for the approval of the Minister criteria and standards for the registration and renewal of registration of, or for the recognition of higher levels of professional practice attained by, teachers in schools in Victoria;

S. 2.6.3(1)(ca)
inserted by
No. 19/2014
s. 43(1)(a).

(ca) recommend for the approval of the Minister criteria and standards for the registration and renewal of registration of, or for the recognition of higher levels of professional practice attained by, registered early

- childhood teachers in early childhood services in Victoria;
- (d) develop, establish and maintain—
- (i) standards of professional practice for entry into and remaining in the teaching profession; and
 - (ii) standards for the recognition of higher levels of professional practice attained by teachers and early childhood teachers in Victorian schools and early childhood services;
- (e) grant registration or permission to teach in Victorian schools;
- (ea) grant registration to teach in Victorian early childhood services;
- (f) issue certificates of registration to those teachers who are registered to, or have permission to, teach in schools in Victoria;
- (fa) issue certificates of registration to those early childhood teachers who are registered to teach in Victorian early childhood services;
- (g) maintain a register of teachers and early childhood teachers who are registered to, or have permission to, teach in schools and early childhood services in Victoria;
- (ga) establish and maintain a Register of Disciplinary Action in relation to registered teachers or former registered teachers;
- (h) develop, maintain and promote a code of conduct for the teaching profession;

S. 2.6.3(1)(d) substituted by No. 28/2010 s. 5(2).

S. 2.6.3 (1)(d)(ii) amended by No. 19/2014 s. 43(1)(b).

S. 2.6.3(1)(ea) inserted by No. 19/2014 s. 43(1)(c).

S. 2.6.3(1)(fa) inserted by No. 19/2014 s. 43(1)(d).

S. 2.6.3(1)(g) substituted by No. 19/2014 s. 43(1)(e).

S. 2.6.3(1)(ga) inserted by No. 19/2014 s. 17.

S. 2.6.3(1)(i)
amended by
Nos 27/2010
s. 12(b),
19/2014
s. 43(1)(f).

(i) investigate the conduct, competence and fitness to teach of registered teachers and whether a registered teacher's ability to practise as a teacher or an early childhood teacher is seriously detrimentally affected or likely to be seriously detrimentally affected because of an impairment and impose sanctions where appropriate;

S. 2.6.3(1)(j)
amended by
No. 19/2014
s. 43(1)(g).

(j) develop and maintain a Professional Learning Framework to support and promote the continuing education and professional development of teachers and early childhood teachers;

S. 2.6.3(1)(ja)
inserted by
No. 10/2021
s. 5(3).

(ja) set requirements, criteria or standards that a program, unit or course of study must satisfy before the Institute endorses the program, unit or course of study as a continuing education program;

S. 2.6.3(1)(jb)
inserted by
No. 10/2021
s. 5(3).

(jb) endorse programs, units or courses of study as continuing education programs;

(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;

S. 2.6.3(1)(la)
inserted by
No. 27/2010
s. 12(c).

(la) recognise and promote the role and activities of the Institute;

S. 2.6.3(1)(m)
amended by
No. 19/2014
s. 43(1)(h).

(m) advise the Minister about any matters concerning teachers and early childhood teachers including the professional development needs of teachers and early childhood teachers;

- (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.
- (1A) When performing any regulatory function under subsection (1), the Institute must consider the wellbeing and safety of children, including by taking into account community expectations. **S. 2.6.3(1A) inserted by No. 31/2018 s. 47.**
- (1B) Before making any recommendations to the Minister under subsection (1)(ab), the Institute must consider any requirements, criteria or standards for programs or courses of study leading to qualifications for entry to teaching as a teacher that have been agreed to with other States, Territories or the Commonwealth, including teacher registration authorities in those States or Territories. **S. 2.6.3(1B) inserted by No. 10/2021 s. 5(4).**
- (1C) The Minister must not approve requirements, criteria or standards that a program or course of study must satisfy before the Institute approves the program or course as an initial teacher education program unless those requirements, criteria or standards have been recommended to the Minister by the Institute under subsection (1)(ab). **S. 2.6.3(1C) inserted by No. 10/2021 s. 5(4).**
- (2) The Minister may not approve criteria and standards for the registration or renewal of registration of, or for the recognition of higher levels of professional practice attained by, teachers and early childhood teachers in schools and early childhood services in Victoria unless they have been recommended by the Institute under subsection (1)(c) or (ca). **S. 2.6.3(2) amended by Nos 28/2010 s. 5(3), 19/2014 s. 43(2), 10/2021 s. 5(5).**

S. 2.6.3(3)
inserted by
No. 10/2021
s. 5(6).

- (3) The Institute must perform its functions under subsection (1)(c), (ca), (d), (j), (k) and (l) having regard to raising the quality of teaching.

2.6.4 Powers of Institute

S. 2.6.4(2)
amended by
No. 42/2016
s. 14(2).

- (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.

S. 2.6.4(2)(a)
amended by
No. 42/2016
s. 14(3).

- (2) Without limiting subsection (1), the Institute may—
- (a) 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.
- (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 and approvals

- (1) 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.

Note

See section 5.2.1 for the Minister's power to issue a policy, guideline or direction to the Institute.

- (2) Subject to section 2.6.3(1C), the Minister may approve requirements, criteria or standards that a program or course of study must satisfy before the Institute approves the program or course as an initial teacher education program.
- (3) For the purposes of subsection (2), the requirements, criteria or standards that the Minister may approve include—
 - (a) entry standards or minimum requirements for entry into programs or courses of study, including academic and non-academic attributes and demonstrated proficiency in literacy and numeracy; and
 - (b) student selection methods including any pre-entry student ranking and the scope and extent of any adjustments to that ranking; and
 - (c) the extent and scope of credit or advanced standing for prior study, including study completed as part of a pathway program; and
 - (d) requirements that a provider must ensure are met by students before students proceed beyond a particular point of the program or course, including the demonstration of competence in literacy and numeracy.

S. 2.6.5
amended by
No. 10/2021
s. 35,
substituted by
No. 10/2021
s. 6.

- (4) For the purposes of approving requirements, criteria or standards that a program or course of study must satisfy in accordance with this section, the Minister may adopt, apply or incorporate in full or in part any code, rules, specifications or other document of another person or body including any amendments made to that document from time to time.
- (5) The Institute must publish on the Institute's website any requirements, criteria or standards approved by the Minister in accordance with this section.

S. 2.6.6
substituted by
No. 27/2010
s. 13.

2.6.6 Council of the Victorian Institute of Teaching

- (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—
 - (a) is responsible for the management of the affairs of the Institute; and
 - (b) may exercise the powers of the Institute.
- (3) The Council is to consist of not more than 14 members of whom—
 - (a) 13 are to be appointed by the Governor in Council on the recommendation of the Minister in accordance with section 2.6.6A; and
 - (b) one is to be the Secretary or the nominee of the Secretary.

S. 2.6.6(3)
substituted by
No. 19/2014
s. 29,
amended by
No. 9/2016
s. 15(1)(a).

S. 2.6.6(3)(a)
amended by
No. 9/2016
s. 15(1)(b).

(4) Of the members appointed under subsection (3)(a) on the recommendation of the Minister—

(a) subject to section 2.6.6AD, 5 must be registered teachers (of whom at least one must be an early childhood teacher) nominated by a nominating organisation referred to in section 2.6.6AB(1)(a); and

(b) subject to section 2.6.6AD, 2 must be registered teachers nominated by a nominating organisation referred to in section 2.6.6AB(1)(b); and

(c) the majority must be registered teachers.

(5) The Governor in Council, on the recommendation of the Minister, must appoint one of the members appointed under subsection (3)(a), who is a registered teacher or a principal, as the Chairperson of the Council.

S. 2.6.6(4)
inserted by
No. 19/2014
s. 29,
amended by
No. 19/2014
s. 44(1),
substituted by
No. 9/2016
s. 15(2).

S. 2.6.6(5)
inserted by
No. 19/2014
s. 29.

2.6.6A Minister's recommendations of persons for appointment as members of the Council

Subject to section 2.6.6(4), the Minister, in recommending persons to the Governor in Council to be appointed to the Council, must ensure that—

(a) the persons recommended possess, in the opinion of the Minister, the skills, experience or qualifications that are relevant to enable the Council to exercise its powers and perform its duties and functions; and

S. 2.6.6A
inserted by
No. 27/2010
s. 13,
substituted by
No. 19/2014
s. 30.

- (b) the persons recommended include persons who have knowledge of, or experience in, the following areas—
 - (i) management;
 - (ii) finance;
 - (iii) law;
 - (iv) corporate governance.

S. 2.6.6AB
inserted by
No. 9/2016
s. 16.

2.6.6AB Nominations for recommendation for appointment of members to the Council

- (1) For the purposes of recommending persons for appointment to the Council to satisfy the requirements in section 2.6.6(4)(a) and (b), the Minister must call for nominations of registered teachers by—
 - (a) the Australian Education Union or, if the Australian Education Union ceases to exist, an organisation designated by a Ministerial Order under section 2.6.6AE(1)(a); and
 - (b) the Independent Education Union or, if the Independent Education Union ceases to exist, an organisation designated by a Ministerial Order under section 2.6.6AE(1)(b).
- (2) The nominating organisation may nominate any number of registered teachers for recommendation for appointment to the Council in accordance with subsection (3).
- (3) A nomination referred to in this section must be given to the Minister—
 - (a) in the manner specified by the Minister; and
 - (b) on or before the date specified by the Minister.

2.6.6AC Minister may decline nominations

The Minister may decline to recommend to the Governor in Council for appointment to the Council a person nominated under section 2.6.6AB if—

- (a) the nominee is not a registered teacher; or
- (b) the appointment of the nominee would result in the requirement in section 2.6.6(4)(a) to appoint an early childhood teacher to the Council not being satisfied; or
- (c) in the Minister's opinion the nominee does not possess the skills, experience or qualifications referred to in section 2.6.6A(a); or
- (d) the appointment of the nominee would result in the requirement in section 2.6.6A(b) not being satisfied.

S. 2.6.6AC
inserted by
No. 9/2016
s. 16.

2.6.6AD Insufficient eligible nominations

If there is not a sufficient number of eligible nominations provided to the Minister to fill a vacancy in the office of a member of the Council appointed to satisfy the requirements in section 2.6.6(4)(a) or (b), the Minister may recommend any other suitable person in accordance with sections 2.6.6A and 2.6.6B to fill that vacancy.

S. 2.6.6AD
inserted by
No. 9/2016
s. 16.

2.6.6AE Minister may designate nominating organisation in certain circumstances

- (1) The Minister may, by Order, designate an organisation representing the professional and industrial interests of teachers and early childhood teachers to be the nominating organisation—
 - (a) for the purposes of section 2.6.6AB(1)(a) if the Australian Education Union ceases to exist; or

S. 2.6.6AE
inserted by
No. 9/2016
s. 16.

(b) for the purposes of section 2.6.6AB(1)(b) if the Independent Education Union ceases to exist.

(2) An Order referred to in subsection (1) must be published in the Government Gazette as soon as practicable after the Order is made.

S. 2.6.6B
inserted by
No. 27/2010
s. 13,
substituted by
No. 19/2014
s. 30.

2.6.6B Minister must consider certain persons for appointment as members of the Council

The Minister must give consideration to recommending persons from the following classes of person for appointment to the Council under section 2.6.6A—

- (a) registered teachers currently teaching in—
 - (i) Government schools (other than schools for students with disabilities or impairments); or
 - (ii) Government schools for students with disabilities or impairments; or
 - (iii) non-Government schools (other than schools operating under the auspices of the Catholic Education Commission); or
 - (iv) non-Government schools operating under the auspices of the Catholic Education Commission;
- (b) registered early childhood teachers currently engaged or employed in early childhood services;
- (c) parents of students in schools or children in early childhood services;
- (d) employers of registered teachers;

S. 2.6.6B(b)
substituted by
No. 19/2014
s. 44(2)(a).

S. 2.6.6B(d)
substituted by
No. 19/2014
s. 44(2)(b).

- (e) providers of education to registered teachers or to persons who wish to qualify as teachers or early childhood teachers.

2.6.6C Governor to appoint Deputy Chairperson

The Governor in Council, on the nomination of the Minister, may appoint a member of the Council (other than the Chairperson, Secretary or the Secretary's nominee) as a Deputy Chairperson.

S. 2.6.6C
inserted by
No. 27/2010
s. 13.

Division 2A—Initial teacher education program approval process

Pt 2.6 Div. 2A
(Heading and
ss 2.6.6D–
2.6.6L)
inserted by
No. 10/2021
s. 7.

2.6.6D Application for approval or variation of approval

- (1) A provider of a program or course of study may apply to the Institute for the provider's program or course to be approved as an initial teacher education program.
- (2) A provider of an initial teacher education program may apply to the Institute for a variation of the approval of the program or course of study as an initial teacher education program.
- (3) An application made under subsection (1) or (2) must be—
 - (a) in the form approved by the Institute; and
 - (b) accompanied by the application fee fixed by the Minister.

S. 2.6.6D
inserted by
No. 10/2021
s. 7.

2.6.6E Approval by Institute

- (1) The Institute may approve a program or course of study as an initial teacher education program or vary the approval of a program or course of study as an initial teacher education program, if—

S. 2.6.6E
inserted by
No. 10/2021
s. 7.

- (a) the Institute has considered any requirements, criteria or standards for programs or courses of study leading to qualifications for entry to teaching as a teacher that have been agreed to with other States, Territories or the Commonwealth, including teacher registration authorities in those States or Territories; and
 - (b) the Institute has had regard to any advice or recommendations given to it under section 2.6.6K; and
 - (c) the program or course of study satisfies all requirements, criteria or standards approved by the Minister under section 2.6.5 and in force at the time the application is made.
- (2) If the Institute approves a program or course of study as an initial teacher education program, or varies an approval of a program or course of study as an initial teacher education program under subsection (1), the Institute must—
- (a) give the provider written notice of—
 - (i) the approval; or
 - (ii) the variation of an approval; and
 - (b) specify in the written notice—
 - (i) the period for which the approval, or variation of the approval, is given; and
 - (ii) that the Institute may impose conditions on the approval, or variation of the approval, under section 2.6.6G at any time for the duration of the approval.

2.6.6F Application for renewal and approval of renewal by Institute

S. 2.6.6F
inserted by
No. 10/2021
s. 7.

- (1) A provider of an initial teacher education program may apply to the Institute for renewal of an approval given under section 2.6.6E in respect of the program before the approval expires.
- (2) An application made under subsection (1) must be—
 - (a) in the form approved by the Institute; and
 - (b) accompanied by the application fee fixed by the Minister.
- (3) If the Institute has not considered an application made under subsection (1) before the expiry of the approval, the approval is taken to be current until the Institute has determined the application.
- (4) The Institute may renew the approval of a program or course of study as an initial teacher education program if—
 - (a) the Institute has had regard to any advice or recommendations given to it under section 2.6.6K; and
 - (b) the Institute has considered any requirements, criteria or standards for programs or courses of study leading to qualifications for entry to teaching as a teacher that have been agreed to with other States, Territories or the Commonwealth, including teacher registration authorities in those States or Territories; and
 - (c) the Institute has considered whether the provider of the program has complied with any conditions imposed on the existing approval and any previous approval given; and

- (d) the program satisfies the requirements, criteria or standards approved by the Minister under section 2.6.5 and in force at the time the application is made.
- (5) If the Institute renews the approval of an initial teacher education program under subsection (4), the Institute must—
 - (a) give the provider written notice of the renewal of the approval; and
 - (b) specify in the written notice—
 - (i) the period for which the renewed approval is given; and
 - (ii) that the Institute may impose conditions on the approval being renewed under section 2.6.6G at any time for the duration of the approval.

S. 2.6.6G
inserted by
No. 10/2021
s. 7.

2.6.6G Institute may impose, vary or revoke conditions on approval

- (1) The Institute may impose, vary or revoke a condition on an approval of a program or course of study as an initial teacher education program, given under this Division, at any time during the period of approval in accordance with this section.
- (2) If the Institute intends to impose a condition on, or vary a condition imposed on, an approval given in respect of an initial teacher education program under this Division, the Institute must, in writing—
 - (a) advise the provider of the initial teacher education program of that intention; and
 - (b) invite the provider to make a written submission to the Institute if the provider believes a condition should not be imposed or that the condition should not be varied; and

- (c) advise the provider that a written submission must be made within 14 days of receiving the invitation to make a submission.
- (3) The Institute may impose a condition on, or vary a condition on, an approval of a program or course of study as an initial teacher education program, given under this Division if, after considering the following matters, the Institute is of the view that it would be appropriate in the circumstances to impose, or vary, the condition—
- (a) any submission made by a provider under subsection (2);
 - (b) the interests of any students enrolled in the initial teacher education program.
- (4) If the Institute has imposed a condition on, or varied a condition on, an approval under subsection (3), the Institute must give the provider of the initial teacher education program written notice of the decision to impose, or vary, the condition on the approval—
- (a) as soon as reasonably practicable; and
 - (b) specifying written reasons for the decision; and
 - (c) specifying that the condition, or variation of the condition, applies—
 - (i) from the date of the notice; or
 - (ii) from a later date specified in the notice; and
 - (d) specifying that the condition, or variation of the condition, applies for the duration of the approval or another shorter period specified in the notice.

(5) The Institute may revoke a condition imposed on an approval at any time by written notice to the provider of the initial teacher education program specifying the date from which the revocation of the condition applies.

(6) In this section—

approval includes a renewal of an approval and any variation of an approval.

S. 2.6.6H
inserted by
No. 10/2021
s. 7.

2.6.6H Revocation of approval of initial teacher education program

- (1) An approval of an initial teacher education program may be revoked by the Institute in accordance with this section—
- (a) on the request of the provider of the initial teacher education program made to the Institute; or
 - (b) if the program is no longer a course of study accredited under the Tertiary Education Quality and Standards Agency Act 2011 of the Commonwealth; or
 - (c) if the program no longer satisfies any requirements, criteria or standards approved by the Minister as in force from time to time under section 2.6.5; or
 - (d) if the program no longer complies with any conditions on its approval.
- (2) If the Institute intends to revoke an approval of an initial teacher education program under paragraph (b), (c) or (d) of subsection (1), the Institute must—
- (a) advise the provider of the initial teacher education program of that intention; and

- (b) invite the provider to make a written submission to the Institute if the provider believes the approval should not be revoked; and
 - (c) advise the provider that a written submission must be made within 14 days of receiving the invitation to make a submission.
- (3) The Institute may revoke the approval of an initial teacher education program, given under this Division if, after considering the following matters, the Institute is of the view that it would be appropriate in the circumstances to revoke the approval—
- (a) any submission made by a provider under subsection (2) as to why the provider believes the approval should not be revoked;
 - (b) the interests of any students enrolled in the initial teacher education program.
- (4) If the Institute has revoked an approval under subsection (3), the Institute must give the provider written notice of the decision—
- (a) as soon as reasonably practicable; and
 - (b) specifying written reasons for the decision; and
 - (c) specifying that the approval of the initial teacher education program is revoked—
 - (i) from the date of the notice; or
 - (ii) from a later date specified in the notice.

S. 2.6.6I
inserted by
No. 10/2021
s. 7.

2.6.6I Enrolled students not disadvantaged by revocation

If a student is enrolled in an initial teacher education program at the time the approval of the initial teacher education program is revoked under section 2.6.6H—

- (a) the program is to continue and is taken to be approved by the Institute under this Division solely for the purpose of allowing the enrolled student to complete the program; and
- (b) if the student satisfactorily completes the program continued for the purposes of this section, the student is taken to have satisfactorily completed an initial teacher education program.

S. 2.6.6J
inserted by
No. 10/2021
s. 7.

2.6.6J Request for provision of further information

- (1) The Institute may request a provider of an approved initial teacher education program to provide information or material in respect of the program to the Institute for the following purposes—
 - (a) to make a decision under section 2.6.6E, 2.6.6F, 2.6.6G or 2.6.6H;
 - (b) to ensure that the program continues to satisfy all requirements, criteria and standards for approval as an initial teacher education program;
 - (c) to ensure that the provider is complying with any conditions on the approval of the program as an initial teacher education program.
- (2) A provider of an approved initial teacher education program must comply with a request made under subsection (1).

(3) In this section—

provider of an approved initial teacher education program includes a provider of a program or course of study applying for approval of that program or course as an initial teacher education program under this Division.

2.6.6K Institute to have regard to relevant advice regarding initial teacher education programs

S. 2.6.6K
inserted by
No. 10/2021
s. 7.

The Institute must have regard to any relevant advice or recommendations given to the Institute by the Accreditation Committee in respect of a program or course of study before the Institute approves—

- (a) the program or course as an initial teacher education program; or
- (b) a variation of an approval of the program or course as an initial teacher education program; or
- (c) a renewal of the approval of the program or course as an initial teacher education program.

2.6.6L Publication in relation to compliance of providers

S. 2.6.6L
inserted by
No. 10/2021
s. 7.

- (1) Subject to subsection (2), the Institute may publish information on its website in respect of a provider of an initial teacher education program specifying whether the program—
 - (a) continues to satisfy all requirements, criteria and standards for approval as an initial teacher education program; or
 - (b) has any conditions on its approval as an initial teacher education program and if there are conditions on the program's approval specifying what those conditions are.

- (2) The Institute must not publish any personal information or sensitive information in respect of a provider of an initial teacher education program.

Pt 2.6 Div. 2B
(Heading and
ss 2.6.6M–
2.6.6V)
inserted by
No. 10/2021
s. 7.

Division 2B—Pathway program approval process

S. 2.6.6M
inserted by
No. 10/2021
s. 7.

2.6.6M Requirements, criteria and standards for pathway programs

- (1) Subject to subsection (2), the Institute may set requirements, criteria or standards that a program or course of study must satisfy before the Institute approves the program or course as a pathway program under this Division including in relation to the following—
- (a) entry requirements;
 - (b) minimum academic and non-academic attributes or standards to be achieved or demonstrated by students undertaking the program by the end of the program.
- (2) Before the Institute sets any requirements, criteria or standards under subsection (1), the Institute must—
- (a) consider any requirements, criteria or standards for equivalent pathway programs that have been agreed to with other States, Territories or the Commonwealth, including teacher registration authorities in those States and Territories; and
 - (b) have regard to any relevant advice or recommendations given to the Institute by the Accreditation Committee in accordance with section 2.6.6V.

2.6.6N Application for approval or variation of approval

- (1) A provider of a program or course of study may apply to the Institute for the program or course to be approved as a pathway program.
- (2) A provider of a pathway program may apply to the Institute for a variation of the approval of the program or course of study as a pathway program.
- (3) An application made under subsection (1) or (2) must be—
 - (a) in the form approved by the Institute; and
 - (b) accompanied by the application fee fixed by the Minister.

S. 2.6.6N
inserted by
No. 10/2021
s. 7.

2.6.6O Approval by Institute

- (1) The Institute may approve a program or course of study, or vary the approval of a program or course of study, as a pathway program if—
 - (a) the Institute has considered any requirements, criteria or standards for equivalent pathway programs that have been agreed to with other States, Territories or the Commonwealth, including teacher registration authorities in those States or Territories; and
 - (b) the program or course satisfies all requirements, criteria and standards set by the Institute under section 2.6.6M and in force at the time the application is made; and
 - (c) the Institute has had regard to any relevant advice or recommendations given to the Institute in accordance with section 2.6.6V.

S. 2.6.6O
inserted by
No. 10/2021
s. 7.

- (2) If the Institute approves a program or course of study, or varies an approval of a program or course of study, as a pathway program under subsection (1), the Institute must—
 - (a) give the provider written notice of the approval or variation of the approval; and
 - (b) specify in the written notice—
 - (i) the period for which the approval, or variation of the approval, is given; and
 - (ii) that the Institute may impose conditions on the approval, or variation of the approval, under section 2.6.6Q at any time for the duration of the approval.

S. 2.6.6P
inserted by
No. 10/2021
s. 7.

2.6.6P Application for renewal and approval of renewal by Institute

- (1) A provider of a pathway program may apply to the Institute for renewal of an approval given under section 2.6.6O in respect of the program before the approval expires.
- (2) An application made under subsection (1) must be—
 - (a) in the form approved by the Institute; and
 - (b) accompanied by the application fee fixed by the Minister.
- (3) If the Institute has not considered an application made under subsection (1) before the expiry of the approval, the approval is taken to be current until the Institute has determined the application.
- (4) The Institute may renew the approval of a program or course of study as a pathway program if—
 - (a) the Institute has had regard to any advice or recommendations given to it under section 2.6.6V; and

- (b) the Institute has had regard to any requirements, criteria or standards for equivalent pathway programs that have been agreed to with other States, Territories or the Commonwealth, including teacher registration authorities in those States or Territories; and
 - (c) the Institute has considered whether the provider of the program has complied with any conditions imposed on the existing approval and any previous approval given; and
 - (d) the program satisfies the requirements, criteria and standards set by the Institute under section 2.6.6M and in force at the time the application for renewal is made.
- (5) If the Institute renews the approval of a pathway program under subsection (4), the Institute must—
- (a) give the provider written notice of the renewal of the approval; and
 - (b) specify in the written notice—
 - (i) the period for which the renewed approval is given; and
 - (ii) that the Institute may impose conditions on the approval being renewed under section 2.6.6Q at any time for the duration of the approval.

2.6.6Q Institute may impose, vary or revoke conditions on approval

S. 2.6.6Q
inserted by
No. 10/2021
s. 7.

- (1) The Institute may impose, vary or revoke a condition on an approval of a program or course of study as a pathway program, given under this Division, at any time during the period of approval in accordance with this section.

- (2) If the Institute intends to impose a condition on, or vary a condition imposed on, an approval given in respect of a pathway program under this Division, the Institute must, in writing—
- (a) advise the provider of the pathway program of that intention; and
 - (b) invite the provider to make a written submission to the Institute if the provider believes a condition should not be imposed or that the condition should not be varied; and
 - (c) advise the provider that a written submission must be made within 14 days of receiving the invitation to make a submission.
- (3) The Institute may impose a condition on, or vary a condition on, an approval of a program or course of study as a pathway program, given under this Division if, after considering the following matters, the Institute is of the view that it would be appropriate in the circumstances to impose, or vary, the condition—
- (a) any submission made by a provider under subsection (2);
 - (b) the interests of any students enrolled in the pathway program.
- (4) If the Institute has imposed a condition on, or varied a condition on, an approval under subsection (3), the Institute must give the provider of the pathway program written notice of the decision to impose, or vary, a condition on the approval—
- (a) as soon as reasonably practicable; and
 - (b) specifying written reasons for the decision; and

- (c) specifying that the condition, or variation of the condition, applies—
 - (i) from the date of the notice; or
 - (ii) from a later date specified in the notice; and
 - (d) specifying that the condition, or variation of the condition, applies for the duration of the approval or another shorter period specified in the notice.
- (5) The Institute may revoke a condition imposed on an approval at any time by written notice to the provider of the pathway program specifying the date from which the revocation of the condition applies.
- (6) In this section—
approval includes a variation or renewal of an approval.

2.6.6R Revocation of approval of pathway program

- (1) An approval of a pathway program may be revoked by the Institute in accordance with this section—
- (a) on the request of the provider of the pathway program made to the Institute; or
 - (b) if the program is no longer a course of study accredited under—
 - (i) the Tertiary Education Quality and Standards Agency Act 2011 of the Commonwealth; or
 - (ii) the National Vocational Education and Training Regulator Act 2011 of the Commonwealth; or

S. 2.6.6R
inserted by
No. 10/2021
s. 7.

- (c) if the program no longer satisfies the requirements, criteria and standards set by the Institute as in force from time to time under section 2.6.6M; or
 - (d) if the program no longer complies with any conditions on its approval.
- (2) If the Institute intends to revoke an approval of a pathway program under paragraph (b), (c) or (d) of subsection (1), the Institute must—
- (a) advise the provider of the pathway program of that intention; and
 - (b) invite the provider to make a written submission to the Institute if the provider believes the approval should not be revoked; and
 - (c) advise the provider that a written submission must be made within 14 days of receiving the invitation to make a submission.
- (3) The Institute may revoke the approval of a pathway program, given under this Division if, after considering the following matters, the Institute is of the view that it would be appropriate in the circumstances to revoke the approval—
- (a) any submission made by a provider under subsection (2) as to why the provider believes the approval should not be revoked;
 - (b) the interests of any students enrolled in the pathway program.
- (4) If the Institute has revoked an approval under subsection (3), the Institute must give the provider written notice of the decision—
- (a) as soon as reasonably practicable; and
 - (b) specifying written reasons for the decision; and

- (c) specifying that the approval of the pathway program is revoked—
 - (i) from the date of the notice; or
 - (ii) from a later date specified in the notice.

2.6.6S Enrolled students not disadvantaged by revocation

If a student is enrolled in a pathway program at the time the approval of the pathway program is revoked under section 2.6.6R—

- (a) the program is to continue and is taken to be approved by the Institute under this Division solely for the purpose of allowing the enrolled student to complete the program; and
- (b) if the student satisfactorily completes the program continued for the purposes of this section, the student is taken to have satisfactorily completed a pathway program.

S. 2.6.6S
inserted by
No. 10/2021
s. 7.

2.6.6T Request for provision of further information

- (1) The Institute may request a provider of a pathway program to provide information or material in respect of the program to the Institute for the following purposes—
 - (a) to make a decision under section 2.6.6O, 2.6.6P, 2.6.6Q or 2.6.6R;
 - (b) to ensure that the program continues to satisfy all requirements, criteria and standards for approval as a pathway program;
 - (c) to ensure that the provider is complying with any conditions on the approval of the program as a pathway program.
- (2) A provider of a pathway program must comply with a request made under subsection (1).

S. 2.6.6T
inserted by
No. 10/2021
s. 7.

(3) In this section—

provider of a pathway program includes a provider of a program or course of study applying for approval of that program or course as a pathway program under this Division.

S. 2.6.6U
inserted by
No. 10/2021
s. 7.

2.6.6U Publication in relation to compliance of providers

- (1) Subject to subsection (2), the Institute may publish information on its website in respect of a provider of a pathway program specifying whether the program—
 - (a) continues to satisfy all requirements, criteria and standards for approval as a pathway program; or
 - (b) has any conditions on its approval as a pathway program and if there are conditions on the program's approval specifying what those conditions are.
- (2) The Institute must not publish any personal information or sensitive information in respect of a provider of a pathway program.

S. 2.6.6V
inserted by
No. 10/2021
s. 7.

2.6.6V Institute to have regard to relevant advice regarding pathway programs

The Institute must have regard to any relevant advice or recommendations given to the Institute by the Accreditation Committee in respect of the following—

- (a) requirements, criteria or standards for pathway programs;
- (b) a program or course of study before the Institute approves—
 - (i) the program or course as a pathway program; or

- (ii) a variation of an approval of the program or course as a pathway program; or
- (iii) a renewal of an approval of the program or course as a pathway program.

Division 2C—Continuing education programs

Pt 2.6 Div. 2C
(Heading and
ss 2.6.6W–
2.6.6ZD)
inserted by
No. 10/2021
s. 7.

2.6.6W Requirements, criteria and standards for continuing education programs

S. 2.6.6W
inserted by
No. 10/2021
s. 7.

- (1) Subject to subsection (2), the Institute may set requirements, criteria or standards that a program, unit or course of study must satisfy before the Institute endorses the program, unit or course of study as a continuing education program under this Division.
- (2) Before setting requirements, criteria and standards under subsection (1), the Institute must—
 - (a) consider any requirements, criteria or standards for continuing education programs that have been agreed to with other States, Territories or the Commonwealth, including teacher registration authorities in those States or Territories; and
 - (b) have regard to any relevant advice or recommendations given to the Institute by the Accreditation Committee under section 2.6.6ZC.

S. 2.6.6X
inserted by
No. 10/2021
s. 7.

2.6.6X Application for, or variation of, endorsement of continuing education programs

- (1) A provider of a program, unit or course of study may apply to the Institute for the program, unit or course to be endorsed as a continuing education program.
- (2) A provider of a continuing education program may apply to the Institute for a variation of the endorsement of the program, unit or course of study as a continuing education program.
- (3) An application made under subsection (1) or (2) must be—
 - (a) in the form approved by the Institute; and
 - (b) accompanied by the application fee fixed by the Minister.
- (4) A provider of a continuing education program—
 - (a) is not required to apply to the Institute for endorsement of the program, unit or course as a continuing education program under this Division; and
 - (b) may identify or market the program, unit or course of study as a continuing education program despite not being endorsed by the Institute under this Division.

S. 2.6.6Y
inserted by
No. 10/2021
s. 7.

2.6.6Y Endorsement by Institute

- (1) The Institute may endorse a program, unit or course of study, or vary the endorsement of a program, unit or course of study, as a continuing education program if—
 - (a) the Institute has considered any requirements, criteria or standards for continuing education programs that have been agreed to with other States or Territories or the Commonwealth, including

- teacher registration authorities in those States or Territories; and
- (b) the program, unit or course satisfies all requirements, criteria and standards set by the Institute under section 2.6.6W and in force at the time the application is made; and
 - (c) the Institute has had regard to any relevant advice or recommendations given to the Institute in accordance with section 2.6.6ZC.
- (2) If the Institute endorses a program, unit or course of study, or varies an endorsement of a program, unit or course of study, as a continuing education program under subsection (1), the Institute must—
- (a) give the provider written notice of the endorsement or variation of the endorsement; and
 - (b) specify in the written notice—
 - (i) the period for which the endorsement, or variation of the endorsement, is given; and
 - (ii) that the Institute may impose conditions on the endorsement, or variation of the endorsement, under section 2.6.6ZA at any time for the duration of the endorsement.

2.6.6Z Application for renewal of endorsement by Institute

- (1) A provider of a continuing education program may apply to the Institute for renewal of an endorsement given under section 2.6.6Y in respect of the program before the endorsement expires.
- (2) An application made under subsection (1) must be—
 - (a) in the form approved by the Institute; and

**S. 2.6.6Z
inserted by
No. 10/2021
s. 7.**

- (b) accompanied by the application fee fixed by the Minister.
- (3) If the Institute has not considered an application under subsection (1) before the expiry of the endorsement, the endorsement is taken to be current until the Institute has determined the application.
- (4) The Institute may renew the endorsement of a program, unit or course of study as a continuing education program if—
 - (a) the Institute has had regard to any advice or recommendations given to it under section 2.6.6ZC; and
 - (b) the Institute has had regard to any requirements, criteria or standards for continuing education programs that have been agreed to with other States, Territories or the Commonwealth, including teacher registration authorities in those States or Territories; and
 - (c) the Institute has considered whether the provider of the program has complied with any conditions imposed on the existing endorsement and any previous endorsement given; and
 - (d) the program satisfies the requirements, criteria and standards set by the Institute under section 2.6.6W and in force at the time the application for renewal is made.
- (5) If the Institute renews the endorsement of a continuing education program under subsection (4), the Institute must—
 - (a) give the provider written notice of the renewal of the endorsement; and

- (b) specify in the written notice—
 - (i) the period for which the renewed endorsement is given; and
 - (ii) that the Institute may impose conditions on the endorsement being renewed under section 2.6.6ZA at any time for the duration of the endorsement.

2.6.6ZA Institute may impose, vary or revoke conditions on endorsement

S. 2.6.6ZA
inserted by
No. 10/2021
s. 7.

- (1) The Institute may impose, vary or revoke a condition on an endorsement of a program, unit or course of study as a continuing education program, given under this Division, at any time during the period of endorsement in accordance with this section.
- (2) If the Institute intends to impose a condition on, or vary a condition imposed on, an endorsement given in respect of a continuing education program under this Division, the Institute must, in writing—
 - (a) advise the provider of the continuing education program of that intention; and
 - (b) invite the provider to make a written submission to the Institute if the provider believes a condition should not be imposed or that the condition should not be varied; and
 - (c) advise the provider that a written submission must be made within 14 days of receiving the invitation to make a submission.
- (3) The Institute may impose a condition on, or vary a condition on, an endorsement of a program, unit or course of study as a continuing education program, given under this Division if, after considering the following matters, the Institute is

of the view that it would be appropriate in the circumstances to impose, or vary, the condition—

- (a) any submission made by a provider under subsection (2);
 - (b) the interests of any students enrolled in the continuing education program.
- (4) If the Institute has imposed a condition on, or varied a condition on, an endorsement under subsection (3), the Institute must give the provider of the continuing education program written notice of the decision to impose, or vary, a condition on the endorsement—
- (a) as soon as reasonably practicable; and
 - (b) specifying written reasons for the decision; and
 - (c) specifying that the condition, or variation of the condition, applies—
 - (i) from the date of the notice; or
 - (ii) from a later date specified in the notice; and
 - (d) specifying that the condition, or variation of the condition, applies for the duration of the endorsement or another shorter period specified in the notice.
- (5) The Institute may revoke a condition imposed on an endorsement of a program, unit or course of study as a continuing education program at any time by written notice to the provider of the continuing education program specifying the date from which the revocation of the condition applies.
- (6) In this section—
- endorsement*** includes a variation or renewal of an endorsement.

2.6.6ZB Revocation of endorsement of continuing education program

S. 2.6.6ZB
inserted by
No. 10/2021
s. 7.

- (1) An endorsement of a continuing education program under this Division may be revoked by the Institute in accordance with this section—
 - (a) on the request of the provider of the continuing education program made to the Institute; or
 - (b) if the program no longer satisfies the requirements, criteria and standards set by the Institute as in force from time to time under section 2.6.6W; or
 - (c) if the program no longer complies with any conditions on its endorsement.
- (2) If the Institute intends to revoke an endorsement of a continuing education program under paragraph (b) or (c) of subsection (1), the Institute must—
 - (a) advise the provider of the continuing education program of that intention; and
 - (b) invite the provider to make a written submission to the Institute if the provider believes the endorsement should not be revoked; and
 - (c) advise the provider that a written submission must be made within 14 days of receiving the invitation to make a submission.
- (3) The Institute may revoke the endorsement of a continuing education program, given under this Division if, after considering the following matters, the Institute is of the view that it would be appropriate in the circumstances to revoke the endorsement—

- (a) any submission made by a provider under subsection (2) as to why the provider believes the endorsement should not be revoked;
 - (b) the interests of any students enrolled in the continuing education program.
- (4) If the Institute has revoked an endorsement under subsection (3), the Institute must give the provider written notice of the decision—
- (a) as soon as reasonably practicable; and
 - (b) specifying written reasons for the decision; and
 - (c) specifying that the endorsement of the continuing education program is revoked—
 - (i) from the date of the notice; or
 - (ii) from a later date specified in the notice.

S. 2.6.6ZC
inserted by
No. 10/2021
s. 7.

2.6.6ZC Institute to have regard to relevant advice regarding continuing education programs

The Institute must have regard to any relevant advice or recommendations given to the Institute by the Accreditation Committee in respect of the following—

- (a) requirements, criteria or standards for continuing education programs;
- (b) a program, unit or course of study before the Institute—
 - (i) endorses the program, unit or course as a continuing education program; or
 - (ii) varies the endorsement of the program, unit or course as a continuing education program; or

- (iii) renews the endorsement of the program, unit or course as a continuing education program.

2.6.6ZD Publication in relation to compliance of providers

S. 2.6.6ZD
inserted by
No. 10/2021
s. 7.

- (1) Subject to subsection (2), the Institute may publish information on its website in respect of a provider of a continuing education program specifying whether the program—
 - (a) continues to satisfy all requirements, criteria and standards for endorsement as a continuing education program that are in force; or
 - (b) has any conditions on its endorsement as a continuing education program and if there are conditions on the program's endorsement specifying what those conditions are.
- (2) The Institute must not publish any personal information or sensitive information in respect of a provider of a continuing education program.

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.
- (1A) A person may not apply for registration as a teacher within 5 years after having been given a WWC exclusion under the **Worker Screening Act 2020** unless, since the person was given the WWC exclusion, the WWC exclusion has been set aside or the person has been given a WWC clearance under that Act.

S. 2.6.7(1A)
inserted by
No. 31/2018
s. 6(1),
substituted by
No. 34/2020
s. 217.

- (2) An application must be—
- (a) made in the form approved by the Institute;
and
 - (b) subject to subsection (5), 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 application fee fixed by the Minister; and
 - (iv) a consent signed by the applicant for the Institute to conduct a national criminal history check on the applicant; and
 - (v) the information specified in the application form relating to the identity of the applicant required for the purposes of the national criminal history check; and
 - (vi) the fee fixed by the Minister for the national criminal history check.
- (2A) The application must include an authorisation by the applicant for the Institute to arrange for the conduct of a State police record check—
- (a) on the applicant in connection with the consideration of the application; and
 - (b) if registration is granted, on the teacher from time to time during the period of that registration.

S. 2.6.7(2)(b)
amended by
No. 19/2014
s. 45(1).

S. 2.6.7(b)(iii)
substituted by
No. 19/2014
s. 5(1).

S. 2.6.7(b)(iv)
inserted by
No. 19/2014
s. 5(2).

S. 2.6.7(b)(v)
inserted by
No. 19/2014
s. 5(2).

S. 2.6.7(b)(vi)
inserted by
No. 19/2014
s. 5(2).

S. 2.6.7(2A)
inserted by
No. 28/2010
s. 6(1),
substituted by
No. 19/2014
s. 5(3).

- (2B) The application must include an address for the applicant to be used by the Institute in corresponding with the applicant. **S. 2.6.7(2B) inserted by No. 14/2013 s. 9(1).**
- (3) The Institute may require an applicant to provide further information or material in respect of the application.
- (3A) In considering an application for registration, the Institute—
- (a) subject to subsection (5), must conduct a national criminal history check on the applicant; and **S. 2.6.7(3A)(a) amended by No. 19/2014 s. 45(2).**
 - (b) may arrange for the conduct of a State police record check on the applicant; and **S. 2.6.7(3A)(b) amended by No. 4/2017 s. 12(1)(a).**
 - (c) may have regard to a finding, under Part 5A of the **Child Wellbeing and Safety Act 2005**, that the applicant has committed reportable conduct and the reasons for the finding. **S. 2.6.7(3A)(c) inserted by No. 4/2017 s. 12(1)(b).**
- (4) The Institute may require an applicant for registration to—
- (a) provide information about criminal records; **S. 2.6.7(4)(a) amended by No. 19/2014 s. 5(5).**
 - (ab) provide information about— **S. 2.6.7(4)(ab) inserted by No. 27/2010 s. 14(1), substituted by No. 14/2013 s. 9(2).**
 - (i) any current or previous right to teach or to be employed as a teacher in another jurisdiction; or

- (ii) any refusal, including the cancellation, of the right to teach or to be employed as a teacher in another jurisdiction and the reasons, including those given by the body responsible in that jurisdiction for any such refusal or cancellation, for the refusal or cancellation;
- S. 2.6.7(4)(ac)**
inserted by
No. 14/2013
s. 9(2).

 - (ac) provide information about any previous refusal to register the applicant, or any cancellation of the applicant's registration, to carry out a profession in Victoria or in another jurisdiction and the reasons, including those given by the body responsible in that jurisdiction for any such refusal or cancellation, for the refusal or cancellation;
- S. 2.6.7(4)(ad)**
inserted by
No. 31/2018
s. 6(2).

 - (ad) provide information about any previous or current work involving children (including as a volunteer) engaged in by the applicant;
- S. 2.6.7(4)(b)**
amended by
No. 27/2010
s. 14(2).

 - (b) submit to any tests or provide any references or reports to determine the suitability 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.
- S. 2.6.7(5)**
inserted by
No. 19/2014
s. 45(3).

 - (5) If the applicant is a registered early childhood teacher on whom a national criminal history check has been conducted in the previous 5 years—
 - (a) the Institute is not required to conduct a national criminal history check on the applicant; and
 - (b) the application is not required to comply with subsection (2)(b)(iv) to (vi).

2.6.8 Qualification for registration as a teacher

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

(a) if the person—

(i) has satisfactorily completed an initial teacher education program or a program or course of study leading to qualifications for entry to teaching that is determined by the Institute to be equivalent to an initial teacher education program and obtained a qualification that is appropriate for entry to teaching; and

(ii) produces evidence that the person satisfies the criteria approved by the Minister about—

(A) suitability to be a teacher; and

(B) competence in speaking or communicating in the English language for the person to teach in a school; and

(iii) produces evidence that the person has achieved the standards of professional practice required for registration that are approved by the Minister; or

(b) if the person is currently registered as a non-practising teacher.

2.6.9 Registration as a teacher

(1) The Institute may register an applicant as a teacher if—

(a) the applicant is qualified for registration under section 2.6.8; and

S. 2.6.8
amended by
No. 27/2010
s. 15,
substituted by
No. 28/2010
s. 7.

S. 2.6.8(a)(i)
substituted by
No. 10/2021
s. 8.

S. 2.6.9
(Heading)
amended by
No. 31/2018
s. 7(1).

S. 2.6.9(1)(b)
substituted by
No. 31/2018
s. 7(2).

(b) there are no grounds under subsection (1A) or (2) under which the Institute must or may refuse to grant registration to the applicant; and

S. 2.6.9(1)(c)
amended by
No. 19/2014
s. 15(1).

(c) the applicant has satisfied the requirements of section 2.6.7.

S. 2.6.9(1A)
inserted by
No. 31/2018
s. 7(3).

(1A) The Institute must refuse to grant registration to an applicant on any one or more of the following grounds—

- (a) the applicant is currently charged with, or has been convicted or found guilty of, a category A offence in Victoria or an equivalent offence in another jurisdiction;
- (b) the applicant is currently charged with, or has been convicted or found guilty of, a category B offence in Victoria or an equivalent offence in another jurisdiction, and the Institute considers that the applicant poses an unjustifiable risk to children;
- (c) the applicant has been given a WWC exclusion.

S. 2.6.9(1A)(c)
amended by
No. 34/2020
s. 218.

Note

Under section 2.6.14A, if the Institute proposes to refuse registration of the applicant under section 2.6.9(1A)(a), (b) or (c), it must notify the applicant of the proposal and the applicant may make submissions about the proposal. The time for making submissions must be at least 14 days if the refusal is based on a ground under section 2.6.9(1A)(a) or (c) and 28 days for a ground under section 2.6.9(1A)(b).

(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;

* * * * *

S. 2.6.9(2)(b)
repealed by
No. 31/2018
s. 7(4)(a).

(c) that the applicant has engaged in category C conduct and—

S. 2.6.9(2)(c)
substituted by
No. 31/2018
s. 7(4)(b).

(i) the ability of the applicant to teach in a school is likely to be affected because of the conduct engaged in; or

(ii) it is not in the public interest to allow the applicant to teach in a school because of the conduct engaged in;

(ca) that the applicant has been found, under Part 5A of the **Child Wellbeing and Safety Act 2005**, to have committed reportable conduct;

S. 2.6.9(2)(ca)
inserted by
No. 4/2017
s. 12(2).

(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;

S. 2.6.9(2)(f)
amended by
No. 27/2010
s. 16(1).

- (f) that the applicant has not produced evidence which satisfies the Institute of his or her suitability to teach.

Note to
s. 2.6.9(2)
inserted by
No. 31/2018
s. 7(5).

Note

Under section 2.6.15, if the Institute proposes to refuse registration of the applicant under section 2.6.9(2), it must notify the applicant of the proposal and the applicant may make submissions about the proposal. The time for making submissions must be at least 28 days.

S. 2.6.9(4)
inserted by
No. 27/2010
s. 16(2).

- (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.
- (4) The Institute may, on application by a person granted registration, amend, vary or revoke any condition, limitation or restriction imposed under subsection (3).
- (5) The Institute may, from time to time, arrange for the conduct of a State police record check on a registered teacher during the period of registration of the teacher.

S. 2.6.9(5)
inserted by
No. 19/2014
s. 6.

2.6.10 Provisional registration

S. 2.6.10(1)
amended by
No. 10/2021
s. 10(1).

- (1) Subject to subsection (6), 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.

S. 2.6.10(2)
amended by
No. 27/2010
s. 17(1).

- (2) Provisional registration is subject to the condition that the registered person will before the end of the second year after the registration or within any further period not exceeding 3 months 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 2 years that is specified by the Institute or for a further period not exceeding 3 months 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. **S. 2.6.10(3) amended by No. 27/2010 s. 17(2).**
- (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.
- (5) The Institute may, upon application by the registered teacher, amend, vary or revoke any condition, limitation or restriction imposed under subsection (4).
- (6) A teacher who is provisionally registered under this section is not eligible for a further grant of provisional registration if the teacher has been provisionally registered for a period of 6 years unless the Institute is satisfied that special circumstances exist. **S. 2.6.10(6) inserted by No. 10/2021 s. 10(2).**
- (7) For the purposes of subsection (6), the period of 6 years may consist of consecutive or non-consecutive periods of provisional registration. **S. 2.6.10(7) inserted by No. 10/2021 s. 10(2).**

2.6.11 Non-practising registration

- (1) A person who is entitled to or eligible for registration under section 2.6.8(a)(i) and (ii) 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. **S. 2.6.11(1) amended by No. 19/2014 s. 15(2).**

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

(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.

S. 2.6.11(4)
amended by
No. 27/2010
s. 18.

(4) Registration under this section remains in force for the period fixed by the Institute.

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.

S. 2.6.12(3)
amended by
No. 19/2014
s. 46.

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

Division 3A—Registration of early childhood teachers

Pt 2.6 Div. 3A
(Heading and
ss 2.6.12A–
2.6.12G)
inserted by
No. 19/2014
s. 47.

2.6.12A Application for registration

S. 2.6.12A
inserted by
No. 19/2014
s. 47.

- (1) An application for registration as an early childhood teacher may be made to the Institute.
- (1A) A person may not apply for registration as an early childhood teacher within 5 years after having been given a WWC exclusion under the **Worker Screening Act 2020** unless, since the person was given the WWC exclusion, the WWC exclusion has been set aside or the person has been given a WWC clearance under that Act.
- (2) An application must be—
 - (a) made in the form approved by the Institute; and
 - (b) subject to section 2.6.12B, accompanied by—
 - (i) evidence that the person is qualified for registration in accordance with section 2.6.12C; and
 - (ii) details of any information required by section 2.6.57; and
 - (iii) the application fee fixed by the Minister; and
 - (iv) a consent signed by the applicant for the Institute to conduct a national criminal history check; and

S. 2.6.12A(1A)
inserted by
No. 31/2018
s. 8(1),
substituted by
No. 34/2020
s. 219.

- (v) the information specified in the application form relating to the identity of the applicant required for the purposes of the national criminal history check; and
 - (vi) the fee fixed by the Minister for the national criminal history check.
- (3) The application must include an authorisation by the applicant for the Institute to arrange for the conduct of a State police record check—
 - (a) on the applicant in connection with the consideration of the application; and
 - (b) if registration is granted, on the early childhood teacher from time to time during the period that the registration, if granted, remains in force.
- (4) The application must include an address for the applicant to be used by the Institute in corresponding with the applicant.
- (5) The Institute may require an applicant to provide further information or material in respect of the application.
- (6) In considering an application for registration, the Institute—
 - (a) subject to section 2.6.12B, must conduct a national criminal history check on the applicant; and
 - (b) may arrange for the conduct of a State police record check on the applicant; and

S.
2.6.12A(6)(b)
amended by
No. 4/2017
s. 12(3)(a).

- (c) may have regard to a finding, under Part 5A of the **Child Wellbeing and Safety Act 2005**, that the applicant has committed reportable conduct and the reasons for the finding. S.
2.6.12A(6)(c)
inserted by
No. 4/2017
s. 12(3)(b).
- (7) Subject to section 2.6.12B, the Institute may require an applicant for registration to—
- (a) provide information about criminal records;
 - (b) provide information about—
 - (i) any current or previous right to teach or to be employed as a teacher or an early childhood teacher in another jurisdiction; or
 - (ii) any refusal, including the cancellation, of the right to teach or to be employed as a teacher or an early childhood teacher in another jurisdiction and the reasons, including those given by the body responsible in that jurisdiction for any such refusal or cancellation, for the refusal or cancellation;
 - (c) provide information about any previous refusal to register the applicant, or any cancellation of the applicant's registration, to carry out a profession in Victoria or in another jurisdiction and the reasons, including those given by the body responsible in that jurisdiction for any such refusal or cancellation, for the refusal or cancellation;
- (ca) provide information about any previous or current work involving children (including as a volunteer) engaged in by the applicant; S.
2.6.12A(7)(ca)
inserted by
No. 31/2018
s. 8(2).

- (d) submit to any tests or provide any references or reports to determine the suitability of the person to teach;
- (e) 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.

S. 2.6.12B
inserted by
No. 19/2014
s. 47.

2.6.12B National criminal history checks and information and testing—registered teachers and applications for registration under Division 3 and this Division

- (1) If the applicant is a teacher registered under Division 3 or 4 on whom a national criminal history check has been conducted in the previous 5 years—
 - (a) the Institute is not required to conduct a national criminal history check on the applicant; and
 - (b) the requirements of section 2.6.12A(2)(b)(iv), (v) and (vi) do not apply to the application for registration.
- (2) If the applicant makes, at the same time as the application under section 2.6.12A, an application for registration as a teacher under Division 3—
 - (a) the requirements of section 2.6.12A(2)(b)(iv), (v) and (vi) do not apply to the application for registration under this Division; and
 - (b) the applicant is not required to provide information or submit to testing under section 2.6.12A(7) if that information or testing has been provided or submitted to in relation to the application under section 2.6.7(4).

(3) In considering an application for registration under this Division made at the same time as an application for registration under Division 3, the Institute—

(a) must take into account a national criminal history check conducted under section 2.6.7(3A); and

(b) may take into account any information provided or testing submitted to under section 2.6.7(4); and

S.
2.6.12B(3)(b)
amended by
No. 4/2017
s. 12(4)(a).

(c) may take into account a finding, under Part 5A of the **Child Wellbeing and Safety Act 2005**, that the applicant has committed reportable conduct.

S.
2.6.12B(3)(c)
inserted by
No. 4/2017
s. 12(4)(b).

2.6.12C Qualification for registration as an early childhood teacher

S. 2.6.12C
inserted by
No. 19/2014
s. 47.

A natural person is qualified to be registered as an early childhood teacher—

(a) if the person—

(i) has obtained an approved early childhood teaching qualification, or is taken under the national regulations to hold an approved early childhood teaching qualification; and

(ii) produces evidence that the person satisfies the criteria approved by the Minister about—

(A) suitability to be an early childhood teacher; and

(B) competence in speaking or communicating in the English language for the person to teach in an early childhood service; and

- (iii) produces evidence that the person has achieved the standards of professional practice required for registration as an early childhood teacher that are approved by the Minister; or
- (b) if the person is currently registered as a non-practising early childhood teacher.

S. 2.6.12D
inserted by
No. 19/2014
s. 47.

2.6.12D Registration as an early childhood teacher

- (1) The Institute may register an applicant as an early childhood teacher if—
 - (a) the applicant is qualified for registration under section 2.6.12C; and
 - (b) there are no grounds under subsection (1A) or (2) under which the Institute must or may refuse to grant registration to the applicant; and
 - (c) the applicant has satisfied the requirements of section 2.6.12A.

S. 2.6.12D
(1)(b)
substituted by
No. 31/2018
s. 9(1).

S. 2.6.12D(1A)
inserted by
No. 31/2018
s. 9(2).

- (1A) The Institute must refuse to grant registration to an applicant on any one or more of the following grounds—
 - (a) the applicant is currently charged with, or has been convicted or found guilty of, a category A offence in Victoria or an equivalent offence in another jurisdiction;
 - (b) the applicant is currently charged with, or has been convicted or found guilty of, a category B offence in Victoria or an equivalent offence in another jurisdiction, and the Institute considers that the applicant poses an unjustifiable risk to children;
 - (c) the applicant has been given a WWC exclusion.

S. 2.6.12D
(1A)(c)
amended by
No. 34/2020
s. 220.

Note

Under section 2.6.14A, if the Institute proposes to refuse registration of the applicant under section 2.6.12D(1A)(a), (b) or (c), it must notify the applicant of the proposal and the applicant may make submissions about the proposal. The time for making submissions must be at least 14 days if the refusal is based on a ground under section 2.6.12D(1A)(a) or (c) and 28 days for a ground under section 2.6.12D(1A)(b).

(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 an early childhood service;

* * * * *

S. 2.6.12D
(2)(b)
repealed by
No. 31/2018
s. 9(3)(a).

(c) that the applicant has engaged in category C conduct and—

S. 2.6.12D
(2)(c)
substituted by
No. 31/2018
s. 9(3)(b).

(i) the ability of the applicant to teach in an early childhood service is likely to be affected because of the conduct engaged in; or

(ii) it is not in the public interest to allow the applicant to teach in an early childhood service because of the conduct engaged in;

(ca) that the applicant has been found, under Part 5A of the **Child Wellbeing and Safety Act 2005**, to have committed reportable conduct;

S.
2.6.12D(2)(ca)
inserted by
No. 4/2017
s. 12(5).

- (d) that—
- (i) the applicant has previously held a right to teach (being the equivalent of registration under this Part), or been employed as a teacher or an early childhood teacher, in a school or an early childhood service (or equivalent) in another State or Territory or another country; and
 - (ii) 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 or early childhood teacher in a school or an early childhood service (or equivalent) 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 suitability to teach.

**Note to
s. 2.6.12D(2)
inserted by
No. 31/2018
s. 9(4).**

Note

Under section 2.6.15, if the Institute proposes to refuse registration of the applicant under section 2.6.12D(2), it must notify the applicant of the proposal and the applicant may make submissions about the proposal. The time for making submissions is at least 28 days if the refusal is based on a ground under section 2.6.12D(2).

- (3) The Institute may impose any condition, limitation or restriction it thinks appropriate on the registration of an early childhood teacher under this section including a condition that the teacher provide information about criminal records within the period specified by the Institute.

- (4) The Institute may, on application by a person granted registration, amend, vary or revoke any condition, limitation or restriction imposed under subsection (3).
- (5) The Institute may arrange for the conduct of a State police record check on a registered early childhood teacher during the period of registration as an early childhood teacher.

2.6.12E Provisional registration as an early childhood teacher

S. 2.6.12E
inserted by
No. 19/2014
s. 47.

- (1) Subject to subsection (6), an applicant who is qualified in accordance with section 2.6.12C except that the applicant has not achieved to the satisfaction of the Institute the standard of professional practice required for registration under section 2.6.12C is eligible to be provisionally registered.
- (2) Provisional registration is subject to the condition that the registered person will before the end of the second year after the registration or within any further period not exceeding 3 months authorised by the Institute achieve the standard of professional practice required for registration under section 2.6.12C.
- (3) The provisional registration of an early childhood teacher continues in force for the period not exceeding 2 years that is specified by the Institute or for a further period not exceeding 3 months that is specified by the Institute or until the registered early childhood teacher achieves the standard of professional practice required for registration under section 2.6.12C, whichever occurs first.

S. 2.6.12E(1)
amended by
No. 10/2021
s. 11(1).

- (4) The Institute may impose any condition, limitation or restriction it thinks appropriate on the provisional registration of an early childhood teacher including a condition that the teacher provide information about criminal records within the period specified by the Institute.
- (5) The Institute may, upon application by the registered early childhood teacher, amend, vary or revoke any condition, limitation or restriction imposed under subsection (4).
- (6) An early childhood teacher who is provisionally registered under this section is not eligible for a further grant of provisional registration if the early childhood teacher has been provisionally registered for a period of 6 years unless the Institute is satisfied that special circumstances exist.
- (7) For the purposes of subsection (6), the period of 6 years may consist of consecutive or non-consecutive periods of provisional registration.

S. 2.6.12E(6)
inserted by
No. 10/2021
s. 11(2).

S. 2.6.12E(7)
inserted by
No. 10/2021
s. 11(2).

S. 2.6.12F
inserted by
No. 19/2014
s. 47.

2.6.12F Non-practising registration as an early childhood teacher

- (1) A person who is entitled to or eligible for registration under section 2.6.12C(a)(i) and (ii) but who does not intend to undertake the duties of an early childhood teacher in an early childhood service may apply to be registered as a non-practising early childhood teacher under this section.
- (2) A person who is registered as an early childhood 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 early

childhood teacher under this section if that person does not intend to undertake the duties of an early childhood teacher in an early childhood service.

- (3) The Institute may register a person as a non-practising early childhood teacher subject to any condition imposed by the Institute.
- (4) Registration under this section remains in force for the period fixed by the Institute.

2.6.12G Interim registration

- (1) An applicant for registration may be granted interim approval to be employed or engaged as an early childhood teacher in an early childhood service if the person is entitled to that registration 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 be employed or engaged as an early childhood teacher in an early childhood service until the next meeting of the Institute.
- (3) Interim approval granted under this section by the chief executive officer is to be treated during the period of approval as being registration under this Division granted by the Institute under this Part.

S. 2.6.12G
inserted by
No. 19/2014
s. 47.

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.
- (1A) A person may not apply for permission to teach within 5 years after having been given a WWC exclusion under the **Worker Screening Act 2020** unless, since the person was given the WWC exclusion, the WWC exclusion has been set aside

S. 2.6.13(1A)
inserted by
No. 31/2018
s. 10(1),
substituted by
No. 34/2020
s. 221.

or the person has been given a WWC clearance under that Act.

(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

**S. 2.6.13
(2)(ab)**
inserted by
No. 27/2010
s. 19(1),
repealed by
No. 19/2014
s. 7(1).

* * * * *

S. 2.6.13(2)(b)
substituted by
No. 19/2014
s. 7(1),
amended by
No. 19/2014
s. 48(1)(a).

(b) subject to section 2.6.13A, accompanied by—

**S. 2.6.13
(2)(b)(i)**
amended by
No. 19/2014
s. 48(1)(b).

- (i) subject to subsection (4), evidence satisfactory to the Institute that the person or body intending to employ or engage the applicant had first attempted to employ or engage a teacher registered under Division 3 of this Part to fill the teaching position relating to the application; and
- (ii) the application fee fixed by the Minister; and
- (iii) a consent signed by the applicant for the Institute to conduct a national criminal history check on the applicant; and

- (iv) the information specified in the application form relating to the identity of the applicant required for the purposes of the national criminal history check; and
 - (v) the fee fixed by the Minister for the national criminal history check.
- (2A) The application must include an authorisation by the applicant for the Institute to arrange for the conduct of a State police record check—
- (a) on the applicant in connection with the consideration of the application; and
 - (b) if permission to teach is granted, on the teacher from time to time during the period for which the permission remains in force.
- (2AB) The application must include an address for the applicant to be used by the Institute in corresponding with the applicant.
- (2B) In considering an application under this section, the Institute—
- (a) subject to section 2.6.13A, must conduct a national criminal history check on the applicant; and
 - (b) may arrange for the conduct of a State police record check on the applicant; and

S. 2.6.13(2A)
inserted by
No. 28/2010
s. 8(1),
substituted by
No. 19/2014
s. 7(2).

S. 2.6.13(2AB)
inserted by
No. 14/2013
s. 10.

S. 2.6.13(2B)
inserted by
No. 28/2010
s. 8(1),
substituted by
No. 19/2014
s. 7(3).

S. 2.6.13
(2B)(a)
amended by
No. 19/2014
s. 48(2).

S.
2.6.13(2B)(b)
amended by
No. 4/2017
s. 12(6)(a).

S.
2.6.13(2B)(c)
inserted by
No. 4/2017
s. 12(6)(b).

(c) may have regard to a finding, under Part 5A of the **Child Wellbeing and Safety Act 2005**, that the applicant has committed reportable conduct and the reasons for the finding.

S. 2.6.13(3)
amended by
No. 19/2014
s. 7(4),
substituted by
No. 31/2018
s. 10(2).

- (3) The Institute may require an applicant to provide further information or material in respect of the application including information about—
- (a) criminal records; and
 - (b) any previous or current work involving children (including as a volunteer) engaged in by the applicant.

S. 2.6.13(4)
inserted by
No. 27/2010
s. 19(2),
amended by
No. 19/2014
s. 7(5).

- (4) The Institute may give a written exemption to an applicant under this section from having to provide the evidentiary material required under subsection (2)(b)(i).

S. 2.6.13A
inserted by
No. 19/2014
s. 49.

**2.6.13A National criminal history checks and information—
registered early childhood teachers and applicants
for registration under Division 3A and this Division**

- (1) If the applicant is a registered early childhood teacher on whom a national criminal history check has been conducted in the previous 5 years—
- (a) the Institute is not required to conduct a national criminal history check on the applicant; and
 - (b) the requirements of section 2.6.13(2)(b)(iv), (v) and (vi) do not apply to the application for permission to teach.

- (2) If the applicant makes, at the same time as the application under section 2.6.13, an application for registration as an early childhood teacher—
- (a) the requirements of section 2.6.13(2)(b)(iv), (v) and (vi) do not apply to the application for permission to teach; and
 - (b) the applicant is not required to provide information under section 2.6.13(3) if that information has been provided in relation to the application under section 2.6.12A(7).
- (3) In considering an application for permission to teach made at the same time as an application for registration under Division 3A, the Institute—
- (a) must take into account a national criminal history check conducted under section 2.6.12A(6); and
 - (b) may take into account any information provided or testing submitted to under section 2.6.12A(7); and
 - (c) may take into account a finding, under Part 5A of the **Child Wellbeing and Safety Act 2005**, that the applicant has committed reportable conduct and the reasons for the finding.

S.
2.6.13A(3)(b)
amended by
No. 4/2017
s. 12(7)(a).

S.
2.6.13A(3)(c)
inserted by
No. 4/2017
s. 12(7)(b).

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(a)(ii); and

S. 2.6.14(1)(a)
amended by
No. 14/2013
s. 20(1).

S. 2.6.14(1)(b)
substituted by
No. 31/2018
s. 11.

- (b) there are no grounds under section 2.6.9(1A) or (2) under which the Institute must or may refuse to grant registration 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.
- (2) The Institute may impose any condition, limitation or restriction it thinks appropriate on the permission to teach including—

S. 2.6.14(2)(a)
amended by
No. 27/2010
s. 20(1).

- (a) the period for which the permission remains in force, which may not exceed 3 years from the date of the grant of the permission;
- (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.

S. 2.6.14(3)
inserted by
No. 27/2010
s. 20(2).

- (3) The Institute may, on application by a person granted permission to teach, amend, vary or revoke any condition, limitation or restriction imposed under subsection (2).

S. 2.6.14(4)
inserted by
No. 19/2014
s. 8.

- (4) The Institute may, from time to time, conduct a State police record check on a person granted permission to teach during the period that the permission to teach remains in force.

S. 2.6.14(5)
inserted by
No. 19/2014
s. 50.

- (5) Permission to teach does not permit a person to be employed by or engaged in an early childhood service as an early childhood teacher.

Division 5—General provisions

2.6.14A Notice of intention to refuse, renew or reinstate registration under grounds relating to a category A offence or a category B offence

S. 2.6.14A
(Heading)
amended by
No. 10/2021
s. 13(1).

S. 2.6.14A
inserted by
No. 31/2018
s. 12.

- (1) If the Institute is proposing to refuse an application for registration, renewal of registration or reinstatement of registration under this Part on any ground under section 2.6.9(1A) or 2.6.12D(1A), the Institute must serve a notice of intention on the applicant that states the following—
- (a) that the Institute proposes to refuse the application;
 - (b) the ground on which the proposal to refuse the application is based;
 - (c) any category A offence or category B offence, with which the applicant is currently charged, or of which the applicant has been convicted or found guilty, that forms the basis for the ground on which the proposal is based (the *relevant offence*);
 - (d) if the relevant offence is a category B offence, the reasons why the Institute believes that the applicant would pose an unjustifiable risk to children if the application were granted;
 - (e) that the applicant is entitled to show, within the period specified in the notice (the *show cause period*), why the Institute should not refuse the application;

S. 2.6.14A(1)
amended by
No. 10/2021
s. 13(2).

- (f) any requirements of the Institute relating to the form or content of a submission made by the applicant.
- (2) An applicant who has been served with a notice under subsection (1) may, within the show cause period, make written submissions to the Institute about the proposal to refuse an application.
- (3) Before the Institute makes a decision on the proposal it must take into account any submissions made to the Institute by an applicant within the show cause period.
- (4) The show cause period specified in the notice of intention by the Institute must be—
 - (a) in the case of a refusal of an application on a ground under section 2.6.9(1A)(a) or (c) or 2.6.12D(1A)(a) or (c), not less than 14 days after the notice of intention is served on the applicant; and
 - (b) in the case of a refusal of an application on a ground under section 2.6.9(1A)(b) or 2.6.12D(1A)(b), not less than 28 days after the notice of intention is served on the applicant.

S. 2.6.15
amended by
Nos 27/2010
s. 21, 31/2018
s. 13
(1)(a)(b)(2)
(ILA s. 39B(1)).

2.6.15 Entitlement of applicant to make submissions

S. 2.6.15(1)
amended by
No. 10/2021
s. 14.

- (1) If the Institute is proposing to refuse an application for registration, renewal of registration or reinstatement of registration, other than in relation to an application to which section 2.6.14A applies, or to impose conditions, limitations or restrictions on the registration 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; and
- (c) it has taken any submissions made by the applicant into account.
- (2) An applicant who has been given notice under subsection (1), may make written submissions to the Institute about the proposal to refuse the application.
- (3) Submissions under subsection (2) must be made within the period for making submissions specified in the notice under subsection (1), which must be no less than 28 days after the notice is given to the applicant.

S. 2.6.15(1)(b)
amended by
No. 31/2018
s. 13(1)(c).

S. 2.6.15(1)(c)
inserted by
No. 31/2018
s. 13(1)(d).

S. 2.6.15(2)
inserted by
No. 31/2018
s. 13(2).

S. 2.6.15(3)
inserted by
No. 31/2018
s. 13(2).

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 or renewal of registration has been granted to the applicant.
- (2) A notice under subsection (1) about an application for registration or renewal of registration must include the following information—
- (a) if the registration or renewal of registration has been granted—
- (i) the Division of this Part under which registration has been granted, the type of registration granted and the period of registration or renewal of registration;

S. 2.6.16(1)
amended by
No. 27/2010
s. 22(a).

S. 2.6.16(2)
amended by
No. 27/2010
s. 22(b).

S. 2.6.16(2)(a)
amended by
No. 27/2010
s. 22(c).

S. 2.6.16
(2)(a)(i)
amended by
Nos 27/2010
s. 22(d),
19/2014 s. 51.

- (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;
- S. 2.6.16(2)(b) amended by No. 27/2010 s. 22(e).
- (b) if the registration or renewal of 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 or renewal of registration.
- S. 2.6.16 (2)(b)(ii) amended by No. 27/2010 s. 22(f).

S. 2.6.17 (Heading) amended by Nos 10/2021 s. 12(1), 13/2022 s. 15(1).

2.6.17 Duration, renewal, reinstatement and extension of registration

- S. 2.6.17(1) substituted by No. 27/2010 s. 23(1), amended by No. 19/2014 s. 52(1).
- (1) The registration of a teacher or an early childhood teacher continues in force until the first occurrence of 30 September after the date of the grant of registration.
- S. 2.6.17(2) substituted by No. 27/2010 s. 23(1), amended by No. 19/2014 s. 52(1).
- (2) The renewal of registration of a teacher or an early childhood teacher continues in force until the first anniversary of the date of renewal of registration.
- S. 2.6.17(2A) inserted by No. 10/2021 s. 12(2).
- (2A) The reinstatement of registration of a teacher or an early childhood teacher continues in force until the first occurrence of 30 September after the date of reinstatement.

- (3) The Institute may, before any registration under this Part 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. **S. 2.6.17(3) amended by No. 13/2022 s. 15(2).**
- (4) In this section *registration* does not include interim registration under section 2.6.12 or 2.6.12G. **S. 2.6.17(4) inserted by No. 27/2010 s. 23(2), amended by No. 19/2014 s. 52(2), substituted by No. 13/2022 s. 15(3).**

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
- (ab) must be in the form approved by the Institute; and **S. 2.6.18 (1)(ab) inserted by No. 28/2010 s. 9(1).**
- (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 period of registration; **S. 2.6.18 (1)(b)(i) amended by No. 27/2010 s. 24.**
- (ii) details of any information required by section 2.6.57;
- (iii) the application fee fixed by the Minister. **S. 2.6.18 (1)(b)(iii) amended by No. 19/2014 s. 9(1).**

S. 2.6.18(1A)
inserted by
No. 28/2010
s. 9(2),
substituted by
No. 19/2014
s. 9(2).

(1A) If a national criminal history check has not been conducted on the applicant within 4 years before the existing registration is due to expire—

**S. 2.6.18
(1A)(a)**
amended by
No. 19/2014
s. 53(1).

- (a) subject to subsection (1D), the application for renewal of registration must be accompanied by—
- (i) a consent signed by the applicant for the Institute to conduct a national criminal history check on the applicant; and
 - (ii) the information specified in the application form relating to the identity of the applicant required for the purposes of the national criminal history check; and
 - (iii) the fee fixed by the Minister for the national criminal history check; and
- (b) in considering the application for renewal of registration, the Institute must conduct a national criminal history check on the applicant.

S. 2.6.18(1B)
inserted by
No. 28/2010
s. 9(2),
substituted by
No. 19/2014
s. 9(2).

- (1B) The application for renewal of registration must include an authorisation by the applicant for the Institute to arrange for the conduct of a State police record check—
- (a) on the applicant in connection with the consideration of the application; and
 - (b) if renewal of registration is granted, on the teacher from time to time during the period of that registration.

- (1C) The Institute may arrange for the conduct of a State record police check—
- (a) on the applicant in considering an application under this section; and
 - (b) if renewal of registration is granted, on the registered teacher from time to time during the period of registration of the teacher.
- (1D) An application for renewal of registration under Division 3A is not required to comply with subsection (1A)(a)(ii) and (iii) if made at the same time as an application by the applicant for renewal of registration under Division 3.
- (1E) In considering an application for renewal of registration, the Institute may have regard to a finding, under Part 5A of the **Child Wellbeing and Safety Act 2005**, that the applicant has committed reportable conduct and the reasons for the finding.
- (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.

S. 2.6.18(1C)
inserted by
No. 19/2014
s. 9(2).

S. 2.6.18(1D)
inserted by
No. 19/2014
s. 53(2).

S. 2.6.18(1E)
inserted by
No. 4/2017
s. 12(8).

S. 2.6.18A
inserted by
No. 10/2021
s. 15.

2.6.18A Reinstatement of registration in certain circumstances

- (1) A person may apply for reinstatement of their registration, including non-practising registration, as a teacher or an early childhood teacher under this section if—
 - (a) the person's registration is no longer in force in accordance with—
 - (i) section 2.6.17(1); or
 - (ii) section 2.6.11(4); or
 - (iii) section 2.6.12F(4); and
 - (b) the person did not apply for their registration to be renewed under section 2.6.18(1) or (2); and
 - (c) an application for reinstatement of the person's registration is made under this section within 12 months after the registration has expired under section 2.6.17(1), 2.6.11(4) or 2.6.12F(4); and
 - (d) special circumstances exist that led to the person not applying for a renewal of registration under section 2.6.18(1) or (2).
- (2) An applicant's application for reinstatement of registration must—
 - (a) be in the form approved by the Institute; and
 - (b) be accompanied by—
 - (i) evidence satisfactory to the Institute that the applicant has maintained an appropriate level of professional practice in the preceding period of registration; and
 - (ii) details of any information required by section 2.6.57; and

- (iii) the application fee fixed by the Minister; and
 - (iv) a statement specifying the reasons why the applicant was unable to apply for renewal of their registration; and
 - (c) include or be accompanied by any other information or material required by section 2.6.18B to enable the Institute to conduct checks in respect of the applicant.
- (3) An applicant for reinstatement of registration must comply with a request made by the Institute under section 2.6.18C.
- (4) The Institute must conduct a national criminal history check on the applicant in considering an application for reinstatement of registration under this section.
- (5) The Institute may have regard to a finding that the applicant has committed reportable conduct and the reasons for the finding under Part 5A of the **Child Wellbeing and Safety Act 2005** in considering an application for reinstatement of registration under this section.
- (6) If the Institute reinstates the applicant's registration as a teacher or early childhood teacher, the Institute must determine whether the registration is a grant of non-practising registration.

2.6.18B Checks to be conducted in respect of applicant for reinstatement

- (1) For the purposes of section 2.6.18A(4), an applicant's application for reinstatement of registration must be accompanied by—
 - (a) a consent signed by the applicant for the Institute to conduct a national criminal history check on the applicant; and

S. 2.6.18B
inserted by
No. 10/2021
s. 15.

- (b) subject to subsection (2)—
 - (i) the information specified in the application form relating to the identity of the applicant required for the purposes of the national criminal history check; and
 - (ii) the fee fixed by the Minister for the national criminal history check.
- (2) An applicant applying for reinstatement of registration as an early childhood teacher is not required to comply with subsection (1)(b) if the applicant applies for reinstatement of registration as a teacher at the same time.
- (3) An applicant's application for reinstatement of registration must include an authorisation by the applicant for the Institute to arrange for the conduct of a State police record check—
 - (a) on the applicant in connection with consideration of the application; and
 - (b) if reinstatement of registration is granted, on the teacher or early childhood teacher from time to time during the period of that registration.

S. 2.6.18C
inserted by
No. 10/2021
s. 15.

2.6.18C VIT may request information about criminal records of applicant for reinstatement of registration

For the purposes of determining whether to grant an application for reinstatement under section 2.6.18A, the Institute may require an applicant to provide information about any criminal records relating to the applicant.

S. 2.6.18D
inserted by
No. 10/2021
s. 15.

2.6.18D Grant of reinstatement of registration

Subject to section 2.6.19, the Institute may grant a reinstatement of registration following an application made under section 2.6.18A.

2.6.19 Refusal to renew or reinstate registration

- (1) The Institute—
- (a) may refuse to renew the registration of an applicant—
 - (i) if the Institute is satisfied that the applicant has not maintained an appropriate level of professional practice in the preceding period of registration having regard to the standards of professional practice approved by the Minister; or
 - (ii) on any other ground on which the Institute may refuse to grant registration; and
 - (b) must refuse to renew the registration of an applicant on any ground on which the Institute must refuse to grant registration.
- (2) The Institute—
- (a) may refuse to reinstate the registration of an applicant—
 - (i) if the Institute is satisfied that the applicant has not maintained an appropriate level of professional practice in the preceding period of registration having regard to the standards of professional practice approved by the Minister; or
 - (ii) if the Institute is not satisfied that special circumstances exist for reinstating the applicant's registration; or
 - (iii) on any other ground on which the Institute may refuse to grant registration; and

S. 2.6.19
(Heading)
amended by
No. 10/2021
s. 16(1).

S. 2.6.19
amended by
No. 27/2010
s. 25,
substituted by
No. 31/2018
s. 14,
amended by
No. 10/2021
s. 16(2) (ILA
s. 39B(1)).

S. 2.6.19(2)
inserted by
No. 10/2021
s. 16(2).

- (b) must refuse to reinstate the registration of an applicant on any ground on which the Institute must refuse to grant registration.

Note to s. 2.6.19 amended by No. 10/2021 s. 16(3).

Note

If the Institute is proposing to refuse an application for renewal of registration or for reinstatement of registration, the applicant is entitled to make submissions to the Institute under section 2.6.14A or 2.6.15 depending on the ground on which the refusal is based.

2.6.20 Registration obtained by fraud

S. 2.6.20(1) amended by No. 19/2014 s. 54.

- (1) If the Institute believes that the registration of a teacher or an early childhood teacher has been obtained by fraud or misrepresentation or that the qualifications upon which the teacher or early childhood 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.

- (1A) Despite subsection (1), if the fee payable under subsection (1) is for a period of less than 12 months it must be calculated on a pro rata basis to the nearest month. **S. 2.6.21(1A) inserted by No. 28/2010 s. 10.**
- (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 all registrations under this Part held by the teacher. **S. 2.6.21(2) amended by No. 19/2014 s. 55(1).**
- (2A) Despite subsection (2), if the registered teacher fails to pay the annual registration fee for the teacher's second registration without reasonable excuse by the date fixed by the Institute and notified to the teacher, the Institute may suspend the second registration of the teacher. **S. 2.6.21(2A) inserted by No. 19/2014 s. 55(2).**
- (3) The Institute may revoke a suspension under subsection (2) or (2A) 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. **S. 2.6.21(3) amended by No. 19/2014 s. 55(3).**
- (4) In this section—
second registration means—
- (a) if the teacher holds registration under Divisions 3 and 3A, whichever registration was granted later;
 - (b) if the teacher holds registration under Division 3A and has been granted permission to teach, the permission to teach.

2.6.21A Change in teacher's name or correspondence address must be notified

A registered teacher must notify the Institute in writing within 30 days of any change in—

- (a) the name of the teacher; or

S. 2.6.21A inserted by No. 14/2013 s. 11, substituted by No. 19/2014 s. 18, amended by No. 31/2018 s. 15.

- (b) the address provided by the teacher to be used by the Institute in corresponding with the teacher.

Penalty: 10 penalty units.

S. 2.6.21B
inserted by
No. 10/2021
s. 18.

2.6.21B Disclosure and collection of information

- (1) The Institute may disclose information in respect of a registered teacher or former registered teacher, or a provider of a program, unit or course of study, for a purpose specified in subsection (4), to—
- (a) any State or Territory Government department; or
 - (b) any Government department of the Commonwealth; or
 - (c) any Commonwealth, State or Territory public authority; or
 - (d) any municipal council or any equivalent body in another State or Territory of the Commonwealth; or
 - (e) a former or current employer of a registered teacher.
- (2) The Institute may collect information in respect of a registered teacher or former registered teacher or a provider of a program, unit or course of study for a purpose specified in subsection (4), from—
- (a) any State or Territory Government department; or
 - (b) any State or Territory public authority; or
 - (c) any Government department of the Commonwealth if the department is able to make the disclosure in accordance with a law of the Commonwealth; or

- (d) any Commonwealth public authority if the public authority is able to make the disclosure in accordance with a law of the Commonwealth; or
 - (e) any municipal council or any equivalent body in another State or Territory of the Commonwealth; or
 - (f) a former or current employer of a registered teacher.
- (3) An entity specified in subsection (2)(a), (b), (c), (d), (e) or (f) may disclose information to the Institute in respect of a registered teacher or former registered teacher, or a provider of a program, unit or course of study, for a purpose specified in subsection (4).
- (4) The purposes for disclosure and collection of information under this section are—
- (a) the disclosure or collection is reasonably necessary for the purposes of enabling the Institute to perform its functions and duties or exercise its powers; or
 - (b) the disclosure or collection is reasonably necessary for the purposes of regulating and registering schools, early childhood services or other services related to children; or
 - (c) the disclosure or collection is reasonably necessary for the purposes of regulating and registering teachers and early childhood teachers; or
 - (d) the disclosure or collection is reasonably necessary for the purposes of screening persons who work or intend to work with children or vulnerable people; or

- (e) the disclosure or collection is reasonably necessary for the purposes of regulating disability services; or
 - (f) the disclosure or collection is reasonably necessary to promote the safety and wellbeing of a child or group of children; or
 - (g) the disclosure or collection is for the purposes of research or development of national, State or Territory policy in respect of the regulation and registration of teachers; or
 - (h) the disclosure or collection is reasonably necessary for any other prescribed purpose.
- (5) Information disclosed or collected for the purposes of research or development of national, State or Territory policy in respect of the regulation and registration of teachers under subsection (4)(g) must not include—
- (a) personal information; or
 - (b) sensitive information; or
 - (c) health information.
- (6) A former or current employer who is given information under subsection (1)(e) must ensure the information—
- (a) is collected, stored and used by the employer in a way that ensures the privacy of the person to whom it relates; and
 - (b) is not used for a purpose other than the purpose for which it was disclosed.
- (7) In this section—
- information**, unless the contrary intention appears, includes personal information, sensitive information and health information.

Division 6—Criminal record and history checks

**Pt 2.6 Div. 6
(Heading)
substituted by
No. 19/2014
s. 10.**

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 a check on any criminal record of the teacher.
- (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.

**S. 2.6.22(1)
amended by
No. 19/2014
s. 11.**

2.6.22A National criminal history checks

- (1) The Institute must ensure that a national criminal history check is conducted in respect of each registered teacher—
 - (a) before the end of 5 years after the last national criminal history check was conducted in respect of that teacher under this Part or any corresponding previous enactment; or
 - (b) if such a check has never been conducted on the teacher, as soon as is reasonably practicable.

**S. 2.6.22A
inserted by
No. 58/2007
s. 9,
substituted by
No. 19/2014
s. 12.**

- (2) In addition to conducting a national criminal history check under subsection (1), the Institute may conduct a national criminal history check on a registered teacher at any other time if the Institute reasonably suspects that there are circumstances that warrant the check being conducted at that time.
- (3) A registered teacher, at the request of the Institute and by the date notified to the teacher by the Institute, must—
 - (a) provide to the Institute a consent signed by the teacher for the Institute to conduct a national criminal history check on the teacher under this section; and
 - (b) provide to the Institute information specified by the Institute relating to the identity of the teacher required for the purposes of the national criminal history check; and
 - (c) if the national criminal history check is conducted under subsection (1), pay the fee fixed by the Minister for the national criminal history check.
- (4) If a registered teacher, without reasonable excuse, fails to comply with the requirements in subsection (3) relating to a national criminal history check, the Institute may suspend all registrations under this Part held by the teacher.
- (5) The Institute may revoke a suspension under subsection (4) if the person concerned—
 - (a) gives a satisfactory explanation of the failure to comply with the requirements of subsection (3); and
 - (b) provides to the Institute the consent or identification information required under subsection (3), if it was not provided by the notified date; and

S. 2.6.22A(4)
amended by
No. 19/2014
s. 56.

- (c) if the national criminal history check is conducted under subsection (1), pays the fee fixed by the Minister for the national criminal history check if it was not paid by the notified date; and
- (d) pays any additional fee fixed by the Minister.

2.6.23 VIT may request information about criminal records of registered teacher

S. 2.6.23 substituted by No. 19/2014 s. 12.

- (1) The Institute, at any time during the period of registration of a teacher or an early childhood teacher, may require the registered teacher to provide information about any criminal records relating to the teacher, by the date notified to the teacher by the Institute.
- (2) If the registered teacher, without reasonable excuse, fails to provide the information by the notified date, the Institute may suspend all registrations under this Part held by the teacher.
- (3) The Institute may revoke a suspension under subsection (2) if the person concerned—
 - (a) gives a satisfactory explanation of the failure to comply with subsection (1); and
 - (b) provides to the Institute the required information.

S. 2.6.23(1) amended by No. 19/2014 s. 57(1).

S. 2.6.23(2) amended by No. 19/2014 s. 57(2).

Division 7—The Register of Registered Teachers

Pt 2.6 Div. 7
(Heading)
amended by
No. 19/2014
s. 19.

2.6.24 The Register of Registered Teachers

S. 2.6.24
(Heading)
amended by
No. 19/2014
s. 20(1).

S. 2.6.24
amended by
No. 19/2014
ss 20(2), 58(1).

There shall be a Register of Registered Teachers containing the following particulars in relation to each registered teacher and each registration held by the teacher—

S. 2.6.24(ab)
inserted by
No. 19/2014
s. 58(2).

- (a) the teacher's name;
- (ab) the Division of this Part under which the teacher is registered;
- (b) the registration status of the teacher including details as to the type of registration held;
- (c) the teacher's qualifications;
- (d) whether, due to an adverse finding by a formal hearing panel under Division 12 or by virtue of section 2.6.29, the registration of the teacher—
 - (i) is subject to a condition, limitation or restriction; or
 - (ii) has been suspended or cancelled;
- (e) the date of registration;
- (f) the registration number.

S. 2.6.24(d)
substituted by
No. 28/2010
s. 11.

2.6.25 Publication of Register of Registered Teachers

- (1) The Institute must maintain the Register of Registered Teachers 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) The Institute may publish the whole or any part of the Register of Registered Teachers in any manner that it considers fit.

S. 2.6.25 (Heading) amended by **No. 19/2014 s. 21(1)**.

S. 2.6.25 amended by **No. 19/2014 s. 21(2)(3) (ILA s. 39B(1))**.

S. 2.6.25(2) inserted by **No. 19/2014 s. 21(3)**.

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 or an early childhood 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—

S. 2.6.26(a) amended by **No. 19/2014 s. 59**.

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

Division 7A—Details of teachers and early childhood teachers

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

Pt 2.6 Div. 7A
(Heading)
amended by
No. 19/2004
s. 60.

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

2.6.26A Institute may request details of teachers in schools

- (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.

S. 2.6.26AB
inserted by
No. 37/2015
s. 8.

2.6.26AB Teacher must notify Institute of change to employer

S. 2.6.26AB(1)
amended by
No. 31/2018
s. 16.

- (1) A teacher must notify the Institute in writing of the name of any school at which the teacher is employed within 30 days of commencing employment at that school.

Penalty: 10 penalty units.

S. 2.6.26AB(2)
amended by
No. 31/2018
s. 16.

- (2) A teacher must notify the Institute in writing if the teacher ceases to be employed at a school within 30 days of ceasing employment at that school.

Penalty: 10 penalty units.

2.6.26B Institute may request details of early childhood teachers in early childhood services

S. 2.6.26B
inserted by
No. 19/2014
s. 61.

- (1) The Institute may in writing request a person or body who employs or engages persons as early childhood teachers in or for an early childhood service to provide (within 28 days of the request) details of the name, registration number and date of birth of all or any of those persons 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.

2.6.26C Early childhood teacher must notify Institute of change to employer

S. 2.6.26C
inserted by
No. 37/2015
s. 9.

- (1) An early childhood teacher must notify the Institute in writing of the name of any early childhood service at which the early childhood teacher is employed within 30 days of commencing employment at that early childhood service.

Penalty: 10 penalty units.

- (2) An early childhood teacher must notify the Institute in writing if the early childhood teacher ceases to be employed at an early childhood service within 30 days of ceasing employment at that early childhood service.

Penalty: 10 penalty units.

S. 2.6.26C(1)
amended by
No. 31/2018
s. 17.

S. 2.6.26C(2)
amended by
No. 31/2018
s. 17.

S. 2.6.26D
inserted by
No. 37/2015
s. 10.

2.6.26D Secretary may disclose information to Institute

If the Secretary considers it appropriate to do so, the Secretary may disclose to the Institute any information the Secretary has about, or arising from, an exemption or an application under section 2.6.60A or 2.6.60B.

S. 2.6.26E
inserted by
No. 31/2018
s. 18,
amended by
No. 34/2020
s. 222.

2.6.26E Institute may disclose information about child-related work to Secretary

The Institute may disclose to the Secretary within the meaning of the **Worker Screening Act 2020** information that the Institute has received from the following persons in relation to any child-related work within the meaning of that Act undertaken or proposed to be undertaken by that person before or after being granted registration under this Part—

- (a) an applicant for registration as a registered teacher under this Part;
- (b) a registered teacher.

Pt 2.6 Div. 8
(Heading)
substituted by
No. 10/2021
s. 19.

Division 8—Suspension of registration

S. 2.6.27
amended by
Nos 68/2009
s. 97(Sch.
items 48.4,
48.5), 19/2014
s. 62,
substituted by
No. 31/2018
s. 19.

2.6.27 Institute may suspend registration under this Part

- (1) The Institute may decide that it intends to suspend all registrations held by a person under this Part if that person is charged with a category B offence in Victoria or an equivalent offence in another jurisdiction.
- (2) The Institute must suspend all registrations held by a person under this Part if the person—
 - (a) is charged with a category A offence in Victoria or an equivalent offence in another jurisdiction; or

(b) has been given an interim WWC exclusion.

S. 2.6.27(2)(b)
amended by
No. 34/2020
s. 223.

2.6.27A Notice of intended suspension of registration

S. 2.6.27A
inserted by
No. 31/2018
s. 19.

- (1) The Institute must serve a notice on a person, in accordance with subsection (2), of the Institute's intention to suspend all registrations under this Part held by that person.
- (2) A notice served under subsection (1) must be in writing and set out the following information—
 - (a) that the Institute intends to suspend each registration under this Part held by the person;
 - (b) the ground for suspension;
 - (c) in the case of a suspension under section 2.6.27(1)—
 - (i) that the person may make written submissions to the Institute regarding the intended suspension; and
 - (ii) that the submissions must be lodged with the Institute within 28 days after being served with the notice;
 - (d) in the case of a suspension under section 2.6.27(2), that the person, within 14 days after being served with the notice, may lodge written information with the Institute;
 - (e) any requirements relating to the form and content of submissions or information that may be lodged with the Institute.
- (3) A copy of a notice served under this section must also be served on any person employing the person subject to the intended suspension of the person's registration under this Part.

S. 2.6.27B
inserted by
No. 31/2018
s. 19.

2.6.27B Submissions or information lodged with Institute

- (1) A person who has been served with a notice under section 2.6.27A of the intention to suspend the registration of the person under section 2.6.27(1) may, within 28 days after being served with the notice, make written submissions to the Institute in order to show that the person—
 - (a) does not pose an unjustifiable risk to children; and
 - (b) is fit to teach until the category B offence with which the person is charged is finally dealt with as described in section 2.6.27F(1)(b).
- (2) A person who has been served with a notice under section 2.6.27A of the intention to suspend the registration of the person under section 2.6.27(2) may, within 14 days after being served with the notice, lodge any of the following written information (if applicable) with the Institute—
 - (a) the person is not the person charged with the category A offence referred to in the notice;
 - (b) the person is not the person who was given the interim WWC exclusion referred to in the notice;
 - (c) the charge for the category A offence referred to in the notice has been withdrawn;
 - (d) a decision has been made under the **Worker Screening Act 2020** in relation to the interim WWC exclusion referred to in the notice—
 - (i) to give a WWC clearance under that Act to the person given the interim WWC exclusion; or

S. 2.6.27B
(2)(b)
amended by
No. 34/2020
s. 224(a).

S. 2.6.27B
(2)(d)
substituted by
No. 34/2020
s. 224(b).

- (ii) to not revoke a WWC clearance held by the person given the interim WWC exclusion.

2.6.27C Institute must take into account submissions or information

S. 2.6.27C
inserted by
No. 31/2018
s. 19.

In deciding whether to suspend the registration of a person under this Division, the Institute must take into account any submissions or information lodged by that person in accordance with the notice served under section 2.6.27A.

2.6.27D Notice of suspension of registration

S. 2.6.27D
inserted by
No. 31/2018
s. 19.

- (1) If the Institute suspends the registration of a person under this Division it must serve a written notice on the person containing the following information—
 - (a) that the person's registration 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 section 2.6.27F.
- (2) A copy of a notice served under this section must be—
 - (a) served on any person employing the person whose registration has been suspended under this Division; and
 - (b) given to the Secretary within the meaning of the **Worker Screening Act 2020**.

S. 2.6.27D
(2)(b)
amended by
No. 34/2020
s. 225.

2.6.27E Effect and validity of suspension

- (1) A suspension of registration under this Division takes effect on the date specified by the Institute in the notice served under section 2.6.27D.

S. 2.6.27E
inserted by
No. 31/2018
s. 19.

- (2) The validity of a suspension of registration under this Division is not affected by any failure to serve or give a copy of a notice under section 2.6.27A(3) or 2.6.27D(2).

S. 2.6.27F
inserted by
No. 31/2018
s. 19.

2.6.27F Suspension remains in force

- (1) A suspension of registration under this Division remains in force until the earlier of the following occurs—
- (a) the Institute revokes the suspension;
 - (b) in the case of a charge against a person that forms the ground for the suspension, the charge is finally dealt with in any of the following ways—
 - (i) the charge is withdrawn or the prosecution for the offence charged is discontinued;
 - (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 proceeding;
 - (v) the person is acquitted of the offence by a court;
 - (vi) the person's registration is cancelled because of being found guilty of the offence by a court;
 - (c) in the case of an interim WWC exclusion that forms the ground for the suspension, a decision has been made under the **Worker Screening Act 2020**—
 - (i) to give a WWC clearance under that Act to the person whose registration has been suspended under this Division; or

S. 2.6.27F
(1)(c)
substituted by
No. 34/2020
s. 226.

- (ii) to not revoke a WWC clearance held by that person.
- (2) If more than one charge forms the ground for the suspension, subsection (1)(b) does not apply until each of the charges is finally dealt with in accordance with that paragraph.

2.6.27G Revocation of suspension

If the Institute revokes a suspension of registration under this Division it must immediately notify the person subject to that suspension and any other person served with, or given, a copy of a notice under section 2.6.27D(2) of the revocation.

* * * * *

S. 2.6.27G
inserted by
No. 31/2018
s. 19.

S. 2.6.28
amended by
No. 19/2014
s. 63,
repealed by
No. 9/2016
s. 4.

Division 8A—Interim suspension of registration

Pt 2.6 Div. 8A
(Heading and
ss 2.6.28–
2.6.28H)
inserted by
No. 9/2016
s. 5.

2.6.28 Institute may suspend registration where unacceptable risk of harm to children

New s. 2.6.28
inserted by
No. 9/2016
s. 5.

- (1) The Institute may suspend any or all registrations held by a person under this Part if the Institute reasonably believes that—
- (a) the person poses an unacceptable risk of harm to children; and
- (b) the suspension is necessary to protect children.

- (2) A suspension under this Division takes effect on the day the person is served with a written notice under section 2.6.28A or, if any later day is specified in the notice, on that day.

S. 2.6.28A
inserted by
No. 9/2016
s. 5.

2.6.28A Notice of interim suspension of registration

If the Institute decides to suspend a person's registration under this Division it must serve a written notice on the person containing the following—

- (a) that the person's registration is suspended;
- (b) the date on which the suspension takes effect (which must be no earlier than the date that the notice is served);
- (c) the reasons for the suspension and the information on which the Institute has based its decision;
- (d) the date on which the Institute will review the basis of the suspension;
- (e) that the Institute must under section 2.6.28E review the basis for the suspension at least every 30 days after the date of the first review;
- (f) that the person may make written submissions to the Institute at any time regarding the continuation of the suspension.

S. 2.6.28B
(Heading)
amended by
No. 31/2018
s. 20(1).

2.6.28B Institute must notify persons of interim suspension

- (1) The Institute must serve a written notice on any person employing the person subject to a suspension under this Division as a teacher or an early childhood teacher containing the following—
- (a) that the employed person's registration is suspended;

S. 2.6.28B
inserted by
No. 9/2016
s. 5.

- (b) the date on which the suspension takes effect.
- (2) A notice under subsection (1) must be served on the same day a notice is served on the employed person under section 2.6.28A or, if it is not reasonably possible to do so, as soon as practicable after that day.
- (3) The validity of a suspension under this Division is not affected by any failure to serve a notice under subsection (1).
- (4) The Institute must give a copy of a notice served under subsection 2.6.28A to the Secretary within the meaning of the **Worker Screening Act 2020**.

S. 2.6.28B(4)
inserted by
No. 31/2018
s. 20(2),
amended by
No. 34/2020
s. 227.

2.6.28C Cessation of interim suspension of registration

A suspension under this Division remains in force until the earliest of the following occurs—

- (a) the Institute revokes the suspension under section 2.6.28G;
- (b) the person ceases to be registered as a teacher or an early childhood teacher under section 2.6.29(1);
- (c) the person ceases to have permission to teach under section 2.6.29(2);
- (d) the person's registration is cancelled under section 2.6.29C or under an agreement in accordance with section 2.6.34(1)(d);
- (e) a medical panel makes a determination under section 2.6.41E(2) or (4) in relation to the matter which is the basis for the Institute's decision to suspend the person's registration;

S. 2.6.28C
inserted by
No. 9/2016
s. 5.

- (f) a formal hearing panel finds under section 2.6.46(1) that the person has not engaged in misconduct or serious misconduct, has not been seriously incompetent and is fit to teach;
- (g) a formal hearing panel makes a determination under section 2.6.46(2)(h), (ha), (hb), (i), (j) or (k) in relation to the matter which is the basis for the Institute's decision to suspend the person's registration.

S. 2.6.28D
inserted by
No. 9/2016
s. 5.

2.6.28D Person subject to interim suspension may make submissions to Institute

A person whose registration is suspended under this Division may make written submissions to the Institute at any time regarding the continuation of the suspension.

S. 2.6.28E
inserted by
No. 9/2016
s. 5.

2.6.28E Periodic review of interim suspension

- (1) The Institute must review the basis for the suspension of a person's registration under this Division within 30 days after the suspension takes effect and within 30 days after that review and every successive review in order to determine whether or not to continue that suspension.
- (2) The Institute must take into account any submission provided under section 2.6.28D in determining whether or not to continue the suspension.
- (3) The Institute may take into account any matter it considers to be relevant in determining whether or not to continue the suspension.
- (4) The Institute may determine to continue the suspension if it reasonably believes that—
 - (a) the person continues to pose an unacceptable risk of harm to children; and

- (b) the suspension is necessary to protect children.

2.6.28F Notice of determination to continue interim suspension

S. 2.6.28F
inserted by
No. 9/2016
s. 5.

If the Institute determines to continue the suspension of the person's registration it must serve a written notice on the person containing the following—

- (a) that the person's registration continues to be suspended;
- (b) the reasons for continuing the suspension and the information on which the Institute based its decision;
- (c) the date on which the Institute will next review the suspension;
- (d) that the person may make written submissions to the Institute at any time regarding the continuation of the suspension.

2.6.28G Revocation of interim suspension

S. 2.6.28G
inserted by
No. 9/2016
s. 5.

- (1) The Institute must revoke the suspension of a person's registration under this Division if the Institute no longer reasonably believes that—
 - (a) the person poses an unacceptable risk of harm to children; and
 - (b) the suspension is necessary to protect children.
- (2) The revocation of the suspension of a person's registration under this section does not affect an investigation conducted under this Part that has commenced in relation to the person.

S. 2.6.28G(2)
amended by
No. 10/2021
s. 20.

S. 2.6.28H
inserted by
No. 9/2016
s. 5,
amended by
Nos 31/2018
s. 21, 34/2020
s. 228.

2.6.28H Notice of revocation of interim suspension

If the Institute revokes the suspension of a person's registration under this Division it must notify the person, and any person employing the person as a teacher or early childhood teacher at the time the suspension was imposed, and the Secretary within the meaning of the **Worker Screening Act 2020**, in writing as soon as possible after the suspension is revoked—

- (a) that the suspension is revoked; and
- (b) the date on which the revocation takes effect.

Pt 2.6 Div. 9
(Heading)
substituted by
No. 10/2021
s. 21.

Division 9—Cancellation of registration

S. 2.6.29
(Heading)
amended by
Nos 31/2018
s. 22(1),
10/2021 s. 22.

2.6.29 Cancellation of registration held under this Part

S. 2.6.29(1)
amended by
No. 19/2014
s. 64(1),
substituted by
No. 31/2018
s. 22(2).

(1) All registrations held by a person under this Part are cancelled if the person—

- (a) is convicted or found guilty of a category A offence in Victoria or an equivalent offence in another jurisdiction; or

S. 2.6.29(1)(b)
amended by
No. 34/2020
s. 229(1).

- (b) has been given a WWC exclusion.

S. 2.6.29(2)
repealed by
No. 31/2018
s. 22(2).

* * * * *

- (3) A person whose registration is cancelled by the operation of subsection (1) is disqualified from teaching in a school or an early childhood service and is not entitled to apply to be registered under this Part—
- (a) if the registration is cancelled by the operation of subsection (1)(a), for an indefinite period; and
- (b) subject to subsection (3A), if the registration is cancelled by the operation of subsection (1)(b), for the period of 5 years after the date on which the WWC exclusion is given.
- (3A) If a WWC exclusion given to a person referred to in subsection (1) or (3) is set aside, or a WWC clearance is given to that person, under the **Worker Screening Act 2020**, the relevant subsection ceases to apply to the person from the date that the WWC exclusion was set aside or the WWC clearance was given to the person.
- (4) For the purposes of subsections (1) 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.
- (5) If a finding or conviction in relation to a person referred to in subsection (1) or (3) is quashed or set aside on appeal the relevant subsection ceases, from the date the finding or conviction was quashed or set aside, 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.

S. 2.6.29(3) amended by No. 19/2014 s. 64(2), substituted by No. 31/2018 s. 22(3).

S. 2.6.29(3)(b) amended by No. 34/2020 s. 229(1).

S. 2.6.29(3A) inserted by No. 31/2018 s. 22(3), substituted by No. 34/2020 s. 229(2).

S. 2.6.29(4) amended by No. 31/2018 s. 22(4).

S. 2.6.29(5) amended by Nos 68/2009 s. 97(Sch. item 48.6), 31/2018 s. 22(5).

S. 2.6.29(7)
amended by
Nos 31/2018
s. 22(6),
34/2020
s. 229(1).

- (7) This section applies to any conviction or finding of guilt of a category A offence or the giving of a WWC exclusion whether occurring before, on or after the commencement of this Chapter.

Pt 2.6 Div. 9A
(Heading and
ss 2.6.29A–
2.6.29C)
inserted by
No. 27/2010
s. 26.

Division 9A—Voluntary suspension or cancellation of registration

S. 2.6.29A
inserted by
No. 27/2010
s. 26.

2.6.29A Request for conditions on or suspension of registration

- (1) A registered teacher may ask the Institute to suspend his or her registration or to impose a condition on the registration or to do both of those things if the teacher believes that—
- (a) he or she is seriously incompetent; or
 - (b) he or she has engaged in misconduct or serious misconduct; or
 - (c) he or she is not fit to teach; or
 - (d) his or her ability to practise as a teacher is seriously detrimentally affected or likely to be seriously detrimentally affected because of an impairment.
- (2) If the Institute and the registered teacher agree on the suspension of the registration or a condition to be imposed on the registration or to both of those things occurring, the Institute may—
- (a) suspend the registration or impose the condition on the registration (as the case requires); or

S. 2.6.29A(2)
substituted by
No. 19/2014
s. 65.

(b) if the teacher holds registration under more than one Division of this Part, suspend or impose the condition on one or both registrations (as the case requires).

(3) If the Institute and the registered teacher do not agree on the suspension of the registration or a condition to be imposed on the registration under this section, the Institute must investigate the matter in accordance with Division 11.

S. 2.6.29A(3)
amended by
No. 10/2021
s. 23.

2.6.29B Agreements to amend, vary or revoke conditions or revoke suspensions

S. 2.6.29B
inserted by
No. 27/2010
s. 26.

(1) The Institute may, if the registered teacher so agrees—

(a) amend, vary or revoke any condition imposed on the teacher's registration by the Institute under this Division without a hearing by a hearing panel; or

(b) revoke a suspension of the teacher's registration imposed by the Institute under this Division and impose a condition on the registration without a hearing by a hearing panel; or

(c) revoke a suspension of the teacher's registration imposed by the Institute under this Division without a hearing by a hearing panel if the teacher satisfies the Institute that his or her ability to practise as a teacher is no longer affected.

(2) If the Institute and the registered teacher fail to agree under subsection (1), the Institute may refer the matter to a hearing of a hearing panel.

S. 2.6.29BA
inserted by
No. 19/2014
s. 22.

2.6.29BA Discretion to record suspension or condition in Register of Disciplinary Action

(1) Subject to subsection (3), the Institute may determine that it is not appropriate or in the public interest for any of the following particulars to be recorded in the Register of Disciplinary Action in accordance with Division 13A—

S. 2.6.29BA
(1)(a)
amended by
No. 19/2014
s. 66(a).

(a) the suspension of the registration of a teacher or an early childhood teacher imposed under this Division;

S. 2.6.29BA
(1)(b)
amended by
No. 19/2014
s. 66(a).

(b) the imposition of a condition (whether amended or varied) on the registration of a teacher or an early childhood teacher imposed under this Division.

(2) In making a determination under subsection (1), the Institute may determine the extent to which, the manner in which and the period for which the particulars are recorded in the Register of Disciplinary Action.

S. 2.6.29BA(3)
amended by
No. 19/2014
s. 66(b).

(3) In making a determination under subsections (1) and (2), the Institute must consider the circumstances of the suspension of, or the imposition of the condition on, the registration of the teacher or early childhood teacher.

S. 2.6.29C
inserted by
No. 27/2010
s. 26.

2.6.29C Cancellation by agreement

(1) A registered teacher may, on surrender of his or her registration, ask the Institute to cancel his or her registration.

(2) The Institute may at the request of a registered teacher cancel the registration of the teacher.

2.6.29D Notifications to Secretary

The Institute must notify the Secretary within the meaning of the **Worker Screening Act 2020** of the following—

- (a) any suspension of the registration of a registered teacher under section 2.6.29A;
- (b) any revocation of the suspension of the registration of a registered teacher under section 2.6.29B;
- (c) any cancellation of the registration of a registered teacher under section 2.6.29C.

S. 2.6.29D
inserted by
No. 31/2018
s. 23,
amended by
No. 34/2020
s. 230.

Division 10—Notifications and complaints about registered teachers

Pt 2.6 Div. 10
(Heading and
ss 2.6.30–
2.6.32)
amended by
Nos 58/2007
s. 11, 27/2010
ss 27, 28,
19/2014 s. 67,
9/2016 s. 6,
4/2017
s. 12(9),
31/2018
ss 24–26,
34/2020 s. 231,
substituted as
Pt 2.6 Div. 10
(Heading and
ss 2.6.30,
2.6.30A) by
No. 10/2021
s. 24.

S. 2.6.30
substituted by
No. 10/2021
s. 24.

2.6.30 Notifications to Institute concerning actions against registered teachers

- (1) The employer of a registered teacher must notify the Institute if the employer has taken—
 - (a) any action against the registered teacher in response to allegations—
 - (i) of serious incompetence of the registered teacher; or
 - (ii) of serious misconduct of the registered teacher; or
 - (iii) that the registered teacher is unfit to be a registered teacher; or
 - (iv) that the registered teacher's ability to practise as a registered teacher is seriously detrimentally affected or likely to be seriously detrimentally affected because of an impairment; or
 - (b) any other action against the registered teacher that may be relevant to the registered teacher's fitness to teach.
- (2) The employer of a registered teacher must immediately notify the Institute if the employer becomes aware that the registered teacher—
 - (a) is currently charged with, or has been convicted or found guilty of, a category A offence or a category B offence; or
 - (b) has been given a WWC exclusion.
- (3) 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 convicted or found guilty of, a category A offence or a category B offence.

- (4) The Commission for Children and Young People (established by section 6 of the **Commission for Children and Young People Act 2012**) must immediately notify the Institute if the Commission becomes aware that a registered teacher is the subject of a reportable allegation or a finding of reportable conduct under Part 5A of the **Child Wellbeing and Safety Act 2005**.

2.6.30A Person or body may make a complaint to Institute

S. 2.6.30A
inserted by
No. 10/2021
s. 24.

- (1) A person or body may make a complaint to the Institute alleging that a registered teacher—
- (a) has engaged in misconduct or serious misconduct; or
 - (b) is unfit to be a registered teacher; or
 - (c) is seriously incompetent; or
 - (d) has such an impairment that the person's ability to practise as a registered teacher is seriously detrimentally affected or likely to be seriously detrimentally affected; or
 - (e) has been charged with, or convicted or found guilty of, a category A offence or a category B offence; or
 - (f) has engaged in category C conduct; or
 - (g) has been given an interim WWC exclusion or a WWC exclusion; or
 - (h) is the subject of disciplinary action by a person or organisation for whom the registered teacher undertakes work (including as a volunteer).
- (2) A complaint under subsection (1)—
- (a) must be in writing; and
 - (b) may include any other information relevant to the complaint.

Division 10A—Preliminary assessments

Pt 2.6 Div. 10A
(Heading and
ss 2.6.31,
2.6.32)
inserted by
No. 10/2021
s. 24.

New s. 2.6.31
inserted by
No. 10/2021
s. 24.

2.6.31 Institute to conduct preliminary assessment

- (1) The Institute must conduct a preliminary assessment of a notification or complaint.
- (2) The Institute, by written notice, must advise the following that the Institute is conducting a preliminary assessment—
 - (a) the registered teacher who is the subject of the notification or complaint;
 - (b) the person or body that made the notification or complaint.
- (3) Despite subsection (2), the Institute is not required to give written notice under subsection (2) if the Institute reasonably believes that doing so may—
 - (a) seriously prejudice any investigation of the notification or complaint; or
 - (b) place at risk a person's health or safety; or
 - (c) place a person at risk of harassment or intimidation.
- (4) For the purposes of conducting a preliminary assessment under subsection (1), the Institute, in writing, may require the following to provide further information within a specified period—
 - (a) the registered teacher who is the subject of the notification or complaint;
 - (b) the person or body that made the notification or complaint;
 - (c) any person who may have information relevant to the notification or complaint.

- (5) The Institute may use any information obtained in the course of conducting a preliminary assessment for the purposes of—
- (a) considering the notification or complaint; or
 - (b) conducting an investigation under Division 11; or
 - (c) performing its functions under this Part.

2.6.32 Outcome of preliminary assessment

New s. 2.6.32
inserted by
No. 10/2021
s. 24.

- (1) On completing a preliminary assessment of a notification or complaint, the Institute may—
- (a) decide to conduct an investigation under Division 11; or
 - (b) decide to take any other action required or authorised to be taken under this Part; or
 - (c) decide to take no further action if the Institute is satisfied that—
 - (i) the notification or complaint is vexatious, frivolous, misconceived or lacking in substance; or
 - (ii) the person or body that made the notification or complaint has not responded, or has responded inadequately, to a requirement for further information under section 2.6.31(2); or
 - (iii) the employer or another person has already dealt adequately with the subject matter of the notification or complaint.
- (2) The Institute, by written notice, must advise the following of the outcome of a preliminary assessment—

- (a) the registered teacher who is the subject of the notification or complaint;
 - (b) the person or body that made the notification or complaint;
 - (c) the employer of the registered teacher, unless the Institute decides to take no further action under subsection (1)(c).
- (3) Despite subsection (2), the Institute is not required to give written notice under subsection (2) if the Institute reasonably believes that doing so may—
- (a) seriously prejudice any investigation of the notification or complaint; or
 - (b) place at risk a person's health or safety; or
 - (c) place a person at risk of harassment or intimidation.

Pt 2.6 Div. 11
(Heading)
substituted by
No. 10/2021
s. 25.

Division 11—Investigations

S. 2.6.33
amended by
Nos 27/2010
s. 29, 31/2018
s. 27,
substituted by
No. 10/2021
s. 26.

2.6.33 Conduct of investigation

If the Institute decides under section 2.6.32(1)(a) to conduct an investigation after completing a preliminary assessment of a notification or complaint, the Institute must investigate the notification or complaint in accordance with this Division.

S. 2.6.33A
inserted by
No. 27/2010
s. 30,
substituted by
No. 10/2021
s. 26.

2.6.33A Investigation following suspension

- (1) If the Institute suspends a person's registration under Division 8A, the Institute must investigate whether the person—
- (a) has engaged in misconduct or serious misconduct; or
 - (b) is unfit to be a registered teacher; or

- (c) is seriously incompetent; or
 - (d) has such an impairment that the person's ability to practise as a registered teacher is seriously detrimentally affected or likely to be seriously detrimentally affected.
- (2) The Institute must commence an investigation under subsection (1) as soon as practicable after suspending the person's registration.

2.6.33AB Investigation without notification or complaint

S. 2.6.33AB
inserted by
No. 10/2021
s. 26.

The Institute may investigate a matter relating to a registered teacher without receiving a notification or complaint if the Institute reasonably believes that the registered teacher—

- (a) has engaged in misconduct or serious misconduct; or
- (b) is unfit to be a registered teacher; or
- (c) is seriously incompetent; or
- (d) has such an impairment that the registered teacher's ability to practise as a registered teacher is seriously detrimentally affected or likely to be seriously detrimentally affected; or
- (e) has failed to comply with any condition, limitation or restriction imposed on the teacher's registration; or
- (f) has contravened a provision of this Chapter.

2.6.33AC Institute or employer may conduct investigation

S. 2.6.33AC
inserted by
No. 10/2021
s. 26.

In order to determine whether to conduct a formal or informal hearing into a matter, the Institute may—

- (a) conduct an investigation into the matter; or

- (b) request the employer of the person being investigated to conduct an investigation into the matter.

S. 2.6.33B
inserted by
No. 27/2010
s. 30,
amended by
19/2014 s. 68,
substituted by
No. 10/2021
s. 26.

2.6.33B Institute to give written notice of an investigation

- (1) The Institute must give a person being investigated under this Division written notice of the investigation.
- (2) Despite subsection (1), the Institute is not required to give the person written notice of the investigation if the Institute reasonably believes that doing so may—
 - (a) seriously prejudice the investigation; or
 - (b) place at risk a person's health or safety; or
 - (c) place a person at risk of harassment or intimidation.
- (3) A notice under subsection (1) must—
 - (a) be given within 14 days after the Institute decides to conduct an investigation; and
 - (b) advise the person of the nature of the matter to be investigated; and
 - (c) advise the person of the procedures that can be taken under this Division and Divisions 12, 13 and 14.
- (4) If the person holds registration under more than one Division of this Part, a notice under subsection (1) must also state—
 - (a) the registration to which the investigation relates; and
 - (b) that on completing the investigation, a recommendation may be made in relation to both registrations.

- (5) If the Institute is investigating whether a person's ability to practise as a registered teacher is seriously detrimentally affected or likely to be seriously detrimentally affected because of an impairment, a notice under subsection (1) may request the person to advise the Institute within 28 days after receiving the notice as to whether the person agrees to undergo a health assessment in accordance with Division 11A to assess the person's ability to practise as a registered teacher.

2.6.33C Powers of investigator

An investigator may—

- (a) by written notice given to a person, require the person to do either or both of the following—
- (i) to give stated information to the investigator within a stated reasonable time and in a stated reasonable way;
 - (ii) to attend before the investigator at a stated reasonable time and place to answer questions or to produce a stated thing; and
- (b) ask the person being investigated to undergo a health assessment in accordance with Division 11A within 28 days after receiving the notice; and
- (c) conduct an investigation in the manner determined by the investigator.

S. 2.6.33C
inserted by
No. 27/2010
s. 30.

S. 2.6.33C(b)
amended by
No. 10/2021
s. 27.

2.6.33D Investigation to be conducted expeditiously

- (1) An investigation under this Division must be conducted as quickly as practicable having regard to the nature of the matter being investigated.
- (2) Until the investigation is completed and a determination is made under section 2.6.34 by the Institute about the matter being investigated, the

S. 2.6.33D
inserted by
No. 27/2010
s. 30.

S. 2.6.33D(2)
amended by
No. 10/2021
s. 28(a).

Institute must, at intervals of not more than 3 months, report to the following about the progress of the investigation—

S. 2.6.33D
(2)(a)
amended by
No. 10/2021
s. 28(b).

(a) any person or body that made a notification or complaint in relation to the matter being investigated;

S. 2.6.33D
(2)(b)
amended by
No. 10/2021
s. 28(c).

(b) the person being investigated.

(3) If a matter has been referred to an investigator to investigate, that investigator must give the Institute any information the Institute reasonably requires to enable the Institute to comply with subsection (2).

2.6.34 Outcome of investigation

S. 2.6.34(1)
substituted by
No. 27/2010
s. 31,
amended by
No. 10/2021
s. 29(1)(a).

(1) On completing an investigation, the person conducting the investigation may make one of the following recommendations—

S. 2.6.34(1)(b)
amended by
No. 10/2021
s. 29(1)(b).

(a) that no further action be required; or

S. 2.6.34(1)(c)
amended by
No. 10/2021
s. 29(1)(c).

(b) that the matter or part of the matter be settled by agreement between the Institute and the person who has been investigated; or

S. 2.6.34(1)(d)
substituted by
No. 10/2021
s. 29(1)(d).

(c) that the matter or part of the matter be settled by agreement between the Institute, the person who has been investigated and the person or body that made the notification or complaint; or

(d) that the person who has been investigated agree to the cancellation of any registrations held by that person under this Part; or

- (e) that an informal, formal or medical panel hearing be held into the matter; or
- (f) if the matter raises issues, which in the investigator's opinion require investigation by another person, organisation or agency, refer the matter to that person, organisation or agency.

(1A) If the person holds registration under more than one Division of this Part, a recommendation under subsection (1)(d) may be made in relation to one or both registrations.

S. 2.6.34(1A)
inserted by
No. 19/2014
s. 69,
amended by
No. 10/2021
s. 29(2).

(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 11A—Health assessments

Part 2.6
Div. 11A
(Heading and
ss 2.6.35A–
2.6.35E)
inserted by
No. 27/2010
s. 32.

2.6.35A Definitions

In this Division—

health assessment means an assessment of a person to determine whether the person has an impairment and includes a medical, physical, psychiatric or psychological examination or test of the person;

S. 2.6.35A
inserted by
No. 27/2010
s. 32.

S. 2.6.35A
def. of
*registered
health
practitioner*
substituted by
Nos 39/2010
s. 121(1) (as
amended by
No. 29/2011
s. 3(Sch. 1
item 68.2)),
27/2012 s. 17.

registered health practitioner means a person registered under the Health Practitioner Regulation National Law to practise a health profession other than as a student;

S. 2.6.35A
def. of
*registered
medical
practitioner*
substituted by
No. 39/2010
s. 121(1) (as
amended by
No. 29/2011
s. 3(Sch. 1
item 68.2)).

registered medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student).

S. 2.6.35B
inserted by
No. 27/2010
s. 32.

2.6.35B Health assessments

- (1) If a registered teacher agrees to undergo a health assessment, the teacher must be assessed by a registered health practitioner who is agreed on by the Institute and the teacher.
- (2) If the Institute and the registered teacher are unable to agree on a registered health practitioner to conduct the assessment, the Chairperson of the Council must appoint a registered health practitioner to perform the assessment.
- (3) The Institute must pay for the assessment.

S. 2.6.35C
inserted by
No. 27/2010
s. 32 (as
amended by
No. 28/2010
s. 22).

2.6.35C Report of health assessment

- (1) The assessing health practitioner must give a report of his or her assessment to the investigator.

- (2) The investigator must—
 - (a) give a copy of the report to the registered teacher within 7 days after receiving the report unless subsection (3) applies; and
 - (b) discuss the report with the registered teacher, and, in the case of an adverse finding in the report, the possible ways of dealing with that finding.
- (3) If the report contains information of a medical or psychiatric nature concerning the registered teacher and it appears to the investigator that the disclosure of that information to the teacher might be prejudicial to the physical or mental health or wellbeing of the teacher, the investigator may decide not to give that information to the teacher but to give it instead to a registered health practitioner nominated by the Institute or that teacher.
- (4) Before acting under subsection (3), the investigator must report to the Institute and, if the investigator is not a registered health practitioner and the Institute is of the opinion that it is necessary for the investigation of the matter to be continued by a registered health practitioner, the Institute may appoint a registered health practitioner as an investigator to continue the investigation.

2.6.35D Refusal to attend or cooperate

- (1) If a registered teacher, who is the subject of an investigation under this Part—
 - (a) does not agree to undergo a health assessment; or

S. 2.6.35D
inserted by
No. 27/2010
s. 32.

(b) does not abide by an agreement to undergo a health assessment—

the investigator must report on the matter to the Institute together with any recommendations of the investigator to the Institute.

- (2) After receiving a report from the investigator under subsection (1), the Institute may refer the matter to a hearing by a medical panel.

S. 2.6.35E
inserted by
No. 27/2010
s. 32.

2.6.35E Health assessments required by a medical panel

- (1) If a medical panel appointed under this Part requires a registered teacher to undergo a health assessment, the teacher must be assessed by a registered health practitioner who is appointed by the panel.

Note

Under section 2.6.41F, a medical panel may direct a registered teacher to undergo a health assessment to assess the teacher's ability to practise as a teacher if the panel believes that the teacher may have an impairment.

- (2) The Institute must pay for the assessment.
- (3) The assessing health practitioner must give a report of his or her assessment to the panel.
- (4) The panel may discuss the report with the registered teacher, and, in the case of an adverse finding in the report, the possible ways of dealing with that finding.

Division 12—Hearing panel hearings

Pt 2.6 Div. 12
(Heading)
substituted by
No. 27/2010
s. 33.

Subdivision 1—Pool of persons to sit on hearing panels

Pt 2.6 Div. 12
Subdiv. 1
(Heading and
s. 2.6.35F)
inserted by
No. 27/2010
s. 34.

2.6.35F Pool of approved persons who may sit on hearing panels

S. 2.6.35F
inserted by
No. 27/2010
s. 34.

- (1) The Governor in Council, on the recommendation of the Minister, may approve a pool of persons who may be appointed to a hearing panel under this Division.

* * * * *

S. 2.6.35F(2)
repealed by
No. 14/2013
s. 12.

- (3) Any of the following persons may be approved for a pool under this section—

- (a) persons who are Australian lawyers of at least 5 years standing;

S. 2.6.35F
(3)(a)
substituted by
No. 17/2014
s. 160(Sch. 2
item 34.2).

- (b) persons who are current or former members of the Council;

- (c) registered teachers;

- (d) persons registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);

S. 2.6.35F(d)
substituted by
No. 39/2010
s. 121(2).

S. 2.6.35F(e)
substituted by
No. 39/2010
s. 121(2).

- (e) persons registered under the Health Practitioner Regulation National Law to practise in the psychology profession (other than as a student);
 - (f) persons who have knowledge of or experience in health and community services.
- (4) The Governor in Council, on the recommendation of the Minister, may revoke the approval of a person under this section.

Pt 2.6 Div. 12
Subdiv. 2
(Heading)
inserted by
No. 27/2010
s. 34.

Subdivision 2—Informal hearings

S. 2.6.36
amended by
No. 27/2010
s. 35(1).

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 or the ability of the registered teacher to practise as a teacher, the Institute must—

S. 2.6.36(a)
substituted by
No. 27/2010
s. 35(2).

- (a) appoint a panel from the pool of persons approved under section 2.6.35F 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 Constitution of informal hearing panel

- (1) A panel appointed to hold an informal hearing must consist of not less than 3 persons who are approved under section 2.6.35F, of whom—
 - (a) one is to be the Chairperson, who must be a member or former member of the Council; and
 - (b) one must be a registered teacher.
- (2) A person who has made a complaint or undertaken an investigation of the matter is not entitled to be a member of the informal hearing panel.

S. 2.6.37
substituted by
No. 27/2010
s. 36.

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
- (ab) if the teacher holds registration under more than one Division of this Part, the registration to which the hearing relates; 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

S. 2.6.38(ab)
inserted by
No. 19/2014
s. 70(a).

S. 2.6.38(f)
amended by
Nos 27/2010
s. 37, 19/2014
s. 70(b).

- (f) list the findings the informal hearing panel can make including application of those findings to teachers holding registration under more than one Division of this Part.

2.6.39 Conduct of an informal hearing

At an informal hearing—

S. 2.6.39(a)
substituted by
No. 27/2010
s. 38.

- (a) the informal 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 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

S. 2.6.40(1)
substituted by
No. 27/2010
s. 39(1).

- (1) After considering all the submissions made to the hearing, the informal hearing panel may make findings about whether or not—
 - (a) the teacher has by act or omission engaged in misconduct; or
 - (b) the matter should be referred to a formal hearing.

S. 2.6.40(1A)
inserted by
No. 27/2010
s. 39(1).

- (1A) If the panel finds that the teacher has engaged in misconduct, the panel may make one or more of the following determinations—

S. 2.6.40
(1A)(a)
amended by
No. 14/2013
s. 20(2).

- (a) that the matter be referred to a medical panel hearing, if the panel is of the opinion that the teacher's ability to practise as a teacher is seriously detrimentally affected or likely to be seriously detrimentally affected because of an impairment;
- (b) that the teacher be cautioned;

- (c) that the teacher be reprimanded;
- (d) that any condition be placed on the teacher's registration including a condition—
 - (i) that the teacher undertake and complete specified further education or training within a specified period; or
 - (ii) that the teacher undergo counselling.

- (2) If the panel finds that there should be a formal hearing the panel must refer the matter to a formal hearing.

S. 2.6.40(2)
amended by
No. 27/2010
s. 39(2).

2.6.41 Change of informal hearing to formal or medical panel hearing during course of hearing

S. 2.6.41
substituted by
No. 27/2010
s. 40.

If, before the end of the informal hearing—

- (a) the teacher requests that a formal hearing be held; or
- (b) the informal hearing panel is of the opinion that a formal hearing should be held; or
- (c) the matter is referred to a medical panel because the informal hearing panel is of the opinion that the teacher's ability to practise as a teacher is seriously detrimentally affected or likely to be seriously detrimentally affected because of an impairment; or
- (d) the Institute suspends the registration of the registered teacher under Division 8A—

S. 2.6.41(c)
amended by
Nos 14/2013
s. 20(2),
9/2016 s. 7(a).

S. 2.6.41(d)
inserted by
No. 9/2016
s. 7(b).

the panel must abandon the informal hearing and refer the matter to a formal hearing or a medical panel hearing (as the case requires).

Subdivision 3—Medical panel hearings

Pt 2.6 Div. 12
Subdiv. 3
(Heading and
ss 2.6.41A–
2.6.41G)
inserted by
No. 27/2010
s. 41.

2.6.41A Appointment and notification of medical panel hearing

S. 2.6.41A
inserted by
No. 27/2010
s. 41.

If the Institute has determined under section 2.6.34 or 2.6.35D that a medical panel hearing be held into a registered teacher's ability to practise as a teacher or an informal or formal hearing panel has referred a matter to a medical panel hearing in relation to a registered teacher's ability to practice as a teacher, the Institute must—

- (a) appoint a medical panel from the pool of persons approved under section 2.6.35F to hold the hearing; and
- (b) fix a time and place for the hearing to be held; and
- (c) serve a notice by post on the registered teacher under section 2.6.41C; and
- (d) serve notice on any complainant by post which complies with sections 2.6.41C(a) and 2.6.41C(b).

2.6.41B Constitution of medical hearing panel

S. 2.6.41B
inserted by
No. 27/2010
s. 41.

- (1) A medical panel appointed to hold a hearing must consist of not less than 3 persons who are approved under section 2.6.35F, of whom—

S. 2.6.41B
(1)(a)
substituted by
No. 17/2014
s. 160(Sch. 2
item 34.3).

- (a) one must be an Australian lawyer of at least 5 years standing; and

- (b) one must be a person registered under the Health Practitioner Regulation National Law—
- (i) to practise in the medical profession (other than as a student); or
 - (ii) to practise in the psychology profession (other than as a student); and
- (c) one must be a registered teacher.
- (2) A person is not entitled to be a member of the medical panel if the person has made a complaint or been involved in any proceedings under this Division relating to the matter to be referred to the panel.

**S. 2.6.41B
(1)(b)
substituted by
No. 39/2010
s. 121(3).**

2.6.41C Notice of medical panel hearing

A notice of a medical panel hearing must—

- (a) state the nature of the hearing and the complaint or allegations made against the teacher; and
- (ab) if the teacher holds registration under more than one Division of this Part, the registration to which the hearing relates; and
- (b) give the time and place of the hearing; and
- (c) state that there is a right to legal representation at the hearing; and
- (d) state 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 panel can make including application of those findings to teachers holding registration under more than one Division of this Part; and

**S. 2.6.41C
inserted by
No. 27/2010
s. 41.**

**S. 2.6.41C(ab)
inserted by
No. 19/2014
s. 71(a).**

**S. 2.6.41C(f)
amended by
No. 19/2014
s. 71(b).**

- (g) state that there is a right of review of the panel's determinations.

S. 2.6.41D
inserted by
No. 27/2010
s. 41.

2.6.41D Conduct of a medical panel hearing

At a medical panel hearing—

- (a) the 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 be accompanied by another person; and
- (c) the teacher has a right to legal representation at the hearing; and
- (d) the proceedings of the hearing must not be open to the public.

S. 2.6.41E
inserted by
No. 27/2010
s. 41.

2.6.41E Findings and determinations of medical panel hearing

- (1) After considering all the submissions made to a hearing into the ability of a registered teacher to practise as a teacher, a medical panel may find that—
 - (a) the ability of the teacher to practise as a teacher is seriously detrimentally affected or likely to be seriously detrimentally affected because of an impairment; or
 - (b) the ability of the teacher to practise as a teacher is not affected.
- (2) If the medical panel makes a finding under subsection (1)(a), the panel may make one or more of the following determinations—
 - (a) to impose any condition on the registration of the teacher;
 - (b) to suspend the registration of the teacher for the period and subject to any condition specified in the determination.

- (2A) If the teacher holds registration under more than one Division of this Part, a determination under subsection (2) may be made in relation to one or both registrations.
- (3) Without limiting the powers of the medical panel under subsection (2)(a), the panel may determine to impose all or any of the following conditions on the registration of a teacher—
- (a) that the teacher undergo counselling;
 - (b) that the teacher undertake and complete specified further education or training within a specified period;
 - (c) that the teacher work under the supervision of another registered teacher;
 - (d) that the teacher attend a person registered under the Health Practitioner Regulation National Law to practise a health profession for treatment.
- (4) If the medical panel makes a finding under subsection (1)(b), the panel may determine that no further action be taken.

S. 2.6.41E(2A)
inserted by
No. 19/2014
s. 72.

S. 2.6.41E
(3)(d)
amended by
Nos 39/2010
s. 121(4),
27/2012 s. 18.

S. 2.6.41E(4)
amended by
No. 14/2013
s. 20(3).

2.6.41EA Findings on referral by formal panel

S. 2.6.41EA
inserted by
No. 14/2013
s. 13.

- (1) This section applies if a matter has been referred to a medical panel hearing by a formal hearing panel under section 2.6.45A.
- (2) Despite sections 2.6.41D and 2.6.41E, the medical panel may make a finding but not a determination in relation to the matter under section 2.6.41E.
- (3) The medical panel must notify the formal hearing panel of any finding in relation to the matter made under section 2.6.41E(1).

S. 2.6.41F
inserted by
No. 27/2010
s. 41.

2.6.41F Referral to a health assessment

The medical panel, at any time during the panel's hearing into a registered teacher's ability to practise, may direct the teacher to undergo a health assessment in accordance with Division 11A to assess the teacher's ability to practise as a teacher if the panel believes that the teacher may have an impairment.

S. 2.6.41G
inserted by
No. 27/2010
s. 41.

2.6.41G Referral to formal hearing

- (1) The medical panel must refer a matter arising out of a hearing to a formal hearing if the panel is of the opinion that the registered teacher's ability to practise as a teacher is affected to such an extent that there is a reasonable likelihood that a formal hearing panel may determine to cancel the registration of the teacher.
- (2) A medical panel may cease a hearing into a registered teacher's ability to practise as a teacher and refer the matter to a formal hearing if the panel is of the opinion that the teacher is seriously incompetent in his or her teaching practice or has engaged in misconduct or serious misconduct.
- (3) If a matter is referred to a formal hearing under this section, any hearing by a medical panel into the registered teacher's ability to practise as a teacher must be abandoned.

Pt 2.6 Div. 12
Subdiv. 4
(Heading)
inserted by
No. 27/2010
s. 42.

Subdivision 4—Formal hearings

2.6.42 Establishment and notification of formal hearing

If—

- (a) the Institute has determined that a formal hearing be held; or

- (b) the informal hearing panel or medical panel has referred a matter to a formal hearing—
- S. 2.6.42(b)
amended by
No. 27/2010
s. 43(1).
- the Institute must—
- (c) appoint a panel from the pool of persons approved under section 2.6.35F to hold the hearing; and
- S. 2.6.42(c)
amended by
No. 27/2010
s. 43(2).
- (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 or a former member of the Council; and
- S. 2.6.43(1)(a)
amended by
No. 27/2010
s. 44(1).
- (b) one is to be a registered teacher.
- * * * * *
- S. 2.6.43(2)
repealed by
No. 27/2010
s. 44(2).
- (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 a medical panel or an informal hearing panel, which held a hearing into the matter;
- S. 2.6.43(3)(b)
substituted by
No. 27/2010
s. 44(3).
- (c) a complainant.

S. 2.6.44
amended by
No. 19/2014
s. 73(2) (ILA
s. 39B(1)).

2.6.44 Notice of a formal hearing

(1) A notice of a formal hearing must—

S. 2.6.44(ab)
inserted by
No. 19/2014
s. 73(1).

- (a) state the nature of the hearing and the complaint or allegations made against the teacher; and
- (ab) if the teacher holds registration under more than one Division of this Part, the registration to which the hearing relates; and

S. 2.6.44(c)
amended by
No. 19/2014
s. 23(1).

- (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; and

S. 2.6.44(d)
inserted by
No. 19/2014
s. 23(2).

- (d) state that the panel has, under section 2.6.45, the power to make a determination prohibiting the publishing of information that may enable identification of the teacher or a witness; and

S. 2.6.44(e)
inserted by
No. 19/2014
s. 23(2).

- (e) include any other prescribed information.

S. 2.6.44(2)
inserted by
No. 19/2014
s. 73(2).

(2) The list of possible findings in a notice of a formal hearing must include application of those findings to teachers holding registration under more than one Division of this Part.

2.6.45 Conduct of a formal hearing

At a formal hearing—

S. 2.6.45(a)
amended by
No. 27/2010
s. 45.

- (a) the 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, any information that might enable the complainant to be identified is not to be published or broadcast and the complainant—
- (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) the panel may determine that any information that might enable any witness giving evidence in the proceedings to be identified 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 the final determination must not be published or broadcast 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; and
- (g) the panel may determine that any evidence given before it and the content of any document produced to it during the hearing

S. 2.6.45(c)
amended by
No. 19/2014
s. 24(1).

S. 2.6.45(e)
substituted by
No. 14/2013
s. 14.

S. 2.6.45(f)
substituted by
No. 19/2014
s. 24(2).

S. 2.6.45(g)
inserted by
No. 19/2014
s. 24(2).

must not be published or broadcast prior to or after the making of a final determination 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.

S. 2.6.45A
inserted by
No. 14/2013
s. 15.

2.6.45A Panel may adjourn hearing

If, before the end of a formal hearing the panel is of the opinion that the teacher's ability to practise as a teacher is seriously detrimentally affected or likely to be seriously detrimentally affected because of an impairment, the panel may adjourn the hearing and refer the matter to a medical panel hearing to make findings about the teacher's ability to practise as a teacher.

S. 2.6.46
(Heading)
amended by
No. 27/2010
s. 46(1).

2.6.46 Findings and determinations of a formal hearing

(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 misconduct or serious misconduct; or
- (b) the teacher has, whether by act or omission, been seriously incompetent; or
- (c) the teacher is, whether by act or omission, not fit to teach.

S. 2.6.46(1)(a)
amended by
Nos 27/2010
s. 46(2),
73/2012
s. 109(1).

(2) If after considering the submissions made at a formal hearing 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

S. 2.6.46(2)
amended by
No. 14/2013
s. 16(1).

- (c) the teacher is guilty of misconduct or serious misconduct; or **S. 2.6.46(2)(c) amended by No. 27/2010 s. 46(3)(a).**
- (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— **S. 2.6.46(2)(f) substituted by No. 31/2018 s. 28(1).**
- (i) has been convicted or found guilty of a category B offence in Victoria or an equivalent offence in another jurisdiction; and
- (ii) 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 including a condition that the teacher— **S. 2.6.46(2)(h) substituted by No. 27/2010 s. 46(3)(b).**
- (i) undergo counselling; or
- (ii) undertake and complete specified further education or training within a specified period;
- (ha) caution the teacher; **S. 2.6.46(2)(ha) inserted by No. 27/2010 s. 46(3)(b).**

S. 2.6.46
(2)(hb)
inserted by
No. 27/2010
s. 46(3)(b).

(hb) reprimand the teacher;

S. 2.6.46
(2)(hc)
inserted by
No. 27/2010
s. 46(3)(b),
amended by
No. 14/2013
s. 20(2).

(hc) refer the matter to a medical panel hearing, if the panel is of the opinion that the teacher's ability to practise as a teacher is seriously detrimentally affected or likely to be seriously detrimentally affected because of an impairment;

(i) suspend the registration of the teacher for the period and subject to the conditions, limitations and restrictions, if any, specified in the determination;

S. 2.6.46(2)(j)
amended by
No. 27/2010
s. 46(3)(c).

(j) cancel the registration of the teacher;

S. 2.6.46(2)(k)
inserted by
No. 27/2010
s. 46(3)(d),
amended by
No. 19/2014
s. 74(1).
S. 2.6.46(2AA)
inserted by
No. 31/2018
s. 28(2).

(k) disqualify the teacher from applying for registration under Divisions 3, 3A and 4 within a specified period if the teacher's registration is cancelled by the panel.

(2AA) If the panel makes a finding under subsection (2)(f), the panel must make a determination under subsection (2)(j) to cancel the registration of the teacher.

S. 2.6.46(2AB)
inserted by
No. 31/2018
s. 28(2).

(2AB) For the purposes of subsection (2)(f)(ii), the panel may decide that a teacher is fit to teach despite being convicted or found guilty of a category B offence in Victoria or an equivalent offence in another jurisdiction, if the panel is satisfied that a reasonable person would allow their child to have direct contact with the teacher.

- (2A) If the teacher holds registration under more than one Division of this Part, the panel may make a determination under subsection (2)(h), (i) or (j) in relation to one or to both registrations. **S. 2.6.46(2A) inserted by No. 19/2014 s. 74(2).**
- (3) In making a determination under subsection (2), the panel may take into consideration any finding of a medical panel to which the matter was referred under section 2.6.45A. **S. 2.6.46(3) inserted by No. 14/2013 s. 16(2).**
- (4) In addition to a determination made under subsection (2) the panel may determine— **S. 2.6.46(4) inserted by No. 19/2014 s. 25.**
- (a) subject to subsection (5)—
- (i) that it is not appropriate or in the public interest for any particulars relating to the hearing, including any determination made under subsection (2), to be recorded in the Register of Disciplinary Action in accordance with Division 13A; and
- (ii) the extent to which, the manner in which and the period for which those particulars are recorded in the Register of Disciplinary Action; or
- (b) that any information, which might enable the teacher who is the subject of a determination made under subsection (2) to be identified, must not be published or broadcast 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.
- (5) In making a determination under subsection (4)(a), the panel must consider the circumstances of the determination made under subsection (2). **S. 2.6.46(5) inserted by No. 19/2014 s. 25.**

Division 13—General provisions relating to investigations, hearings and determinations

Pt 2.6 Div. 13
(Heading)
substituted by
No. 10/2021
s. 30.

2.6.47 Preliminary assessment, investigation or hearing may continue even if person no longer registered

S. 2.6.47
(Heading)
amended by
No. 10/2021
s. 31(1).

The Institute may conduct or continue to conduct a preliminary assessment, investigation or hearing 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.

S. 2.6.47
amended by
No. 10/2021
s. 31(2).

2.6.48 Procedure at hearing panel hearings

S. 2.6.48
(Heading)
substituted by
No. 27/2010
s. 47(1).

At a hearing of a hearing panel—

S. 2.6.48
amended by
No. 27/2010
s. 47(2)(a).

S. 2.6.48(a)
amended by
Nos 27/2010
s. 47(2)(b),
14/2013
s. 20(4).

(a) subject to this Part, the procedure of a hearing 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

S. 2.6.48(c)
amended by
No. 27/2010
s. 47(2)(c).

(c) the hearing panel is not bound by rules of evidence but may inform itself in any way it thinks fit; and

S. 2.6.48(d)
amended by
No. 27/2010
s. 47(2)(c).

(d) the hearing panel is bound by the rules of natural justice.

2.6.49 Determinations

- | | |
|---|---|
| (1) A determination made by a hearing panel on a hearing comes into operation on its making or at any later time stated in the determination. | S. 2.6.49(1) amended by No. 27/2010 s. 48. |
| (2) A determination of a hearing panel has effect as if it were a determination of the Institute. | S. 2.6.49(2) amended by No. 27/2010 s. 48. |

2.6.49A Publication of determinations of formal hearing panels

S. 2.6.49A
inserted by
No. 19/2014
s. 26.

The Institute may publish the whole or part of the findings, reasons or a determination of a formal hearing panel relating to a matter heard by the panel in any manner that it thinks fit, if the publication of the findings, reasons or determination is not in contravention of section 2.6.45(c) or a determination made under section 2.6.45 or 2.6.46(4)(b).

2.6.50 Notice of cancellations and determinations of panel

- | | |
|---|--|
| (1) The Institute must advise the teacher in writing of the determination of a hearing panel under this Part and of the reasons for the determination, within 28 days after the making of the determination. | S. 2.6.50(1) amended by Nos 27/2010 s. 49, 9/2016 s. 8(1). |
| (2) The Institute must advise a person whose registration is suspended or cancelled under this Part in writing of that suspension or cancellation. | S. 2.6.50(2) amended by No. 9/2016 s. 8(2). |
| (3) If a finding or a determination of a hearing panel or a suspension, cancellation or cessation of a person's registration under this Part has the effect of ending the suspension of registration of a person under Division 8A, the Institute must notify the person, and any person employing the person as a teacher or early childhood teacher at the time the suspension was imposed, in writing— | S. 2.6.50(3) inserted by No. 9/2016 s. 8(3). |

- (a) that the suspension has ceased to be in force; and
- (b) the date on which the suspension ceased to be in force; and
- (c) the reason that the suspension has ceased to be in force.

Note to
s. 2.6.50
inserted by
No. 9/2016
s. 8(4).

Note

For the purposes of subsection (3), section 2.6.28C sets out the circumstances in which a suspension of registration of a person under Division 8A ends.

2.6.51 Notifications

S. 2.6.51(1)
amended by
No. 27/2010
s. 50(1).

- (1) If a determination has been made by a formal hearing 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—

S. 2.6.51(1)(g)
amended by
Nos 31/2018
s. 29, 34/2020
s. 232.

- (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 within the meaning of the **Worker Screening Act 2020**; and

- (ga) to the licensing authority within the meaning of the **Transport (Compliance and Miscellaneous) Act 1983**; 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.
- (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), (ga) 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 or a medical panel 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) 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.

S. 2.6.51
(1)(ga)
inserted by
No. 28/2010
s. 12(1),
substituted by
No. 61/2011
s. 25(Sch. 2
item 1).

S. 2.6.51(3)
amended by
No. 28/2010
s. 12(2).

S. 2.6.51(4)(a)
amended by
No. 27/2010
s. 50(2)(a).

S. 2.6.51(4)(b)
amended by
No. 27/2010
s. 50(2)(b).

S. 2.6.52
amended by
No. 27/2010
s. 51,
substituted by
No. 19/2014
s. 27.

2.6.52 Offence to publish or broadcast information identifying a complainant or contravening a determination of the panel

- (1) A person must not publish or broadcast or cause to be published or broadcast any report of a formal hearing under this Part, including any determination made during the hearing, which contains information that would enable the complainant to be identified.

Penalty: 50 penalty units in the case of a natural person and 100 penalty units in the case of a body corporate.

- (2) A person must not publish or broadcast or cause to be published or broadcast any report of a formal hearing under this Part, including any determination made during the hearing, which contains information in contravention of a determination of the formal hearing panel made under section 2.6.45 or 2.6.46(4)(b).

Penalty: 50 penalty units in the case of a natural person and 100 penalty units in the case of a body corporate.

2.6.53 Enforcement of determination

S. 2.6.53(1)
amended by
No. 10/2021
s. 32.

- (1) The Institute must take all action necessary to give effect to a cancellation of registration under section 2.6.29 or a recommendation or determination made 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 13A—Register of Disciplinary Action

Pt 2.6 Div. 13A
(Heading and
ss 2.6.54A–
2.6.54J)
inserted by
No. 19/2014
s. 28.

2.6.54A The Register of Disciplinary Action

There is to be a Register of Disciplinary Action in relation to registered teachers and former registered teachers.

S. 2.6.54A
inserted by
No. 19/2014
s. 28.

2.6.54B Institute to maintain the Register of Disciplinary Action

- (1) The Institute must establish and maintain the Register of Disciplinary Action in accordance with this Division.
- (2) The Institute must make an up to date copy of the Register available for inspection by any person at the Institute's offices, during normal office hours, free of charge.
- (3) The Institute may publish the whole or any part of the Register in any manner that it considers fit.

S. 2.6.54B
inserted by
No. 19/2014
s. 28.

2.6.54C What the Register must contain

- (1) Subject to section 2.6.54D, the Register of Disciplinary Action must contain the following particulars in respect of registered teachers or former registered teachers, as the case requires—

S. 2.6.54C
inserted by
No. 19/2014
s. 28.

- (a) any disciplinary action of a kind set out in subsection (2) imposed, in relation to a registered teacher, by or under this Act or a corresponding previous enactment and whether or not imposed before the commencement of this Division;
 - (b) the date that the disciplinary action took effect;
 - (c) the date that disciplinary action will cease to have effect (if relevant);
 - (d) the teacher's name at the time at which the disciplinary action came into effect and any subsequent name of that teacher of which the Institute is aware;
 - (e) the teacher's registration number or former registration number;
 - (f) whether the disciplinary action relates to registration under Division 3, 3A or 4;
 - (g) any other information prescribed in the regulations.
- (2) For the purposes of subsection (1), the following disciplinary actions are to be recorded in the Register—
- (a) the imposition of conditions, limitations or restrictions on the registration of the teacher;
 - (b) the cautioning of the teacher;
 - (c) the reprimanding of the teacher;
 - (d) the suspension of the registration of the teacher including any conditions, limitations or restrictions relating to the suspension (other than under section 2.6.21(2), 2.6.22A(4) or 2.6.23(2));

S. 2.6.54C(1)(f)
amended by
No. 19/2014
s. 75(1).

S. 2.6.54C
(2)(d)
amended by
No. 9/2016
s. 12.

- (e) the cancellation of the registration of the teacher (other than under section 2.6.29C);

Note

A cancellation under section 2.6.29C arises when a registered teacher voluntarily surrenders his or her registration and asks the Institute to cancel that registration.

- (f) the disqualification of the teacher from applying for registration as a teacher or an early childhood teacher or permission to teach within a specified period if the teacher's registration or permission to teach is cancelled;
- (g) the cessation of the teacher's registration if convicted or found guilty of a category A offence or has been given a WWC exclusion;
- (h) the cessation of the teacher's permission to teach if convicted or found guilty of a category A offence or has been given a WWC exclusion;
- (i) the disqualification from teaching in a school or an early childhood service if convicted or found guilty of a category A offence or has been given a WWC exclusion;
- (j) the voluntary suspension of the registration of the teacher or the voluntary imposition of a condition on a registration of the teacher or both under Division 9A.

S. 2.6.54C(2)(f)
amended by
No. 19/2014
s. 75(2)(a).

S. 2.6.54C
(2)(g)
amended by
Nos 31/2018
s. 30, 34/2020
s. 233.

S. 2.6.54C
(2)(h)
amended by
Nos 31/2018
s. 30, 34/2020
s. 233.

S. 2.6.54C(2)(i)
amended by
Nos 19/2014
s. 75(2)(b),
31/2018 s. 30,
34/2020 s. 233.

Note

The disciplinary actions that must be recorded in the Register of Disciplinary Action under subsection (2) are subject to the exclusions listed in section 2.6.54D.

S. 2.6.54D
inserted by
No. 19/2014
s. 28.

2.6.54D Which particulars must not be recorded on the Register of Disciplinary Action

The following particulars must not be recorded in the Register of Disciplinary Action—

- (a) any particular relating to a disciplinary action imposed—
 - (i) by a determination of an informal hearing panel (whether imposed under this Act or a previous corresponding enactment); or
 - (ii) by a medical hearing panel; or
 - (iii) under Division 9A, which is based solely on medical grounds; or
- (b) any particular relating to a disciplinary action imposed under Division 9A to the extent to which it contravenes a determination of the Institute made under section 2.6.29BA; or
- (c) any particular relating to a disciplinary action imposed by a determination of a formal hearing panel to the extent to which it contravenes a determination of the panel made under section 2.6.45 or 2.6.46(4)(a); or
- (d) any particular that the Institute, under section 2.6.54E, has decided is not to be recorded in the Register.

S. 2.6.54E
inserted by
No. 19/2014
s. 28.

2.6.54E Institute may decide that particulars be removed from or excluded from the Register of Disciplinary Action

- (1) The Institute, on the application of a registered teacher or a former registered teacher, may decide that all or any of the particulars to be contained in the Register in respect of that person are not to be initially recorded in the Register or are to be

removed from the Register if the Institute is satisfied that—

- (a) the exclusion of the particular is necessary to avoid endangering the physical safety of a person; and
 - (b) there is no overriding public interest for the particular to be included or to remain in the Register.
- (2) The Institute, on its own initiative, may decide to remove particulars from the Register that relate to the cautioning or reprimanding of a registered teacher if the Institute considers that it is no longer appropriate or in the public interest for the particulars to remain in the Register.

2.6.54F At what time can particulars be recorded in the Register

**S. 2.6.54F
inserted by
No. 19/2014
s. 28.**

Particulars required to be contained in the Register of Disciplinary Action may be recorded in the Register by the Institute—

- (a) in the case of a disciplinary action referred to in section 2.6.54C(2)(a) to (f) that is imposed by a formal hearing panel, at the later of the following—
 - (i) the end of the period within which the teacher may apply to VCAT for a review of the determination of the formal hearing panel that imposed the action;
 - (ii) the end of the period within which the teacher may appeal to a court from an order of VCAT that affirmed, varied or substituted the determination;

- (iii) when the determination of the formal hearing panel or order of VCAT is affirmed, varied or substituted by VCAT or a court, as the case may be;
- (b) in all other cases, the time at which the disciplinary action takes effect.

S. 2.6.54G
inserted by
No. 19/2014
s. 28.

2.6.54G Retention period of particulars contained in Register of Disciplinary Action

Subject to section 2.6.54H, particulars of a disciplinary action recorded in the Register of Disciplinary Action must remain on the Register for whichever is the longer of the following periods—

- (a) 5 years after the disciplinary action takes effect;
- (b) the period for which the disciplinary action continues to have effect.

Note

For example, if a teacher's registration is cancelled, the particulars recorded in the Register relating to that cancellation will remain on the Register until he or she is re-registered.

S. 2.6.54H
inserted by
No. 19/2014
s. 28.

2.6.54H Removal of particulars contained in Register of Disciplinary Action

The Institute must remove particulars relating to a disciplinary action recorded in the Register of Disciplinary Action in the following circumstances—

- (a) at the end of the retention period for the particulars;
- (b) in accordance with a court order to remove the particulars;
- (c) in the case of a disciplinary action referred to in section 2.6.54C(2)(g) to (i), when the Institute becomes aware of the quashing or

- setting aside of the conviction or finding of guilt relating to that action;
- (d) if the period within which an application to VCAT for a review of the formal hearing panel's determination imposing the action has been extended by VCAT;
 - (e) in the case of a suspension of registration under section 2.6.27, on the occurrence of any of the things listed in section 2.6.27(10)(b)(i) to (v);
 - (ea) in the case of a suspension of registration under Division 8A, when the suspension is no longer in force;
 - (f) if the Institute decides under section 2.6.54E that a particular must be removed.

S. 2.6.54H(ea)
inserted by
No. 9/2016
s. 9.

2.6.54J Updating and correcting particulars contained in the Register of Disciplinary Action

S. 2.6.54J
inserted by
No. 19/2014
s. 28.

- (1) The Institute must note the following in the Register of Disciplinary Action in respect of particulars recorded in the Register, as soon as is reasonably practicable—
 - (a) that a condition imposed on a registered teacher's registration has been amended or varied or satisfied and the details of any amendment or variation;
 - (b) that any restriction or limitation imposed on a registered teacher's registration has been amended and details of that amendment;
 - (c) that any restriction or limitation imposed on a registered teacher's registration has been removed;
 - (d) that any suspension of a former registered teacher's registration under this Part has been revoked;

- (e) that a former registered teacher has been re-registered under this Part following the cancellation of his or her registration.
- (2) A note made by the Institute in the Register under subsection (1) in respect of particulars recorded in the Register does not affect the retention period of the particulars under section 2.6.54G.
- (3) The Institute may correct any error or omission in the particulars recorded in the Register.

Pt 2.6 Div. 13B
(Heading and
s. 2.6.54K)
inserted by
No. 9/2016
s. 10.

Division 13B—Suspension of registration under this Part

S. 2.6.54K
inserted by
No. 9/2016
s. 10.

2.6.54K Effect of suspension of registration

- (1) For the purposes of this Act, a teacher or an early childhood teacher whose registration is suspended is deemed not to be registered for the period of that suspension.
- (2) Despite subsection (1), the Institute may conduct or continue to conduct a preliminary assessment or investigation into the conduct or activities of a person whose registration has been suspended under this Part as if the person were a registered teacher.

S. 2.6.54K(2)
amended by
No. 10/2021
s. 33.

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; or **S. 2.6.55(1)(c) amended by No. 27/2010 s. 52(1).**
- (d) a determination made under Divisions 12 and 13— **S. 2.6.55(1)(d) inserted by No. 27/2010 s. 52(2).**
- (i) cautioning a registered teacher;
- (ii) reprimanding a registered teacher;
- (iii) disqualifying a registered teacher from applying for registration under Divisions 3, 3A and 4 within a specified period if his or her registration is cancelled. **S. 2.6.55 (1)(d)(iii) amended by No. 19/2014 s. 76.**
- (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 category A offence or has been given a WWC exclusion. **S. 2.6.55(3) amended by Nos 31/2018 s. 31, 34/2020 s. 234.**

Division 15—Offences

2.6.56 Unregistered teachers

S. 2.6.56(1)
amended by
No. 19/2014
s. 77(1).

- (1) A person who is not registered under Division 3 of 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.

S. 2.6.56(2)
amended by
No. 19/2014
s. 77(2).

- (2) A person or body must not employ a person to teach in a school unless the person is registered under Division 3 of this Part to undertake teaching duties in a school or has permission to teach under this Part.

Penalty: 120 penalty units.

S. 2.6.56(3)
amended by
No. 19/2014
s. 77(3).

- (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 Division 3 of this Part.

S. 2.6.56A
inserted by
No. 19/2014
s. 78.

2.6.56A Unregistered early childhood teachers

- (1) A person or body must not employ or engage a person as an early childhood teacher in an early childhood service unless the person—

(a) is a registered early childhood teacher; or

(b) holds a temporary approval that permits the person to be engaged or employed in the early childhood service for the purposes of meeting funding requirements in the kindergarten guidelines.

S. 2.6.56A
(1)(b)
amended by
No. 33/2020
s. 16(1)(a).

S. 2.6.56A
(1)(c)
repealed by
No. 33/2020
s. 16(1)(b).

* * * * *

Penalty: 120 penalty units.

- (2) A person is not employed or engaged as an early childhood teacher only for the reason that the person is—
- (a) taken to be an early childhood teacher under regulation 135 of the national regulations; or
 - (b) taken to be an early childhood teacher under regulations made under the **Children's Services Act 1996**.

S. 2.6.56A
(2)(b)
amended by
No. 33/2020
s. 16(2).

2.6.56B Offence to employ unregistered person for early childhood teacher requirements

S. 2.6.56B
inserted by
No. 19/2014
s. 78.

- (1) A person or body must not employ or engage a person in an early childhood service for the purpose of meeting requirements under the national regulations for attendance of or access to early childhood teachers unless the person is a registered early childhood teacher.

S. 2.6.56B(1)
substituted by
No. 33/2020
s. 17(1).

Penalty: 120 penalty units.

- (2) A person or body must not employ or engage a person in an early childhood service for the purpose of meeting requirements under the **Children's Services Act 1996** or regulations made under that Act for attendance of or access to early childhood teachers unless the person is a registered early childhood teacher.

S. 2.6.56B(2)
amended by
No. 33/2020
s. 17(2).

Penalty: 120 penalty units.

- (3) A person or body must not employ or engage a person in an early childhood service for the purpose of meeting requirements in the kindergarten funding guidelines for attendance of or access to early childhood teachers unless the person—
- (a) is a registered early childhood teacher; or

S. 2.6.56B
(3)(b)
amended by
No. 33/2020
s. 17(3)(a).

(b) holds a temporary approval that permits the person to be engaged or employed in the early childhood service for the purposes of meeting those requirements.

S. 2.6.56B
(3)(c)
repealed by
No. 33/2020
s. 17(3)(b).

* * * * *

Penalty: 120 penalty units.

S. 2.6.56B(4)
amended by
No. 33/2020
s. 17(4)(a).

(4) A person is not employed or engaged for the purpose of meeting requirements for attendance of an early childhood teacher only for the reason that the person is—

(a) taken to be an early childhood teacher under regulation 135 of the national regulations; or

S. 2.6.56B
(4)(b)
amended by
No. 33/2020
s. 17(4)(b).

(b) taken to be an early childhood teacher under regulations made under the **Children's Services Act 1996**.

2.6.57 Provision of information by teachers

S. 2.6.57(1)
amended by
No. 31/2018
s. 32.

(1) If a registered teacher has in respect of a category A offence, a category B offence or an offence specified in paragraph (a) or (c) of the definition of *category C conduct*—

(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, renewal or reinstatement 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.

S. 2.6.57(2)
amended by
No. 10/2021
s. 17.

2.6.58 False representation

- (1) A person who is not registered as a teacher under Division 3 must not claim to be, or hold himself or herself out as being, registered as a teacher under Division 3.

S. 2.6.58(1)
substituted by
No. 19/2014
s. 79 (as
amended by
No. 37/2015
s. 29(1)(a)).

Penalty: 10 penalty units.

- (1A) A person who has not been granted permission to teach must not claim to be, or hold himself or herself out as being, granted permission to teach.

S. 2.6.58(1A)
inserted by
No. 19/2014
s. 79 (as
amended by
No. 37/2015
s. 29(1)(b)).

Penalty: 10 penalty units.

- (1B) A person who is not registered as an early childhood teacher under Division 3A must not claim to be, or hold himself or herself out as being, registered as an early childhood teacher under Division 3A.

S. 2.6.58(1B)
inserted by
No. 19/2014
s. 79 (as
amended by
No. 37/2015
s. 29(1)(c)).

Penalty: 10 penalty units.

- (1BA) A person must not falsely claim to have been, or hold himself or herself out as having been—

S. 2.6.58(1BA)
inserted by
No. 19/2014
s. 79 (as
amended by
No. 37/2015
s. 29(2)).

- (a) registered as a teacher under Division 3; or
(b) granted permission to teach; or
(c) registered as an early childhood teacher under Division 3A.

- (1C) A person or body must not represent a person to be a registered early childhood teacher if the person knows or ought reasonably to know that the person is not registered as an early childhood teacher under Division 3A.

S. 2.6.58(1C)
inserted by
No. 19/2014
s. 79.

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

S. 2.6.59(1)
amended by
No. 19/2014
s. 80.

- (1) If a registered 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 15A—Early childhood service exemptions and temporary approvals

Pt 2.6 Div. 15A
(Heading and
ss 2.6.60A–
2.6.60F)
inserted by
No. 19/2014
s. 81.

2.6.60A Secretary may exempt early childhood service from funding requirements for registered early childhood teacher

S. 2.6.60A
inserted by
No. 19/2014
s. 81.

- (1) The Secretary may grant an exemption to an early childhood service if—
 - (a) the early childhood service is required to employ or engage a registered early childhood teacher for the purposes of meeting funding requirements in the kindergarten funding guidelines; and
 - (b) either—
 - (i) the early childhood service holds a waiver or a children's services exemption; or
 - (ii) the Secretary is satisfied that the early childhood service has made reasonable attempts to employ or engage a registered early childhood teacher to fulfil the requirements of paragraph (a).
- (2) If an exemption is granted under subsection (1), the early childhood service may employ or engage a person holding a temporary approval in place of a registered early childhood teacher for the purpose of meeting funding requirements in the kindergarten funding guidelines.
- (3) An exemption granted under subsection (1) is valid for the period (not exceeding 12 months) specified in it.

(4) The Secretary may impose any condition on an exemption granted under subsection (1) that the Secretary thinks fit.

(5) The Secretary may by notice issued to the early childhood service vary or revoke any condition imposed under subsection (4).

(6) In this section—

waiver means—

(a) a service waiver or temporary waiver under the **Children's Services Act 1996** that exempts a children's service from requirements under that Act for attendance of early childhood teachers; or

(b) a service waiver or temporary waiver under the Education and Care Services National Law (Victoria) that exempts an education and care service from requirements under that Law for attendance of early childhood teachers.

S. 2.6.60A(6)
substituted by
No. 37/2019
s. 18.

S. 2.6.60B
inserted by
No. 19/2014
s. 81.

2.6.60B Application for a temporary approval to be employed or engaged as an early childhood teacher

(1) A natural person who does not hold an approved early childhood teaching qualification may make an application to the Secretary for a temporary approval.

(2) An application for a temporary approval must be—

(a) in the form approved by the Secretary; and

(b) accompanied by—

(i) a copy of the applicant's current WWC clearance under the **Worker Screening Act 2020** or evidence that the applicant has applied for a WWC clearance under that Act; and

S. 2.6.60B
(2)(b)(i)
substituted by
No. 34/2020
s. 235.

- (ii) the application fee fixed by the Minister.
- (3) The application must—
 - (a) specify the early childhood service at which the applicant is proposed to be employed or engaged; and
 - (b) be accompanied by information about the exemption granted to the early childhood service under section 2.6.60A, or the application made by the service for an exemption.
- (4) The Secretary may require an applicant for a temporary approval to provide information about any of the following—
 - (a) the applicant's qualifications or education currently being undertaken by the applicant;
 - (b) the applicant's relevant employment experience.

2.6.60C Grant of temporary approval

- (1) The Secretary may grant an applicant a temporary approval if the Secretary is satisfied that the applicant is suitable to be employed or engaged in an early childhood service in place of a registered early childhood teacher for the purpose of meeting funding requirements in the kindergarten funding guidelines.
- (2) The Secretary must not grant a temporary approval to an applicant who does not hold a current WWC clearance under the **Worker Screening Act 2020**.
- (3) The Secretary must not grant a temporary approval to a person who has, at any time, been convicted or found guilty of a category A offence in Victoria or an equivalent offence in another jurisdiction.

S. 2.6.60C
inserted by
No. 19/2014
s. 81.

S. 2.6.60C(2)
amended by
No. 34/2020
s. 236.

S. 2.6.60C(3)
substituted by
No. 31/2018
s. 33(7).

- (4) The Secretary may publish criteria on the Department's website for assessing the suitability of an applicant for grant of a temporary approval.

S. 2.6.60D
inserted by
No. 19/2014
s. 81.

2.6.60D Duration and conditions of temporary approvals

- (1) A temporary approval is valid for the period (not exceeding 12 months) specified in it.
- (2) A temporary approval permits the person to be employed or engaged at the early childhood service specified in the approval in place of a registered early childhood teacher for the purpose of meeting funding requirements in the kindergarten funding guidelines.
- (3) The Secretary may impose any condition on a temporary approval that the Secretary thinks fit, including conditions about professional development or progress towards obtaining qualifications.
- (4) The Secretary may by notice issued to the person vary or revoke any condition imposed under subsection (3).

S. 2.6.60E
inserted by
No. 19/2014
s. 81.

2.6.60E Revocation of exemptions and temporary approvals

- (1) The Secretary must revoke an exemption granted under section 2.6.60A if the Secretary is satisfied that the early childhood service—
- (a) no longer requires the exemption under section 2.6.60A(1); or
 - (b) has not complied with any condition attached to the exemption.
- (2) The Secretary must revoke a temporary approval if the holder has, at any time, been convicted or found guilty of a category A offence in Victoria or an equivalent offence in another jurisdiction or been given a WWC exclusion.

S. 2.6.60E(2)
substituted by
No. 31/2018
s. 33(8),
amended by
No. 34/2020
s. 237.

- (3) The Secretary may by notice issued to the person revoke a temporary approval if—
- (a) the person has not complied with any condition imposed on the temporary approval; or
 - (b) the Secretary forms the belief that the person is no longer suitable to be employed or engaged in place of a registered early childhood teacher for the purpose of meeting funding requirements in the kindergarten funding guidelines.
- (4) If, under this section, the Secretary revokes an exemption under section 2.6.60A or a temporary approval, as soon as reasonably practicable, the Secretary must notify any early childhood service that employs or engages a person holding that temporary approval under section 2.6.60A(2).

2.6.60F Provision of information to the Secretary

If a person who holds a temporary approval ceases to be employed or engaged under section 2.6.60A(2) at an early childhood service specified in the approval, as soon as reasonably practicable—

- (a) the person must notify the Secretary that the employment or engagement has ceased; and
- (b) the early childhood service must notify the Secretary that the employment or engagement has ceased.

**S. 2.6.60F
inserted by
No. 19/2014
s. 81.**

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.

S. 2.6.62(3)
repealed by
No. 31/2018
s. 48.

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S. 2.6.63
repealed by
No. 19/2014
s. 31.

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S. 2.6.64
substituted by
No. 42/2016
s. 8.

2.6.64 Acting members

- (1) Subject to subsection (2), the Minister may appoint a person to act in the place of a member, including the Chairperson—
 - (a) if the member is absent or is, for any other reason, unable to perform the duties of the office, during that absence or inability; or
 - (b) if there is a vacancy in the office of the member, until the vacancy is filled.
- (2) The Minister must consult with the relevant nominating organisation before appointing a person to act in the place of a member nominated under section 2.6.6AB.
- (3) A person appointed under subsection (1)—
 - (a) has all the powers and may perform all the duties of the member for whom the person is acting; and

- (b) is entitled to the remuneration and allowances (if any) to which the member for whom the person is acting would have been entitled for performing those duties; and
- (c) subject to this section, is subject to the same terms and conditions of appointment as the member for whom the person is acting.
- (4) The Minister may remove or suspend an acting member from office.

S. 2.6.64(4)
inserted by
No. 31/2018
s. 49.

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.
- (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.

S. 2.6.67
amended by
Nos 27/2010
s. 53, 9/2016
s. 11
substituted by
No. 10/2021
s. 34.

2.6.67 Delegation

- (1) The Institute, by instrument, may delegate any function or power of the Institute under this Act, other than this power of delegation or any power under Division 8A or the power to conduct an investigation under Division 11, 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 committee or body or 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.
- (2) Despite subsection (1), the Institute, by instrument, may delegate to the Chief Executive Officer of the Institute any function or power of the Institute under Division 8A.
- (3) Despite subsection (1), the Institute, by instrument, may delegate to any of the following the Institute's power to conduct an investigation under Division 11, other than the Institute's power to make determinations upon an investigation—
 - (a) an employee of the Institute;
 - (b) an investigator retained by the Institute;

- (c) a member of the Council or a number of members not exceeding 3;
- (d) the employer or a nominee of the employer of the person being investigated.

2.6.68 Accreditation Committee

- (1) The Council must establish a committee to be called the Accreditation Committee.
- (2) The Accreditation Committee has the following functions—
 - (a) to assess programs and courses of study and advise and make recommendations to the Institute about whether those programs and courses should be approved, varied or renewed by the Institute as initial teacher education programs;
 - (b) to advise and make recommendations to the Institute about the requirements, criteria or standards that a program, unit or course of study must satisfy before the Institute approves or endorses the program, course or unit as—
 - (i) an initial teacher education program; or
 - (ii) a pathway program; or
 - (iii) a continuing education program;
 - (c) to assess programs and courses of study and advise and make recommendations to the Institute about whether those programs and courses should be approved, varied or renewed by the Institute as pathway programs;
 - (d) to assess programs, units and courses of study and advise and make recommendations to the Institute about whether those programs, units and courses should be

S. 2.6.68(2)
amended by
No. 19/2014
s. 82,
substituted by
No. 10/2021
s. 9.

- endorsed, varied or renewed by the Institute as continuing education programs;
- (e) to assess and make recommendations to the Institute about conditions or the revocation of conditions on any approvals or endorsements the Institute has given in respect of the following programs—
- (i) initial teacher education programs;
 - (ii) pathway programs;
 - (iii) continuing education programs;
- (f) to assess and make recommendations to the Institute about whether any approvals or endorsements given by the Institute in respect of the following programs should be revoked—
- (i) initial teacher education programs;
 - (ii) pathway programs;
 - (iii) continuing education programs;
- (g) any other function or power delegated to the Accreditation Committee by the Institute under section 2.6.67.
- (3) The Accreditation Committee has all the powers necessary to enable it to perform its functions.

S. 2.6.69
repealed by
No. 27/2010
s. 54.

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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 established under this Part 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(2)
amended by
No. 27/2010
s. 55.

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.
- (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.
- (5) If a member of a hearing panel is unable to attend a meeting of the panel that is conducting a hearing or part of a hearing under Division 12, the remaining members of that hearing panel may continue to conduct the hearing or that part of the hearing if a quorum of members is present.

S. 2.6.74(5)
amended by
No. 27/2010
s. 56.

- (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 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.

**S. 2.6.76(1)
amended by
No. 27/2010
s. 57.**

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.

S. 2.6.77(1A)
inserted by
No. 42/2016
s. 9.

- (1A) Despite subsection (1), the Minister is not required to call for and consider recommendations from the Institute in fixing a fee for an application under section 2.6.60B.
- (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.
- (3) Despite subsection (2)(a), if the period for which the fee is payable is less than 12 months, it must be calculated on a pro rata basis to the nearest month.

S. 2.6.77(3)
inserted by
No. 28/2010
s. 13.

S. 2.6.77A
inserted by
No. 19/2014
s. 83.

2.6.77A Fixing of fees for second registrations

- (1) A fee fixed in respect of an application for a second registration must be fixed at no more than 25% of the application fee fixed under section 2.6.7(2)(b)(iii) or 2.6.12A(2)(b)(iii), as the case requires.
- (2) A fee fixed in respect of an application for renewal of a second registration must be fixed at no more than 25% of the renewal fee fixed under section 2.6.18(1)(b)(iii).
- (3) An annual registration fee fixed in respect of a second registration must be no more than 25% of the annual fee fixed under section 2.6.21(1).

(4) In this section—

application for a second registration means—

- (a) an application under section 2.6.12A made by a teacher registered under Division 3; or
- (b) an application under section 2.6.7 made by a registered early childhood teacher; or
- (c) an application under section 2.6.12A made at the same time as an application under section 2.6.7;

second registration means—

- (a) registration under Division 3 or 3A, whichever was granted later; or
- (b) if the person is registered under Division 3A and has been granted permission to teach, the permission to teach.

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.
- (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;
 - (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.

Pt 2.6A
(Heading and
ss 2.6A.1–
2.6A.11)
inserted by
No. 32/2021
s. 4.

Part 2.6A—Victorian Academy of Teaching and Leadership

S. 2.6A.1
inserted by
No. 32/2021
s. 4.

2.6A.1 Definitions

In this Part—

Academy means the Victorian Academy of Teaching and Leadership established under section 2.6A.2;

early childhood teacher has the meaning given by section 2.6.1;

teacher has the meaning given by section 2.6.1.

S. 2.6A.2
inserted by
No. 32/2021
s. 4.

2.6A.2 Establishment of the Academy

- (1) The Victorian Academy of Teaching and Leadership is established.
- (2) The Academy—
 - (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) may acquire, hold, use and dispose of real, intellectual and personal property (other than an estate in fee simple); and
 - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.

S. 2.6A.3
inserted by
No. 32/2021
s. 4.

2.6A.3 Common seal

- (1) The common seal of the Academy—
 - (a) must be kept in custody as directed by the Academy; and

- (b) must not be used except as authorised by the Academy.
- (2) All courts must take judicial notice of the common seal of the Academy affixed to a document and, until the contrary is proved, must presume that it was duly affixed.

2.6A.4 Objectives of the Academy

S. 2.6A.4
inserted by
No. 32/2021
s. 4.

The objectives of the Academy are—

- (a) to improve outcomes for school students through the provision of specialised teaching and leadership excellence programs for exceptional teachers and school leaders; and
- (b) to increase equity of access to professional learning to lift the quality of teaching across Victoria; and
- (c) to provide a dedicated pathway for established exceptional teachers to contribute to school and system improvement; and
- (d) to improve the quality of school leadership; and
- (e) to raise public awareness of the capability and status of school leaders and teachers in the science and practice of teaching.

2.6A.5 Functions of the Academy

S. 2.6A.5
inserted by
No. 32/2021
s. 4.

- (1) The functions of the Academy are—
 - (a) to provide advice to the Minister and the Department in relation to—
 - (i) school leadership; and
 - (ii) teaching and professional practice; and
 - (iii) professional learning; and

- (b) to design and provide accredited and non-accredited professional learning programs for school leaders and teachers including specialised teaching and leadership excellence programs; and
 - (c) to develop and publish guidance materials and resources for use by providers of professional learning programs; and
 - (d) to evaluate the effectiveness and impact of the Academy's professional learning programs, including in relation to teaching practice and outcomes for students; and
 - (e) to work collaboratively with schools, community organisations, universities, post-compulsory education and training providers, professional associations and providers of professional learning programs to—
 - (i) identify the needs of the teaching profession; and
 - (ii) support and improve the delivery of the Academy's professional learning programs including its specialised teaching and leadership excellence programs; and
 - (f) to improve public confidence in the teaching profession and schools in Victoria through the promotion of the use of evidence-informed practice amongst school leaders and teachers; and
 - (g) any other function conferred on or delegated to the Academy by or under this or any other Act.
- (2) For the purposes of subsection (1)(a), the Academy may advise the Minister or the Department on the Academy's own initiative or at

the request of the Minister or the Department
(as the case requires).

2.6A.6 Powers of the Academy

S. 2.6A.6
inserted by
No. 32/2021
s. 4.

- (1) The Academy has power to do all things that are necessary or convenient to be done for or in connection with, or as incidental to, meeting its objectives or the performance of its functions including any function delegated to it.
- (2) Without limiting subsection (1), the Academy may—
 - (a) enter into a joint venture with any other person or persons; and
 - (b) apply for, use, obtain, hold and dispose of, whether on its own behalf or jointly with any other person, any intellectual property rights; and
 - (c) assign or grant licences in respect of intellectual property rights, with or without charge; and
 - (d) enter into licences for the use of real property; and
 - (e) enter into contracts, agreements or arrangements, including for the commercial exploitation of intellectual property rights; and
 - (f) supply and sell goods and services on a commercial basis; and
 - (g) conduct research; and
 - (h) charge a fee for services provided by the Academy.
- (3) The Academy, in the performance of its functions, may exercise its powers within or outside Victoria.

- (4) This section does not limit any other power given to the Academy by any other provision of this Act.

S. 2.6A.7
inserted by
No. 32/2021
s. 4.

2.6A.7 Board of the Academy

- (1) The Academy is to be governed by a Board of the Academy.
- (2) The Board of the Academy—
- (a) is responsible for the management of the affairs of the Academy; and
 - (b) may exercise any of the powers or functions of the Academy.
- (3) The Board of the Academy consists of 7 members of whom—
- (a) one is to be appointed as Chairperson by the Governor in Council on the recommendation of the Minister; and
 - (b) one is to be the Secretary or nominee of the Secretary; and
 - (c) one is to be a representative of ISV appointed by the Governor in Council; and
 - (d) one is to be a representative of the Catholic Education Commission appointed by the Governor in Council; and
 - (e) the remaining members are to be appointed by the Governor in Council.
- (4) In recommending persons for appointment to the Board of the Academy, the Minister must be satisfied that—
- (a) the persons recommended possess the skills, qualifications and experience that are relevant to enable the Academy to perform its functions; and

- (b) the persons recommended include persons who have experience in the following areas—
 - (i) education, including a range of school education settings and sectors, vocational education and training, adult, community and further education and higher education;
 - (ii) education leadership;
 - (iii) management;
 - (iv) finance;
 - (v) law;
 - (vi) corporate governance; and
 - (c) the composition of the Board is a fair and balanced reflection of the diversity of the Victorian community.
- (5) A member of the Board of the Academy 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.

2.6A.8 Establishment of committees

- (1) The Board of the Academy may from time to time, by instrument in writing, establish a committee—
- (a) to assist the Academy in the performance of its functions; or
 - (b) to advise the Academy on matters relating to the performance of the Academy's functions; or
 - (c) to exercise any of the powers or functions of the Academy that are delegated to the committee by the Board.

S. 2.6A.8
inserted by
No. 32/2021
s. 4.

- (2) The Board of the Academy may, to facilitate the Academy's functions, appoint members to the committee including any person who is not a member of the Board.
- (3) The Board of the Academy may make any provision with respect to the terms and conditions of appointment of members of a committee as the Board thinks fit.
- (4) A member of a committee (other than a person referred to in subsection (5)) is entitled to receive the remuneration, fees and personal and travelling expenses that are fixed from time to time by the Board of the Academy.
- (5) Subsection (4) does not apply to a member of a committee 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).
- (6) A committee may permit its members to participate in a particular meeting, or all meetings, by telephone, closed circuit television or other means of communication.
- (7) The Board of the Academy may dissolve a committee if the Board determines that the committee is no longer required.

S. 2.6A.9
inserted by
No. 32/2021
s. 4.

2.6A.9 Provision and publication of advice by Academy

The Academy may publish advice provided under this Part, on its own initiative or at the request of the Minister or the Department, for the following purposes—

- (a) the performance of its functions;
- (b) a prescribed purpose;
- (c) a purpose set out in a Ministerial Order.

2.6A.10 Fees charged by the Academy

- (1) The amount of any fee charged by the Academy under this Part must be paid into the Consolidated Fund.
- (2) The Academy may waive or refund any fee charged under this Part if the Academy is satisfied that it is appropriate to do so.

S. 2.6A.10
inserted by
No. 32/2021
s. 4.

2.6A.11 Schedule 2

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

S. 2.6A.11
inserted by
No. 32/2021
s. 4.

Pt 2.7
(Heading and
ss 2.7.1–
2.7.13)
inserted by
No. 1/2015
s. 4.

S. 2.7.1
inserted by
No. 1/2015
s. 4.

S. 2.7.2
inserted by
No. 1/2015
s. 4.

Part 2.7—State funding for non-Government schools

Division 1—Preliminary

2.7.1 Intent of Part

The intent of this Part is to establish a transparent mechanism for State funding of non-Government schools for the purpose of meeting student needs.

Note

Non-Government schools are required to be registered under Part 4.3 and must meet the prescribed minimum standards for registration. One of the minimum standards for registration is that a school must be a not-for-profit school.

2.7.2 Government school recurrent funding

- (1) For the purposes of this Part—

Government school recurrent funding means funding provided by the State out of money appropriated by Parliament that directly supports the teaching, learning and welfare of students attending Government schools.

- (2) Without limiting subsection (1), ***Government school recurrent funding*** includes—

- (a) any funding specified in the regulations to be Government school recurrent funding for the purposes of this Part; and
- (b) any funding specified by the Minister to be Government school recurrent funding for the purposes of this Part, after taking into account any advice of the School Policy and Funding Advisory Council.

- (3) However, ***Government school recurrent funding*** does not include any of the following—
- (a) funding for programs or initiatives provided to both Government and non-Government schools;
 - (b) early childhood development funding;
 - (c) higher education funding;
 - (d) funding provided to schools referred to in Schedule 10;
 - (e) payroll tax;
 - (f) capital property items (such as capital asset charges and depreciation);
 - (g) any funding from the Commonwealth passed on to Government schools by the State;
 - (h) any funding specified in the regulations not to be Government school recurrent funding for the purposes of this Part;
 - (i) any funding specified by the Minister not to be Government school recurrent funding for the purposes of this Part, after taking into account any advice of the School Policy and Funding Advisory Council.

Division 2—Funding for non-Government schools

2.7.3 Minister may provide funding to non-Government schools

The Minister may provide funding to non-Government schools.

S. 2.7.3
inserted by
No. 1/2015
s. 4.

S. 2.7.4
inserted by
No. 1/2015
s. 4.

2.7.4 Minimum amount of funding for non-Government schools

- (1) The total amount of funding provided under this Part for a calendar year must not be less than the amount calculated in accordance with the formula—

$$\left(\frac{A}{B} \times \frac{1}{4}\right) \times C$$

where—

- A is the amount of Government school recurrent funding for the financial year commencing on 1 July in the previous calendar year;
- B is the number of students enrolled in Government schools (other than in a school referred to in Schedule 10), as counted in the Government school census for the previous year;
- C is the number of students enrolled in non-Government schools, as counted in the non-Government school census for the previous year.
- (2) In this section—

Government school census means the Student Enrolment Census conducted by the Department as part of the February School Census Collection in February each year;

non-Government school census means information about non-Government schools provided by approved authorities in August each year under section 77 of the Australian Education Act 2013 of the Commonwealth.

2.7.5 Payment of funding

Any funding under this Part may be paid directly to the non-Government school or to an organisation (such as the Catholic Education Commission or ISV) for the benefit of the non-Government school.

S. 2.7.5
inserted by
No. 1/2015
s. 4.

2.7.6 Minister may have regard to needs of schools and students

- (1) The Minister may have regard to the needs of non-Government schools and students attending non-Government schools when providing funding under this Part.
- (2) In having regard to the needs of non-Government schools and students attending non-Government schools, the Minister must take into account any advice provided by the School Policy and Funding Advisory Council.
- (3) Nothing in this Part requires the Minister to provide the same amount of funding to each non-Government school on a per student basis, or to calculate the amount of funding based on the same percentage per student for each non-Government school.

S. 2.7.6
inserted by
No. 1/2015
s. 4.

2.7.7 Conditions of funding

- (1) The Minister—
 - (a) may impose any reasonable conditions on the provision of funding under this Part; and
 - (b) may require a non-Government school or an organisation referred to in section 2.7.5 to enter an agreement under section 5.2.11.
- (2) In determining whether to impose a condition, the Minister must take into account any advice provided by the School Policy and Funding Advisory Council.

S. 2.7.7
inserted by
No. 1/2015
s. 4.

S. 2.7.8
inserted by
No. 1/2015
s. 4.

2.7.8 Accountability and reporting

- (1) The Minister may require a non-Government school or an organisation referred to in section 2.7.5 to which funding has been provided under this Part to give the Minister a report as to the application of the funding.
- (2) In determining whether to request a report, the Minister must take into account any advice provided by the School Policy and Funding Advisory Council.

Division 3—School Policy and Funding Advisory Council

S. 2.7.9
inserted by
No. 1/2015
s. 4.

2.7.9 Establishment

The School Policy and Funding Advisory Council is established.

S. 2.7.10
inserted by
No. 1/2015
s. 4.

2.7.10 Function

The function of the School Policy and Funding Advisory Council is to advise the Minister about regulatory, policy and funding issues that affect Government schools and non-Government schools.

S. 2.7.11
inserted by
No. 1/2015
s. 4.

2.7.11 Membership

- (1) The School Policy and Funding Advisory Council consists of the following members, appointed by the Minister—
 - (a) the Secretary of the Department, who is to be the Chairperson of the Council;
 - (b) a representative of the Catholic Education Commission;
 - (c) a representative of ISV;
 - (d) a representative of Government schools, who is employed in the Department.

- (2) The Minister, from time to time, may appoint any other person as a member of the School Policy and Funding Advisory Council who, in the Minister's opinion, has the necessary expertise to contribute to its function.

2.7.12 Further provisions for School Policy and Funding Advisory Council

S. 2.7.12
inserted by
No. 1/2015
s. 4.

The Minister, by Order, may make any further provisions in relation to the School Policy and Funding Advisory Council.

Division 4—Review of Part

2.7.13 Review of Part

S. 2.7.13
inserted by
No. 1/2015
s. 4.

The Minister, in consultation with the School Policy and Funding Advisory Council, must review the operation of this Part in 2018.

Part 2.8—Debt recovery arrangements relating to Commonwealth funding for schools

Ch. 2 Pt 2.8
(Heading and
ss 2.8.1–2.8.3)
inserted by
No. 42/2016
s. 10.

S. 2.8.1
inserted by
No. 42/2016
s. 10.

2.8.1 Definitions

In this Part—

approved authority has the same meaning as in section 6 of the Commonwealth Act;

block grant authority has the same meaning as in section 6 of the Commonwealth Act;

Commonwealth Act means the Australian Education Act 2013 of the Commonwealth;

Commonwealth Minister means the Minister administering the Commonwealth Act;

non-government representative body has the same meaning as in section 6 of the Commonwealth Act.

S. 2.8.2
inserted by
No. 42/2016
s. 10.

2.8.2 Debt recovery arrangements relating to Commonwealth funding for schools

(1) If, in accordance with the Commonwealth Act, the State has paid, or pays, financial assistance to any approved authority, block grant authority or non-government representative body for a school, the payment of that financial assistance is taken to be an arrangement between the authority or body (as the case requires) and the State in relation to that payment by virtue of this section.

S. 2.8.2(2)
amended by
No. 31/2018
s. 65(3)(a).

(2) It is a term of an arrangement referred to in subsection (1) that if—

S. 2.8.2(2)(a)
amended by
No. 31/2018
s. 65(3)(b).

(a) the Commonwealth Minister makes a determination under section 110(1)(a) of the Commonwealth Act that the State must pay a specified amount; and

- (b) the Commonwealth Minister makes that determination as a result of—
- (i) non-compliance or a breach by the authority or body mentioned in section 108 of the Commonwealth Act; or
 - (ii) a payment mentioned in section 109(1), (2), (3)(a) or (4) of the Commonwealth Act that was paid to the State for the authority or body—

the amount specified by the Commonwealth Minister in the determination is taken to be a debt due by the authority or body (as the case requires) to the State and may be recovered by the State in a court of competent jurisdiction.

- (3) A debt due by an authority or body to the State under subsection (2) is payable within 7 days after the date of the determination referred to in that subsection.
- (4) If a debt is due by an authority or body to the State under subsection (2) in relation to financial assistance for a school and the approval of the authority or body under Division 2 of Part 6 of the Commonwealth Act is no longer in force in relation to that school, the State may recover the debt from the person who held the approval immediately before it ceased to exist.
- (5) If a debt is due by an authority or body to the State under subsection (2), the State may assign to the Commonwealth the right to recover the debt.

S. 2.8.3
inserted by
No. 42/2016
s. 10.

2.8.3 Debt enforceable despite certain circumstances

A debt due by an authority or body to the State under section 2.8.2(2) is enforceable whether or not—

- (a) any school operated by the authority or body remains open; or
- (b) the authority or body has been, or is being, compulsorily wound up; or
- (c) the determination referred to in section 2.8.2(2) was made before the commencement of this Part; or
- (d) the financial assistance referred to in section 2.8.2(1) was spent by the authority or body before—
 - (i) the determination referred to in section 2.8.2(2) was made; or
 - (ii) the commencement of this Part.

Chapter 3—Post school education and training

Part 3.1—Vocational education and training

* * * * *

Ch. 3 Pt 3.1
Div. 1
(Heading and
ss 3.1.1–
3.1.10)
amended by
Nos 80/2006
s. 26(Sch.
item 30.3),
58/2007
ss 12, 13,
71/2010
ss 51–53,
39/2012 s. 37,
repealed by
No. 73/2012
s. 4.

Division 1—Government funded vocational education and training

New Ch. 3
Pt 3.1 Div. 1
(Heading and
ss 3.1.1–3.1.7)
inserted by
No. 73/2012
s. 10.

3.1.1 Application of Division

- (1) In this Division, *contractor* means an RTO that has entered into a VET funding contract with the Secretary in relation to the provision by the RTO of vocational education and training that is funded wholly or partially by the State.
- (2) In this Division, a reference to an RTO includes a reference to a vocational education and training organisation registered under section 17 of the National Vocational Education and Training Regulator Act 2011 of the Commonwealth that is operating in Victoria.

New s. 3.1.1
inserted by
No. 73/2012
s. 10.

New s. 3.1.2
inserted by
No. 73/2012
s. 10.

3.1.2 VET funding

- (1) The Secretary may—
 - (a) make payments to RTOs that provide or intend to provide vocational education and training on any terms and conditions the Secretary thinks fit; and
 - (b) enter into a VET funding contract with an RTO in relation to the provision by the RTO of vocational education and training that is funded wholly or partially by the State; and
 - (c) 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
 - (d) 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 Secretary thinks fit.
- (2) The Secretary may apply money for or towards the costs of or incidental to the performance of his or her functions and the exercise of his or her powers under this Division.

New s. 3.1.3
inserted by
No. 73/2012
s. 10.

3.1.3 Provisions in VET funding contracts

A VET funding contract may provide for or with respect to any of the following—

- (a) the terms and conditions under which the State will fund vocational education and training programs, services and facilities to be provided by the contractor;

- (b) that the contractor agrees to deliver vocational education and training programs, services and facilities as part of the government vocational education and training system;
- (c) the terms and conditions under which the contractor will provide vocational education and training programs, services and facilities as part of the government vocational education and training system;
- (d) the vocational education and training programs, services and facilities the contractor will provide as part of the government vocational education and training system to government-subsidised vocational education and training students;
- (e) the performance requirements of vocational education and training programs, services and facilities, including performance requirements, that are to be provided by the contractor and the means by which those performance requirements are to be measured;
- (f) the terms and conditions under which funding is to be paid by the State to the contractor for providing government-subsidised vocational education and training;
- (g) the manner in which the contractor may earn other revenue associated with the delivery of government-subsidised vocational education and training, including the charging of fees to government-subsidised vocational education and training students;

- (h) the fees, scales of fees or maximum or minimum fees that may be charged to government-subsidised vocational education and training students;
- (i) the matters in respect of which an order for specific performance may be sought in addition to any other remedy under the contract or this Act;
- (j) performance requirements for government-subsidised vocational education and training provided to government-subsidised vocational education and training students belonging to a class of government-subsidised vocational education and training students who are not parties to the contract where that class of students is expressly specified or referred to in the contract as a class of students to which the contract extends;
- (k) monetary amounts to be paid to the State by the contractor—
 - (i) for a breach of contract;
 - (ii) for a failure (not being a breach of contract) to meet a performance requirement or standard specified in the contract;
 - (iii) on the termination of the contract;
- (l) the recovery from the contractor by the State of fixed monetary amounts referred to in paragraph (k) in accordance with the contract;
- (m) the variation of the contract;
- (n) the transfer, assignment, subcontracting or other dealing with any right, power or duty under the contract;

- (o) the manner in which the contract may be terminated;
- (p) rights of access granted to persons authorised by the Secretary for the purposes of monitoring compliance with the contract;
- (q) matters consequential on the termination of the contract;
- (r) any other matter required by this Act or the regulations to be specified in a contract;
- (s) any other matter for or with respect to which the Secretary considers that provision should be made in the public interest.

3.1.4 Monetary amounts in VET funding contracts

- (1) This section applies if a VET funding contract expressly provides for the payment by a contractor to the State of a monetary amount fixed or determined in accordance with the contract—
 - (a) for a breach of the contract;
 - (b) for a failure (not being a breach of contract) to meet a performance requirement specified in the contract;
 - (c) on the termination of the contract.
- (2) Despite anything to the contrary in a rule of, or principle at, common law relating to liquidated damages or penalties in respect of a breach of contract, the contractor may be required to pay the monetary amount in accordance with the provision of the VET funding contract.

New s. 3.1.4
inserted by
No. 73/2012
s. 10.

3.1.5 Specific performance

- (1) This section applies if a VET funding contract expressly provides that an order for specific performance may be sought by the Secretary for breach of the VET funding contract.

New s. 3.1.5
inserted by
No. 73/2012
s. 10.

- (2) Despite anything to the contrary in a rule of, or principle at, common law or equity, a contractor may be required to provide specific performance for a breach of, or failure to comply with, the contract even though—
 - (a) adequate damages may be available for the breach of contract; or
 - (b) enforcement of the contract may require personal services to be provided.

New s. 3.1.6
inserted by
No. 73/2012
s. 10.

3.1.6 Requirements of VET funding contracts for the benefit of students

- (1) This section applies to a student if—
 - (a) the student is of a class of students of government-subsidised vocational education and training that is expressly specified or referred to in a VET funding contract as a class of students to which the contract extends; and
 - (b) the contract expressly provides that a performance requirement of the contract confers a benefit directly on that class of students; and
 - (c) the student incurs a loss arising from a breach of, or failure to comply with, that performance requirement; and
 - (d) the loss incurred by the student is a direct or foreseeable consequence of that breach or failure to comply.
- (2) If subsection (1) applies, the performance requirement of the VET funding contract is enforceable by the student in his or her name against the contractor who is a party to the contract even though the student is not named as a party to the contract.

- (3) A contractor who is a defendant to an action or proceeding in respect of a VET funding contract taken by a student referred to in subsection (1) has all the defences that would have been available to the contractor as a defendant had the student been named as a party to the contract.
- (4) In this section, *performance requirement* means a provision of a VET funding contract that specifies a performance requirement for vocational education and training that is expressed to be for the benefit of a class of students of government-subsidised vocational education and training.

3.1.7 Right of entry to monitor VET funding contracts

New s. 3.1.7
inserted by
No. 73/2012
s. 10.

- (1) This section applies if a VET funding contract expressly authorises a person authorised by the Secretary to enter and inspect a premises for the purpose of monitoring compliance with the contract.
- (2) For the purposes of monitoring compliance with the contract, the person authorised by the Secretary may enter and inspect the premises and make enquiries of the contractor or the staff of the contractor.
- (3) An authorised officer may only enter premises under subsection (2) during the times agreed to in the contract.

Division 2—TAFE institutes

3.1.11 TAFE institutes and boards

S. 3.1.11
amended by
No. 39/2012
s. 27,
substituted by
No. 73/2012
s. 17.

- (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

S. 3.1.11(1)(d)
 amended by
 No. 76/2013
 s. 4.

(d) if the council of a dual sector university approves, merge a TAFE institute with the university; or

S. 3.1.11
 (1)(da)
 inserted by
 No. 31/2018
 s. 38(1),
 repealed by
 No. 32/2022
 s. 5(1).

* * * * *

(e) change the name of a TAFE institute.

(2) An Order in Council under this section may—

(a) establish a board to oversee and govern a TAFE institute; or

(b) amalgamate the board of a TAFE institute with another board of a TAFE institute; or

S. 3.1.11(2)(c)
 repealed by
 No. 32/2022
 s. 5(1).

* * * * *

(d) abolish the board of a TAFE institute; or

(e) change the name of the board of a TAFE institute; or

(f) make provision or further provision for or with respect to the constitution, management structure, membership, objectives, powers, duties or functions of a TAFE institute or the board of a TAFE institute or the manner of appointment or the terms and conditions of appointment of directors of the board of a TAFE institute; or

S. 3.1.11(2)(fa)
 inserted by
 No. 69/2015
 s. 4(1).

(fa) make provision for—

(i) the conduct of elections of members of staff of a TAFE institute including electoral systems and procedures, voting methods, voter and candidate eligibility and dispute resolution; and

- (ii) the training and support of elected directors of the board of a TAFE institute; or
 - (g) make provision for the board of a TAFE institute to make rules for the governance of the institute; or
 - (h) make provision for the board of a TAFE institute 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 TAFE institute or to a committee established by or under an Order in Council relating to the board; or
 - (i) amend any provision of a previous Order in Council or Ministerial Order made under this section relating to a TAFE institute or the board of a TAFE institute; or
 - (j) make provision for or with respect to any matter of a consequential, transitional or savings nature consequent on the making of an Order in Council or Ministerial Order under this section including the rights, obligations and assignment of any property (subject to trusts), of any TAFE institute referred to in the Order.
- (3) Without limiting the powers of the Governor in Council under this section, the Minister may also make Ministerial Orders for the purposes of subsection (2)(f), (fa), (g), (h), (i) or (j).
- (4) The Minister must not make a recommendation for an Order in Council under subsection (1) or (2) or make a Ministerial Order under subsection (3) unless—
- (a) in the case of an Order in Council made under subsection (1), the board (if any) of the TAFE institute or proposed TAFE institute

**S. 3.1.11(3)
amended by
No. 69/2015
s. 4(2).**

concerned has made a request for the proposed Order in Council or has been consulted about the proposed Order in Council;

S. 3.1.11(4)(b)
amended by
No. 32/2022
s. 5(2)(a).

- (b) in the case of an Order in Council or Ministerial Order made for the purposes of subsection (2), the board (if any) of the TAFE institute concerned has made a request for the proposed Order or has been consulted about the proposed Order.

S. 3.1.11
(4)(c)
amended by
No. 31/2018
s. 38(2),
repealed by
No. 32/2022
s. 5(2)(b).

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- (5) If an Order in Council made under this section changes the name of the board of a TAFE institute—
- (a) the board continues in existence under the new name so that its identity is not affected; and
 - (b) in an Act, a subordinate instrument or in any other document, a reference to the board under the former name must, except in relation to matters that occurred before the change of name, be construed as a reference to the board under the new name.
- (6) If an Order in Council made under this section changes the name of a TAFE institute—
- (a) the institute continues in existence under the new name so that its identity is not affected; and
 - (b) in an Act, a subordinate instrument or in any other document, a reference to the institute under the former name must, except in

- relation to matters that occurred before the change of name, be construed as a reference to the institute under the new name; and
- (c) the change of name does not affect any rights or obligations of the institute or render defective any legal proceedings by or against the institute; and
- (d) any legal proceedings that might have been continued or commenced by or against the institute by its former name may be continued by or against it by its new name.
- (7) If two or more TAFE institutes are amalgamated under an Order in Council made under this section, any legal proceedings that might have been commenced or continued by or against any of the institutes may be commenced or continued by or against the single institute formed by the amalgamation.
- (8) A copy of every Order in Council or Ministerial Order made under this section must be laid before each House of Parliament as soon as practicable after it is made.

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S. 3.1.11(9)
inserted by
No. 31/2018
s. 38(3),
repealed by
No. 32/2022
s. 5(3).

3.1.12 TAFE institute is a body corporate

A TAFE institute established under section 3.1.11—

- (a) is a body corporate with perpetual succession; and
- (b) has a common seal; and

S. 3.1.12
amended by
Nos 58/2007
s. 14, 71/2010
s. 54, 39/2012
s. 28,
substituted by
No. 73/2012
s. 17.

- (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.

S. 3.1.12A
inserted by
No. 73/2012
s. 17.

3.1.12A Objectives of TAFE institutes

The objectives of a TAFE institute are—

- (a) to perform its functions for the public benefit by—
 - (i) operating its businesses, delivering educational services and utilising assets that it manages on the State's behalf as efficiently as possible; and
 - (ii) ensuring that it is sustainable in the medium to long term; and
 - (iii) ensuring that its procedures, policies and practices are consistent with prudent commercial practice; and
 - (iv) endeavouring to maximise its contribution to the economy and wellbeing of the communities and industries served by the institute and the State as a whole; and
- (b) to facilitate student learning, knowledge acquisition, skills for employment and vocational education and training through excellent teaching, innovation and educational leadership that delivers quality outcomes; and

- (c) to collaborate as part of a strong public training provider network which is mutually and commercially beneficial to enable the institute to offer or provide educational services that meet the needs of industry partners and communities, including persons and groups that have particular education needs; and
- (d) any other objective set out in an Order in Council or Ministerial Order made under section 3.1.11 relating to the institute.

3.1.12B Functions of TAFE institutes

- (1) A TAFE institute may perform all or any of the following functions—

- (a) to provide the communities and industries served by the institute with efficient and effective technical and further education programs and services;
- (b) to provide the communities and industries 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;
- (c) to provide vocational education and training;
- (d) to offer and conduct courses of study leading to the conferral of higher education awards;
- (e) to confer higher education awards;
- (f) to provide facilities or services for study, research or education;
- (g) to undertake research, development, education, training delivery or other

S. 3.1.12B
inserted by
No. 73/2012
s. 17.

- services on a commercial basis for other organisations;
- (h) to aid or engage in the development or promotion of institute research or the application or use of the results of that research;
 - (i) to prepare, publish or distribute or license the use of literary or artistic work, audio or audio-visual material or computer software;
 - (j) to seek or encourage gifts to the institute or for institute purposes;
 - (k) to provide facilities for use by the community;
 - (l) any other function conferred on the institute by or under this Act or any Order in Council or Ministerial Order made under section 3.1.11.
- (2) A TAFE institute may perform any function referred to in subsection (1) within and outside Victoria and outside Australia.
- (3) Subject to any direction or guideline issued by the Minister a TAFE institute may engage in an activity on a commercial basis if the activity is consistent with, and does not interfere with, the carrying out of the functions referred to in this section or the institute's strategic plan.

S. 3.1.12B(3)
inserted by
No. 71/2010
s. 55(3) (as
amended by
No. 73/2012
s. 108(2) (as
amended by
No. 76/2013
s. 27(1))).

S. 3.1.12C
inserted by
No. 73/2012
s. 17.

3.1.12C Powers of TAFE institutes

- (1) A TAFE institute has power to do all things that are necessary or convenient to be done for or in connection with, or as incidental to, meeting its objectives or performing its functions including any function delegated to it.

- (2) Without limiting the generality of subsection (1) a TAFE institute, for the purpose of meeting its objectives or performing its functions, may—
- (a) 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 another person or persons.

Note

Under section 5.2.1, the Minister may issue directions to a TAFE institute concerning its operations and the institute must comply with such a direction. In addition, an Order in Council or Ministerial Order made under section 3.1.11 may provide for or with respect to the powers, duties or functions of a TAFE institute.

- (3) A TAFE institute, in meeting its objectives or performing its functions, may exercise its powers within and outside Victoria and outside Australia.

3.1.12D Borrowing and investment by TAFE institutes

A TAFE institute has the powers conferred on it by the **Borrowing and Investment Powers Act 1987**.

S. 3.1.12D
inserted by
No. 76/2013
s. 5.

3.1.12E TAFE institute to keep books and accounts

- (1) A TAFE institute must establish and keep full and complete books and accounts of all money received and paid by the TAFE institute 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.
- (2) The books and accounts referred to in subsection (1) must be kept in the form and manner approved by the Auditor-General.

S. 3.1.12E
inserted by
No. 69/2015
s. 10.

S. 3.1.13
amended by
Nos 58/2007
s. 15, 71/2010
s. 55(1)(2),
76/2011 s. 3,
substituted by
No. 73/2012
s. 17.

3.1.13 Functions of TAFE institute boards

- (1) The functions of the board of a TAFE institute are—
 - (a) to oversee and govern the institute efficiently and effectively; and
 - (b) to develop and implement—
 - (i) strategic plans and statements of corporate intent in accordance with the requirements of this Act; and
 - (ii) operational business plans for the institute; and
 - (c) to ensure that the institute operates in accordance with its strategic plan and its statement of corporate intent; and
 - (d) to provide for the proper, efficient and effective performance by the institute of its functions and powers; and
 - (e) to determine policies relating to employment of institute staff; and
 - (f) to develop and issue directions for the administration and management of the institute that must be complied with by the chief executive officer and staff employed by the institute; and
 - (g) to give proper direction to, and exercise proper control over, the chief executive officer and other staff employed by the institute and to monitor that they are carrying out their functions in a fit and proper manner; and
 - (h) to advise and report on the activities of the institute to the Minister; and

- (i) to perform any other function conferred on the board by or under this Act or any Order in Council or Ministerial Order made under section 3.1.11.
- (2) The board of a TAFE institute may perform any function referred to in subsection (1) within and outside Victoria and outside Australia.

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.

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S. 3.1.14(2)
repealed by
No. 73/2012
s. 18.

- (3) A board, in the performance of its functions, may exercise its powers within and outside Victoria, whether within or outside Australia.

S. 3.1.14(3)
substituted by
No. 76/2011
s. 4.

3.1.15 Accountability of TAFE institute boards

- (1) A board must perform its functions and exercise its powers subject to—
- (a) a VET funding contract; and

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S. 3.1.15(1)(a)
substituted by
No. 73/2012
s. 11.

S. 3.1.15
(1)(ab)
inserted by
No. 31/2018
s. 39,
repealed by
No. 32/2022
s. 6.

- (b) any economic and social objectives established from time to time by the Government of Victoria; and

S. 3.1.15(1)(c)
amended by
No. 73/2012
s. 19(1).

(c) an Order made under section 3.1.11; 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.

S. 3.1.15(2A)
inserted by
No. 73/2012
s. 19(2).

(2A) The board of a TAFE institute may publish any written direction given by the Minister in the board's annual report.

S. 3.1.15(3)(4)
repealed by
No. 69/2015
s. 11.

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S. 3.1.16
amended by
Nos 58/2007
s. 16, 71/2010
s. 57, 43/2012
s. 3(Sch.
item 13),
substituted by
No. 73/2012
s. 20.

3.1.16 Board directorship

S. 3.1.16(1)
substituted by
No. 69/2015
s. 5(1).

- (1) An Order in Council or Ministerial Order made under section 3.1.11 must provide for a board of a TAFE institute consisting of not less than 10 and not more than 15 directors of whom—
- (a) at least half must be appointed by the Minister; and
 - (b) a minimum of one director or any other greater fixed number of directors must be a staff member or members of the institute elected by staff of the institute; and

(c) one must be the chief executive officer of the institute; and

(d) the remaining directors must be appointed by the board by co-option.

(1A) In subsection (1)(b), a reference to a fixed number of directors is a reference to the number of directors to be elected by the staff of the TAFE institute fixed by the Order in Council or Ministerial Order made under section 3.1.11.

S. 3.1.16(1A)
inserted by
No. 69/2015
s. 5(1).

(2) In appointing directors to a board the Minister and the board must endeavour to ensure that the directors include persons with knowledge of, or experience in, the following areas—

S. 3.1.16(2)
amended by
No. 69/2015
s. 5(2).

(a) management;

(b) finance;

(c) commerce or business;

(d) law;

(e) corporate governance;

(f) vocational education and training;

(g) adult, community and further education;

(h) any industry in which training is provided at the institute;

(i) if the TAFE institute provides higher education programs, higher education.

S. 3.1.16(2)(i)
amended by
No. 32/2022
s. 7(a).

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S. 3.1.16(2)(j)
repealed by
No. 32/2022
s. 7(b).

(3) A person who is a member of Parliament must not be appointed or elected as a director of the board.

S. 3.1.16(3)
substituted by
No. 69/2015
s. 5(3).

S. 3.1.16A
inserted by
No. 69/2015
s. 6.

3.1.16A Chairperson of board—appointment and removal

- (1) The board must elect and appoint a director of the board (other than an elected director or the chief executive officer) as the chairperson of the board in accordance with this section.
- (2) Before appointing a director as chairperson of the board, the board must notify the Minister in writing of the proposal to make the appointment.
- (3) The Minister may, within 20 days after receiving the notification and after considering the board's proposal, give to the board written notice of the Minister's objection to the proposed appointment.
- (4) The board must not appoint a director as chairperson of the board if the Minister has objected to the appointment under subsection (3).
- (5) The board may suspend or remove the chairperson from office at any time.
- (6) The Minister may suspend or remove a chairperson from office if the Minister is satisfied that exceptional circumstances exist.

3.1.17 Schedule 2

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

S. 3.1.18
amended by
Nos 71/2010
s. 58, 39/2012
s. 29,
substituted by
Nos 73/2012
s. 21, 69/2015
s. 7.

3.1.18 Removal of directors

- (1) The Minister may suspend or remove a director appointed by the Minister at any time.
- (2) If the board believes that an elected director or a director co-opted by the board has contravened a code of conduct that is applicable to the director or a duty or obligation otherwise imposed on the director by or under this Act, the board may—
 - (a) suspend the director from office for a period not exceeding one month; or

- (b) remove the director from office.
- (3) A suspension imposed under subsection (2)(a) cannot be extended or renewed.
- (4) A suspended director is, by force of this subsection, restored to office at the end of the period of suspension unless the director is removed from office within that period.
- (5) In exercising a power conferred by subsection (2) to remove a director from office, the board must do so by notice in writing delivered to the director that—
 - (a) specifies a date, not earlier than 7 days after the date of the notice, on which the removal is to take effect; and
 - (b) informs the director that at any time prior to the removal taking effect the director may submit to the board reasons as to why the director should not be removed from office.
- (6) If the board exercises a power conferred by subsection (2) to remove a director from office, the board may revoke the notice of removal, by notice in writing delivered to the director, at any time before it takes effect.

3.1.18A Strategic plans

- (1) The board of a TAFE institute must at the direction of the Minister and at the time or times determined by the Minister, prepare and submit to the Minister for acceptance a strategic plan for the operation of the institute.
- (2) A strategic plan must be prepared in accordance with the guidelines established by the Minister from time to time.
- (3) The Minister may—
 - (a) accept a strategic plan; or

**S. 3.1.18A
inserted by
No. 71/2010
s. 59.**

- (b) accept a strategic plan with amendments; or
- (c) refuse to accept a strategic plan.

S. 3.1.18A(3A)
inserted by
No. 69/2015
s. 12.

- (3A) If the Minister refuses to accept a strategic plan under subsection (3)(c), the board of the TAFE institute must, at the time or times determined by the Minister, amend and resubmit the strategic plan to the Minister for acceptance.
- (4) The board of a TAFE institute must advise the Minister if it wishes to exercise its functions in a manner inconsistent with its accepted strategic plan.

S. 3.1.18B
inserted by
No. 71/2010
s. 59.

3.1.18B When statement of corporate intent to be prepared

- (1) In respect of each year, the board of a TAFE institute must—
 - (a) prepare, in consultation with the Secretary, a proposed statement of corporate intent in relation to the provision of vocational education and training; and
 - (b) submit the proposed statement of corporate intent to the Minister.
- (2) If, prior to 1 October the Minister provides to the board of a TAFE institute a statement of expectations in relation to the operations of the institute in the next year, these must be taken into account in preparing a statement of corporate intent.
- (3) If the board of a TAFE institute and the Minister fail to agree on a statement of corporate intent before 1 March of the year to which the statement of corporate intent relates, the Minister may make a statement of corporate intent in relation to the TAFE institute.
- (4) A statement of corporate intent may be varied at any time if the board of a TAFE institute and the Minister so agree.

S. 3.1.18B
(1)(a)
amended by
No. 39/2012
s. 38.

- (5) If the board of a TAFE institute and the Minister fail to agree to a proposed variation of a statement of corporate intent within 28 days after the variation is proposed, the Minister may—
- (a) vary the statement of corporate intent; or
 - (b) decline to vary the statement of corporate intent.
- (6) The Minister must cause copies of each statement of corporate intent and any variation to be made available on request to a member of the public.

3.1.18C Content of statement of corporate intent

A statement of corporate intent made by a board of a TAFE institute under section 3.1.18B must—

- (a) be consistent with the strategic plan accepted by the Minister for the institute; and
- (b) specify in respect of the year to which it relates—
 - (i) the services to be provided by the institute and the funds to be provided to the institute; and
 - (ii) the objectives, priorities and key performance outcomes to be met by the institute; and
 - (iii) the performance indicators, targets or other measures against which the performance of the institute is to be assessed and monitored; and
 - (iv) how and when the institute must report to the Minister and the Secretary on its performance in relation to the specified objectives, priorities and key performance outcomes; and

S. 3.1.18C
inserted by
No. 71/2010
s. 59.

S. 3.1.18C
(b)(iv)
amended by
No. 39/2012
s. 39.

- (v) any other matter agreed from time to time between the Minister and the board of the TAFE institute, or determined by the Minister.

S. 3.1.18D
inserted by
No. 71/2010
s. 59,
amended by
No. 39/2012
s. 40,
repealed by
No. 31/2018
s. 50.

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3.1.19 Reserve powers of Minister

- (1) If the Minister is satisfied that the board of an institute—

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

- (a) is inefficiently or incompetently governing the institute; or

S. 3.1.19(1)(b)
amended by
No. 73/2012
s. 12.

- (b) is failing to comply with its VET funding contract; 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—

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

- (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 VET funding contract; or

**S. 3.1.19
(1)(d)(ii)
amended by
No. 73/2012
s. 12.**

(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; or

**S. 3.1.19(1)(f)
substituted by
No. 73/2012
s. 22(1).**

Note

If all the directors of the board were dismissed, new directors would be appointed in accordance with section 3.1.16.

(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).

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 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.

S. 3.1.21(6)(a)
amended by
No. 73/2012
s. 22(2).

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 TAFE institute—
 - (a) must employ a chief executive officer of the institute; and
 - (b) may employ such other staff as is necessary to enable the institute to perform its functions and exercise its powers.

S. 3.1.23(1)
amended by
No. 73/2012
s. 22(3)(a)(i).

S. 3.1.23(1)(b)
amended by
No. 73/2012
s. 22(3)(a)(ii).

S. 3.1.23(2)
amended by
No. 73/2012
s. 22(3)(b).

(2) A TAFE institute, in employing persons under this section, does not represent the Crown.

S. 3.1.23(3)
amended by
No. 73/2012
s. 22(3)(b)(c).

(3) A TAFE institute may, by instrument under its common seal, delegate to the chief executive officer of the institute any power of the institute under this section, other than this power of delegation.

3.1.24 Minister may object to appointment of chief executive officer

S. 3.1.24(1)
amended by
No. 73/2012
s. 22(4)(a).

(1) Before appointing a person as the chief executive officer of the TAFE institute, the institute must notify the Minister in writing of the proposal to make the appointment.

S. 3.1.24(2)
amended by
Nos 73/2012
s. 22(4)(b),
69/2015 s. 13.

(2) The Minister may, within 15 days after receiving that notification and after considering the TAFE institute's proposal, give to the institute notice in writing of his or her objection to the proposed appointment.

S. 3.1.24(3)
amended by
No. 73/2012
s. 22(4)(c).

(3) A TAFE institute 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

S. 3.1.25(1)
substituted by
No. 76/2013
s. 6.

(1) Schedule 3 applies to the employment of staff at a TAFE institute.

S. 3.1.25(1A)
inserted by
No. 76/2013
s. 6.

(1A) Clause 1 of Schedule 3 applies to the employment of staff at a dual sector university in the circumstances set out in that clause.

S. 3.1.25(2)
amended by
No. 73/2012
s. 22(5).

(2) A TAFE institute 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—

* * * * *

S. 3.1.26(a)
amended by
No. 73/2012
s. 22(6).

- (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.

* * * * *

S. 3.1.26AA
inserted by
No. 73/2012
s. 23,
amended by
No. 31/2018
s. 51,
repealed by
No. 32/2022
s. 8.

S. 3.1.26AB
inserted by
No. 31/2018
s. 40,
repealed by
No. 32/2022
s. 9.

* * * * *

S. 3.1.26A
inserted by
No. 71/2010
s. 60.

3.1.26A Use of the term "TAFE" or "technical and further education"

- (1) A person or body must not use the term "TAFE" or "technical and further education" in its name, or in a description of its activities, operations or services in connection with its operations in and from Victoria if having regard to the circumstances in which it is used it would be reasonably understood to indicate that—
- (a) the person or body using the term in its name is a TAFE institute; or
 - (b) the activity, operation or service is being provided by a TAFE institute—

unless the person or body is a TAFE institute.

Penalty: 20 penalty units in the case of a natural person and 100 penalty units in the case of a body corporate.

Example to
s. 3.1.26A(1)
amended by
No. 76/2013
s. 7.

Example

A body that is not a TAFE institute and is not exempted under subsection (2) that offers education services using the name "Victoria TAFE Educators" would contravene subsection (1).

- (2) Subsection (1) does not apply to—
- (a) a recognised TAFE Institute or a person or body that operates a recognised TAFE Institute; or

S. 3.1.26A
(2)(a)
amended by
No. 39/2012
s. 62(2).

- (b) a recognised University; or

- (c) a prescribed person or body or person or body of a prescribed class of person or body;
or
 - (d) a person or body to whom the Minister has given approval under subsection (3) to use the term "TAFE" or "technical and further education" in its name or in connection with its activities, operations or services.
- (3) The Minister may give a person or body an approval to use the term "TAFE" or "technical and further education" in its name or in connection with its activities, operations or services despite the body or person not being a TAFE institute if satisfied that—
- (a) the person or body is established by or operates in association with one or more TAFE institutes, recognised TAFE Institutes or recognised Universities; or

Examples

- 1 A company established by a TAFE institute (or in which a TAFE institute is a participant) for the conduct of TAFE related programs or activities.
 - 2 A company established by one or more TAFE institutes to conduct professional development for staff of a TAFE institute or a body established by one or more TAFE institutes to represent or assist those TAFE institutes in workplace relations matters.
- (b) it is unlikely that a reasonable person would think that, because of the use of the term "TAFE" or "technical and further education" in the person or body's name or in connection with its activities, operations or services, the person or body is a TAFE institute.

(4) The Minister must ensure that notice of an approval given under subsection (3) is published in the Government Gazette.

(5) In this section—

recognised TAFE Institute means an institution that—

- (a) is established under an Act of the Commonwealth or another State or Territory; and
- (b) has similar functions to a TAFE institute relating to the provision of courses and programs for technical and further education;

Note

TAFE institute is defined in section 1.1.3(1).

recognised University has the same meaning as in section 4.1.1.

S. 3.1.26B
inserted by
No. 71/2010
s. 60.

3.1.26B Injunction to prevent or restrain a contravention

The Authority may apply to the County Court for an injunction to prevent or restrain a person from contravening section 3.1.26A.

Ch. 3 Pt 3.1
Div. 3
(Heading and
ss 3.1.27–
3.1.34)
amended by
No. 20/2012
s. 226(Sch. 5
item 12),
repealed by
No. 73/2012
s. 5.

* * * * *

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
 - (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
 - (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.

Part 3.3—Adult, community and further education

Division 1—Preliminary

3.3.1 Definitions

In this Part—

S. 3.3.1 def. of *adult learner* inserted by No. 32/2022 s. 10(a).

adult learner means a person who is—

- (a) beyond the age of compulsory school attendance; or
- (b) not less than 15 or more than 17 years of age and is exempt from enrolment and attendance at school by Ministerial Order in accordance with section 2.1.5;

Board means the Adult, Community and Further Education Board;

S. 3.3.1 def. of *Board of AMES Australia* amended as *Board of AMES Australia* by No. 32/2022 s. 10(b)(i), amended by No. 32/2022 s. 10(b)(ii).

Board of AMES Australia means the governing board of AMES Australia established by Order in Council under Division 5;

S. 3.3.1. def. of *Board of the Centre for Adult Education* repealed by No. 31/2018 s. 41.

* * * * *

S. 3.3.1 def. of *governing board* repealed by No. 32/2022 s. 10(c).

* * * * *

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.
- (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.

S. 3.3.3
amended by
Nos 71/2010
s. 61, 73/2012
s. 6(1)(2),
76/2013 s. 8,
substituted by
No. 32/2022
s. 11.

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 or universities, are—
 - (a) to establish strategic objectives, priorities and targets in relation to—
 - (i) the Board's leadership of adult, community and further education; and
 - (ii) training provided in the post-secondary education system relating to adult, community and further education; and
 - (b) to evaluate and report on policies, programs, resources and services developed for the coordination, provision, funding and support of adult, community and further education, having regard to, amongst other things, the matters specified in subsection (2); and
 - (c) to strategically plan and develop new policies, programs, resources and services for the coordination, provision, funding and support of adult, community and further education, having regard to—
 - (i) the economic and social benefits of adult, community and further education to the Victorian community; and
 - (ii) the quality of and equity of access to adult, community and further education; and
 - (d) to register providers of adult, community and further education; and
 - (e) to advise the Minister on matters relating to adult, community and further education; and
 - (f) to provide educational programs where directed by the Minister; and

- (g) to foster and support research and the development of matters relating to adult, community and further education; and
 - (h) to advocate for adult, community and further education; and
 - (i) to promote awareness of adult, community and further education; and
 - (j) to carry out any other function that is conferred on the Board by this or any other Act.
- (2) For the purposes of subsection (1)(b), the following matters are specified—
- (a) the skills and education needs of adult learners in the Victorian community including the following—
 - (i) literacy;
 - (ii) digital literacy;
 - (iii) numeracy;
 - (iv) the English language;
 - (v) the skills, attributes and knowledge required to gain and retain employment and for career progression;
 - (b) the benefit of adult, community and further education to the Victorian community;
 - (c) the impact of adult, community and further education on the Victorian community;
 - (d) the equity of access to, and the quality of programs provided for, adult, community and further education;
 - (e) the role of Government in relation to—
 - (i) fostering innovation, quality teaching, learning and partnerships with respect

to adult, community and further education; and

- (ii) developing resources and services for adult, community and further education; and
- (iii) improving the capability and capacity of providers of adult, community and further education.

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
 - (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—

- | | | | | | |
|---|---|---|---|---|---|
| * | * | * | * | * | S. 3.3.5(a) repealed by No. 71/2010 s. 62(a). |
| * | * | * | * | * | S. 3.3.5(b) repealed by No. 32/2022 s. 12(1). |
- (c) consult, as a matter of general practice, with—
- (i) the Regional Councils; and
 - (ii) industry and industry partners; 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

S. 3.3.6(c)
 substituted by
 No. 71/2010
 s. 62(2),
 amended by
 No. 31/2018
 s. 42(a).

(c) may make payments by way of grants, subsidies or loans in relation to adult, community and further education to a TAFE institute and any such payment must be made on any terms and conditions that the Board thinks fit; and

S. 3.3.6(d)
 amended by
 No. 31/2018
 s. 42(b),
 substituted by
 No. 32/2022
 s. 13.

(d) may make payments to a Regional Council with respect to their functions;

(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.

S. 3.3.7
 amended by
 No. 31/2018
 s. 43,
 repealed by
 No. 32/2022
 s. 14.

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S. 3.3.8
 repealed by
 No. 71/2010
 s. 63.

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S. 3.3.9
 repealed by
 No. 71/2010
 s. 64.

* * * * *

3.3.10 Membership of the Board

- (1) The Board consists of not less than 8 and not more than 12 members of whom—
- (a) one member is to be appointed by the Governor in Council as Chairperson on the recommendation of the Minister; and
 - (b) one member is to be appointed by the Governor in Council as Deputy Chairperson on the recommendation of the Minister; and
 - (c) the remaining members are to be appointed by the Governor in Council on the recommendation of the Minister in accordance with subsection (2).
- (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
 - (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 governance 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 includes members with sufficient expertise in the provision of adult, community and further education.

S. 3.3.10(1)
amended by
Nos 58/2007
s. 18, 7/2015
s. 13(1),
substituted by
No. 32/2022
s. 15(1).

S. 3.3.10(2)(d)
amended by
No. 32/2022
s. 15(2).

S. 3.3.10(2)(f)
substituted by
No. 32/2022
s. 15(3).

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.

S. 3.3.13
substituted by
No. 32/2022
s. 16.

3.3.13 General Manager of the Board

- (1) There is to be appointed a General Manager of the Board who is an executive (within the meaning of the **Public Administration Act 2004**) of the Department.
- (2) The General Manager of the Board is responsible for implementing any policy or decision of the Board made in accordance with this Part or any other Act.

Division 3—Delegations

S. 3.3.14
amended by
Nos 71/2010
s. 65, 32/2022
s. 17(a).

3.3.14 Delegations by the Board

The Board may, by instrument under its common seal, delegate any power or function, other than 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

| | | | | | |
|---|---|---|---|---|--|
| * | * | * | * | * | S. 3.3.14(d)(e) repealed by No. 32/2022 s. 17(b). |
| | | | | (f) an executive (within the meaning of the Public Administration Act 2004) of the Department; or | S. 3.3.14(f) substituted by No. 39/2012 s. 30. |
| | | | | (g) a person or body appointed by the Minister under this Act; | S. 3.3.14(g) substituted by No. 32/2022 s. 17(c). |
| | | | | (h) a body established by Order in Council. | S. 3.3.14(h) inserted by No. 32/2022 s. 17(c). |

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 | |
| * | * | * | * | * | S. 3.3.15(b) repealed by No. 32/2022 s. 18(1). |
| * | * | * | * | * | S. 3.3.15(c) repealed by No. 71/2010 s. 66. |
| * | * | * | * | * | S. 3.3.15(d) repealed by No. 32/2022 s. 18(1). |
| | | | | (e) an executive (within the meaning of the Public Administration Act 2004) of the Department; or | S. 3.3.15(e) substituted by No. 39/2012 s. 31. |
| | | | | (f) a person or body appointed by the Minister under this Act; or | S. 3.3.15(f) substituted by No. 32/2022 s. 18(2). |

S. 3.3.15(g)
inserted by
No. 32/2022
s. 18(2).

(g) a body established by Order in Council.

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 in relation to adult, community and further education; and

S. 3.3.18(1)(b)
substituted by
No. 71/2010
s. 67(a).

S. 3.3.18(1)(c)
repealed by
No. 71/2010
s. 67(b).

* * * * *

- (d) to provide information, and contribute to planning, for adult, community and further education in the region; and

S. 3.3.18(1)(e)
repealed by
No. 71/2010
s. 67(b).

* * * * *

- (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, universities or AMES Australia; 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
- * * * * *
- (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.
- (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.

S. 3.3.18(1)(f)
amended by
Nos 76/2013
s. 9, 32/2022
s. 19(a).

S. 3.3.18(1)(j)
repealed by
No. 71/2010
s. 67(b).

(3) In carrying out its functions a Regional Council must—

S. 3.3.18(3)(a)
amended by
No. 32/2022
s. 19(b).

- (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 Board of AMES Australia 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—

S. 3.3.20(a)
repealed by
No. 32/2022
s. 20.

* * * * *

S. 3.3.20(b)
amended by
No. 71/2010
s. 68.

- (b) the policies of the Board; and
- (c) the general control of the Minister and any other requirement of this Act.

3.3.21 Membership of Regional Councils

- (1) A Regional Council consists of not less than 5 and not more than 9 members appointed by the Minister of whom—
 - (a) one member is to be appointed by the members of the Regional Council as Chairperson; and
 - (b) one member is to be appointed by the members of the Regional Council as Deputy Chairperson.
- (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 issues affecting the local industry and the broader local community in that region.

S. 3.3.21(1) amended by No. 37/2015 s. 11(a), substituted by No. 32/2022 s. 21.

S. 3.3.21(3)(c) amended by Nos 39/2012 s. 41(a), 37/2015 s. 11(b).

S. 3.3.21(3)(d) repealed by No. 39/2012 s. 41(b), new S. 3.3.21(3)(d) inserted by No. 37/2015 s. 11(c).

- (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

* * * * *

S. 3.3.23(1)
repealed by
No. 37/2015
s. 12.

- (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.

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S. 3.3.24
repealed by
No. 39/2012
s. 42.

* * * * *

S. 3.3.25
repealed by
No. 71/2010
s. 69.

Division 5—AMES Australia

Pt 3.3 Div. 5
(Heading)
substituted by
No. 32/2022
s. 22.

3.3.26 Establishment of AMES Australia

S. 3.3.26
(Heading)
substituted by
No. 32/2022
s. 23(1).

- (1) AMES Australia is established.
- (2) The Board of AMES Australia is the governing board of AMES Australia and is constituted by Order in Council as provided for in this Division.
- (3) The Board of AMES Australia has the functions and powers conferred on it by this Division and by Order in Council made under this Division.

S. 3.3.26(1)
substituted by
No. 32/2022
s. 23(2).

S. 3.3.26(2)
amended by
Nos 31/2018
s. 52, 32/2022
s. 23(3).

S. 3.3.26(3)
amended by
No. 32/2022
s. 23(4).

S. 3.3.27
repealed by
No. 31/2018
s. 44.

* * * * *

S. 3.3.28
(Heading)
substituted by
No. 32/2022
s. 24(1).

3.3.28 AMES Australia and the Board of AMES Australia

S. 3.3.28
substituted by
No. 73/2012
s. 26.

S. 3.3.28(1)
substituted by
No. 32/2022
s. 24(2).

- (1) The Governor in Council may, on the recommendation of the Minister, by Order published in the Government Gazette—
 - (a) change the name of AMES Australia; or
 - (b) establish a governing board to oversee and govern AMES Australia; or

- (c) change the name of the Board of AMES Australia; or
- (d) make provision or further provision for or with respect to the constitution, management structure, membership, objectives, powers, duties or functions of AMES Australia or the Board of AMES Australia; or
- (e) make provision or further provision for or with respect to the manner of appointment or the terms and conditions of appointment of members of the Board of AMES Australia; or
- (f) make provision for the Board of AMES Australia to make rules for the governance of AMES Australia; or
- (g) make provision for the Board of AMES Australia 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 AMES Australia or to a committee established by or under an Order in Council relating to the Board of AMES Australia; or
- (h) amend any provision of a previous Order in Council under this section relating to AMES Australia or the Board of AMES Australia; or
- (i) make provision for or with respect to any matter of a consequential, transitional or savings nature consequent on the making of an Order in Council under this section including the rights, obligations and assignment of any property (subject to any trusts) of AMES Australia referred to in the Order in Council.

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| S. 3.3.28(2) repealed by No. 32/2022 s. 24(2). | * * * * * |
| S. 3.3.28(3) substituted by No. 32/2022 s. 24(3). | (3) The Minister must not make a recommendation for the purposes of this section unless the Board of AMES Australia has made a request for the proposed Order in Council or has been consulted about the proposed Order in Council. |
| S. 3.3.28(4) amended by No. 32/2022 s. 24(4)(a). | (4) If an Order in Council under this section changes the name of the Board of AMES Australia— (a) the governing board continues in existence under the new name so that its identity is not affected; and |
| S. 3.3.28(4)(b) substituted by No. 32/2022 s. 24(4)(b). | (b) a reference to the Board of AMES Australia, the Board of AMES, the governing board of AMES or the governing board of Adult Multicultural Education Services in any Act, subordinate instrument or any other document must, except in relation to matters that occurred before the change of name, be construed as a reference to its new name. |
| S. 3.3.28(5) amended by No. 32/2022 s. 24(5)(a). | (5) If an Order in Council made under this section changes the name of AMES Australia— |
| S. 3.3.28(5)(a) amended by No. 32/2022 s. 24(5)(b). | (a) AMES Australia continues in existence under the new name so that its identity is not affected; and |
| S. 3.3.28(5)(b) substituted by No. 32/2022 s. 24(6). | (b) a reference to AMES Australia, AMES or Adult Multicultural Education Services in any Act, subordinate instrument or any other document must, except in relation to matters that occurred before the change of name, be construed as a reference to its new name; and |

(c) the change of name does not affect any rights or obligations of AMES Australia or render defective any legal proceedings by or against AMES Australia; and

S. 3.3.28(5)(c)
amended by
No. 32/2022
s. 24(7).

(d) any legal proceedings that might have been continued or commenced by or against AMES Australia, AMES or Adult Multicultural Education Services may be continued by or against it by its new name.

S. 3.3.28(5)(d)
substituted by
No. 32/2022
s. 24(8).

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S. 3.3.28(6)
repealed by
No. 32/2022
s. 24(9).

(7) A copy of every Order in Council made under this section must be laid before each House of Parliament as soon as practicable after it is made.

3.3.29 AMES Australia is a body corporate

S. 3.3.29
(Heading)
amended by
No. 32/2022
s. 25(1).

AMES Australia—

(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.

S. 3.3.29
substituted by
No. 73/2012
s. 26,
amended by
No. 32/2022
s. 25(2).

3.3.29A Objectives of AMES Australia

S. 3.3.29A
(Heading)
amended by
No. 32/2022
s. 26(1).

S. 3.3.29A
inserted by
No. 73/2012
s. 26,
amended by
No. 32/2022
s. 26(2)(a).

S. 3.3.29A(b)
amended by
No. 32/2022
s. 26(2)(b).

S. 3.3.29A(d)
amended by
No. 32/2022
s. 26(2)(c).

The objectives of AMES Australia are—

- (a) to perform its functions for the public benefit by—
 - (i) operating its businesses, delivering educational services and utilising assets that it manages on the State's behalf as efficiently as possible; and
 - (ii) ensuring that it is sustainable in the medium to long term; and
 - (iii) ensuring that its procedures, policies and practices are consistent with prudent commercial practice; and
 - (iv) endeavouring to maximise its contribution to the economy and well-being of the State; and
- (b) to provide the community served by AMES Australia (including migrants, refugees and asylum seekers) with efficient and effective adult, community and further education, vocational education and training, employment and other associated programs and services responsive to the needs of that community; and
- (c) to facilitate adult, community and further education, knowledge acquisition and skills for employment through excellent teaching, innovation and educational leadership that delivers quality outcomes; and
- (d) to monitor the structure, reach and accessibility of AMES Australia services to maximise their availability to new and emerging communities and client groups; and

- | | |
|--|--|
| (e) to make adequate arrangements for persons and groups which have not had or do not have adequate access to programs or services provided by AMES Australia; and | S. 3.3.29A(e) amended by No. 32/2022 s. 26(2)(d). |
| (f) any other objective set out in an Order in Council made under section 3.3.28(1). | S. 3.3.29A(f) substituted by No. 32/2022 s. 26(2)(e). |

3.3.29B Functions of AMES Australia

S. 3.3.29B
(Heading)
amended by
No. 32/2022
s. 27(1).

S. 3.3.29B
inserted by
No. 73/2012
s. 26.

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|---|---|
| (1) AMES Australia may perform all or any of the following functions— | S. 3.3.29B(1) amended by No. 32/2022 s. 27(2)(a). |
| (a) to undertake generally the development and provision of adult, community and further education, vocational education and training, employment and other associated programs and services considered necessary for the objectives of AMES Australia; | S. 3.3.29B (1)(a) amended by No. 32/2022 s. 27(2)(b). |
| (ab) to develop and provide specialist settlement services for migrants, refugees and asylum seekers; | S. 3.3.29B (1)(ab) inserted by No. 32/2022 s. 27(2)(c). |
| (b) to provide facilities or services for study, research or education; | |
| (c) to undertake research, development, counselling or other services on a commercial basis for other organisations; | S. 3.3.29B (1)(c) amended by No. 32/2022 s. 27(2)(d). |

**S. 3.3.29B
(1)(d)**
amended by
No. 32/2022
s. 27(2)(e).

(d) to aid or engage in the development or promotion of research by AMES Australia or the application or use of the results of that research;

(e) to prepare, publish or distribute or license the use of literary or artistic work, audio or audio-visual material or computer software;

S. 3.3.29B(1)(f)
substituted by
No. 32/2022
s. 27(2)(f).

(f) to seek or encourage gifts to AMES Australia for the purposes of AMES Australia's objectives and functions;

(g) to provide facilities for use by the community;

**S. 3.3.29B
(1)(h)**
substituted by
No. 32/2022
s. 27(2)(g).

(h) to perform any other function conferred on AMES Australia by or under this Act or an Order in Council made under section 3.3.28(1).

S. 3.3.29B(2)
amended by
No. 32/2022
s. 27(3).

(2) AMES Australia may perform any function referred to in subsection (1) within and outside Victoria and outside Australia.

S. 3.3.29B(3)
inserted by
No. 32/2022
s. 27(4).

(3) Subject to any direction or guideline issued by the Minister, AMES Australia may engage in an activity on a commercial basis if the activity is consistent with, and does not interfere with, the carrying out of any of its functions referred to in subsection (1) or its strategic plan.

3.3.29C Powers of AMES Australia

- (1) AMES Australia has power to do all things that are necessary or convenient to be done for or in connection with, or as incidental to, meeting its objectives or performing its functions including any function delegated to it.
- (2) Without limiting the generality of subsection (1), AMES Australia, for the purpose of meeting its objectives or performing its functions, may—
 - (a) 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 another person or persons.
- (3) AMES Australia, in meeting its objectives or performing its functions, may exercise its powers within and outside Victoria and outside Australia.

S. 3.3.29C
(Heading)
amended by
No. 32/2022
s. 28(1).

S. 3.3.29C
inserted by
No. 73/2012
s. 26.

S. 3.3.29C(1)
amended by
No. 32/2022
s. 28(2)(a).

S. 3.3.29C(2)
amended by
No. 32/2022
s. 28(2)(b).

S. 3.3.29C
(2)(a)
amended by
No. 7/2015
s. 13(2).

S. 3.3.29C(3)
amended by
No. 32/2022
s. 28(2)(c).

3.3.29D Borrowing and investment by AMES Australia

AMES Australia has the powers conferred on it by the **Borrowing and Investment Powers Act 1987**.

S. 3.3.29D
inserted by
No. 32/2022
s. 29.

3.3.30 Functions of the Board of AMES Australia

S. 3.3.30
(Heading)
amended by
No. 32/2022
s. 30(1).

S. 3.3.30
amended by
Nos 76/2011
s. 5, 39/2012
s. 32,
substituted by
No. 73/2012
s. 26.

S. 3.3.30(1)
amended by
No. 32/2022
s. 30(2)(a).

(1) The functions of the Board of AMES Australia
are—

S. 3.3.30(1)(a)
substituted by
No. 32/2022
s. 30(2)(b).

(a) to oversee and govern AMES Australia
efficiently and effectively; and

(b) to develop and implement—

(i) strategic plans and statements of
corporate intent in accordance with the
requirements of this Act; and

S. 3.3.30
(1)(b)(ii)
amended by
Nos 7/2015
s. 13(3),
32/2022
s. 30(2)(c).

(ii) operational business plans for AMES
Australia; and

S. 3.3.30(1)(c)
amended by
No. 32/2022
s. 30(2)(d).

(c) to ensure that AMES Australia operates in
accordance with its strategic plan and its
statement of corporate intent; and

S. 3.3.30(1)(d)
amended by
No. 32/2022
s. 30(2)(d).

(d) to provide for the proper, efficient and
effective performance by AMES Australia of
its functions and powers; and

S. 3.3.30(1)(e)
amended by
No. 32/2022
s. 30(2)(e).

(e) to determine policies relating to employment
of staff of AMES Australia; and

- | | |
|---|---|
| (f) to develop and issue directions for the administration and management of AMES Australia that must be complied with by the chief executive officer and staff employed by AMES Australia; and | S. 3.3.30(1)(f) amended by No. 32/2022 s. 30(2)(f). |
| (g) to give proper direction to, and exercise proper control over, the chief executive officer and other staff employed by AMES Australia and to monitor that they are carrying out their functions in a fit and proper manner; and | S. 3.3.30(1)(g) amended by No. 32/2022 s. 30(2)(f). |
| (h) to advise and report on the activities of AMES Australia to the Minister; and | S. 3.3.30(1)(h) amended by No. 32/2022 s. 30(2)(g). |
| (i) to perform any other function conferred on the Board of AMES Australia by or under this Act or an Order in Council made under section 3.3.28(1). | S. 3.3.30(1)(i) substituted by No. 32/2022 s. 30(2)(h). |
| (2) The Board of AMES Australia may perform any function referred to in subsection (1) within and outside Victoria and outside Australia. | S. 3.3.30(2) amended by No. 32/2022 s. 30(3). |
| 3.3.31 Powers of the Board of AMES Australia | S. 3.3.31 (Heading) amended by No. 32/2022 s. 31(1). |
| (1) The Board of AMES Australia 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. | S. 3.3.31(1) amended by No. 32/2022 s. 31(2). |
| * * * * * | S. 3.3.31(2) repealed by No. 73/2012 s. 27. |

S. 3.3.31(3)
inserted by
No. 76/2011
s. 6,
amended by
No. 32/2022
s. 31(2).

- (3) The Board of AMES Australia, in the performance of its functions, may exercise its powers within and outside Victoria, whether within or outside Australia.

S. 3.3.32
(Heading)
amended by
No. 32/2022
s. 32(1).

3.3.32 Accountability of the Board of AMES Australia

S. 3.3.32(1)
amended by
No. 32/2022
s. 32(2)(a).

- (1) The Board of AMES Australia must perform its functions and exercise its powers subject to—

S. 3.3.32(1)(a)
repealed by
No. 32/2022
s. 32(2)(b).

* * * * *

- (b) any economic or social objectives or industrial relations policies established from time to time by the Government of Victoria; and

S. 3.3.32(1)(c)
amended by
No. 31/2018
s. 65(4).

- (c) any Order in Council made under section 3.3.28; and

- (d) any other requirements of this Act.

S. 3.3.32(2)
amended by
No. 32/2022
s. 32(3).

- (2) The Board of AMES Australia 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.

- (4) The Board of AMES Australia may publish any written direction given by the Minister in the Board's annual report.

S. 3.3.32(4)
inserted by
No. 73/2012
s. 28,
amended by
No. 32/2022
s. 32(4).

3.3.33 Membership of the Board of AMES Australia

S. 3.3.33
(Heading)
substituted by
No. 32/2022
s. 33(1).

S. 3.3.33
amended by
Nos 58/2007
s. 19(1),
39/2012 s. 33,
substituted by
No. 73/2012
s. 29.

- (1) The Board of AMES Australia consists of not less than 9 and not more than 11 members of whom—

S. 3.3.33(1)
amended by
No. 32/2022
s. 33(2)(a).

- (a) one is to be appointed by the Governor in Council as the chairperson of the Board; and

S. 3.3.33(1)(a)
amended by
No. 32/2022
s. 33(2)(b).

- (ab) one is to be the chief executive officer of AMES Australia; and

S. 3.3.33
(1)(ab)
inserted by
No. 32/2022
s. 33(2)(c).

- (b) of the remaining members—

- (i) if there is an even number, half are to be appointed by the Minister; or

S. 3.3.33
(1)(b)(i)
amended by
No. 32/2022
s. 33(2)(d)(i).

- (ii) if there is an odd number, half of that number rounded up to the next whole number are to be appointed by the Minister; and

S. 3.3.33
(1)(b)(ii)
amended by
No. 32/2022
s. 33(2)(d)(ii).

- S. 3.3.33(1)(c)
amended by
No. 76/2013
s. 19(1).
- (c) the remaining members are to be appointed by the Minister after considering the advice of the members who have been appointed under paragraphs (a) and (b).
- S. 3.3.33(2)
amended by
No. 32/2022
s. 33(3)(a)(b).
- (2) In appointing members to the Board, or advising on persons for appointment as members of the Board, the Minister and the members must endeavour to ensure that the members include persons with knowledge of, or experience in, the following areas—
- (a) management;
 - (b) finance;
 - (c) commerce or business;
 - (d) law;
 - (e) corporate governance;
 - (f) adult, community and further education;
 - (g) the educational needs of and services required by migrants, refugees and asylum seekers in the community.
- S. 3.3.33(2)(g)
substituted by
No. 32/2022
s. 33(3)(c).
- S. 3.3.33(3)
substituted by
No. 32/2022
s. 33(4).
- (3) A person who is a member of Parliament must not be appointed as a member of the Board of AMES Australia.

3.3.34 Removal from office of members

- S. 3.3.34(1)
substituted by
No. 39/2012
s. 34.
- (1) The Governor in Council may remove the chairperson from office at any time.
- S. 3.3.34(1A)
inserted by
No. 39/2012
s. 34,
repealed by
No. 73/2012
s. 30.
- * * * * *

- (2) The Minister may remove a member appointed by the Minister under section 3.3.33 from office at any time.

S. 3.3.34(2) substituted by No. 73/2012 s. 30, amended by No. 14/2013 s. 20(5).

* * * * *

S. 3.3.34(3) repealed by No. 73/2012 s. 30.

3.3.34A Strategic plans

S. 3.3.34A inserted by No. 39/2012 s. 35.

- (1) The Board of AMES Australia must, at the direction of the Minister and at the time or times determined by the Minister, prepare and submit to the Minister for acceptance a strategic plan for the operation of AMES Australia.
- (2) A strategic plan must be prepared in accordance with the guidelines established by the Minister from time to time.
- (3) The Minister may—
- (a) accept a strategic plan; or
 - (b) accept a strategic plan with amendments; or
 - (c) refuse to accept a strategic plan.

S. 3.3.34A(1) amended by No. 32/2022 s. 34(1).

- (3A) If the Minister refuses to accept a strategic plan under subsection (3)(c), the Board of AMES Australia must, at the time or times determined by the Minister, amend and resubmit the strategic plan to the Minister for acceptance.

S. 3.3.34A(3A) inserted by No. 32/2022 s. 34(2).

- (4) The Board of AMES Australia must advise the Minister if it wishes to exercise its functions in a manner inconsistent with its accepted strategic plan.

S. 3.3.34A(4) amended by No. 32/2022 s. 34(3).

S. 3.3.34B
(Heading)
amended by
No. 32/2022
s. 35(1).

3.3.34B When is a statement of corporate intent to be prepared

S. 3.3.34B
inserted by
No. 39/2012
s. 35.

S. 3.3.34B(1)
amended by
No. 32/2022
s. 35(2)(a).

(1) In respect of each year, the Board of AMES Australia must—

S. 3.3.34B
(1)(a)
amended by
No. 32/2022
s. 35(2)(b).

(a) prepare, in consultation with the Minister, a proposed statement of corporate intent in relation to the provision of adult, community and further education, vocational education and training, employment and other associated programs and services; and

(b) submit the proposed statement of corporate intent to the Minister.

S. 3.3.34B(2)
amended by
No. 32/2022
s. 35(3).

(2) If, prior to 1 October, the Minister provides to the Board of AMES Australia a statement of expectations in relation to the operations of AMES Australia in the next year, these must be taken into account in preparing a statement of corporate intent.

S. 3.3.34B(3)
amended by
No. 32/2022
s. 35(4).

(3) If the Board of AMES Australia and the Minister fail to agree on a statement of corporate intent before 1 March of the year to which the statement of corporate intent relates, the Minister may make a statement of corporate intent in relation to AMES Australia.

S. 3.3.34B(4)
amended by
No. 32/2022
s. 35(5).

(4) A statement of corporate intent may be varied at any time if the Board of AMES Australia and the Minister so agree.

- (5) If the Board of AMES Australia and the Minister fail to agree to a proposed variation of a statement of corporate intent within 28 days after the variation is proposed, the Minister may—
- (a) vary the statement of corporate intent; or
 - (b) decline to vary the statement of corporate intent.
- (6) The Minister must cause copies of each statement of corporate intent and any variation to be made available on request to a member of the public.

S. 3.3.34B(5)
amended by
No. 32/2022
s. 35(5).

3.3.34C Content of statement of corporate intent

A statement of corporate intent made by the Board of AMES Australia under section 3.3.34B must—

S. 3.3.34C
inserted by
No. 39/2012
s. 35,
amended by
No. 32/2022
s. 36(a).¹

- (a) be consistent with the strategic plan accepted by the Minister for AMES Australia; and
- (b) specify in respect of the year to which it relates—
 - (i) the services to be provided by AMES Australia and the funds to be provided to AMES Australia; and
 - (ii) the objectives, priorities and key performance outcomes to be met by AMES Australia; and
 - (iii) the performance indicators, targets or other measures against which the performance of AMES Australia is to be assessed and monitored; and
 - (iv) how and when AMES Australia must report to the Minister on its performance in relation to the specified

S. 3.3.34C(a)
amended by
No. 32/2022
s. 36(c).

S. 3.3.34C(b)(i)
amended by
No. 32/2022
s. 36(c).

S. 3.3.34C
(b)(ii)
amended by
No. 32/2022
s. 36(c).

S. 3.3.34C
(b)(iii)
amended by
No. 32/2022
s. 36(c).

S. 3.3.34C
(b)(iv)
amended by
No. 32/2022
s. 36(b)(c).

objectives, priorities and key performance outcomes; and

- (v) any other matter agreed from time to time between the Minister and the governing board of the adult education institution, or determined by the Minister.

S. 3.3.34D
inserted by
No. 39/2012
s. 35,
repealed by
No. 31/2018
s. 53.

* * * * *

3.3.35 Reserve powers of Minister

S. 3.3.35(1)
amended by
No. 32/2022
s. 37(1)(a).

- (1) If the Minister is satisfied that the Board of AMES Australia—

S. 3.3.35(1)(a)
amended by
No. 32/2022
s. 37(1)(b).

- (a) is inefficiently or incompetently governing AMES Australia; or

S. 3.3.35(1)(b)
repealed by
No. 32/2022
s. 37(1)(c).

* * * * *

S. 3.3.35(1)(c)
amended by
No. 32/2022
s. 37(1)(d).

- (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 or an Order in Council establishing the Board—

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

S. 3.3.35(1)(d)
amended by
No. 32/2022
s. 37(1)(e)(i).

- (d) issue written directions to the Board about—

- | | |
|--|--|
| (i) action to be taken to remedy inefficient or incompetent governance of AMES Australia, which may include the dismissal of the chief executive officer of AMES Australia; or | S. 3.3.35(1)(d)(i) amended by Nos 58/2007 s. 19(1), 32/2022 s. 37(1)(e)(ii). |
| * * * * * | S. 3.3.35 (1)(d)(ii) repealed by No. 32/2022 s. 37(1)(f). |
| (iii) compliance with the Act, guidelines, directions or an Order in Council; | |
| (e) censure the Board; | S. 3.3.35(1)(e) amended by No. 32/2022 s. 37(1)(g). |
| (f) recommend that the Governor in Council dismiss the members of the Board; | S. 3.3.35(1)(f) substituted by No. 73/2012 s. 31(1), amended by No. 32/2022 s. 37(1)(g). |
| Note If all the members of the Board of AMES Australia were dismissed, new members would be appointed in accordance with section 3.3.33. | Note to s. 3.3.35(1)(f) amended by No. 32/2022 s. 37(1)(h). |
| (g) recommend to the Governor in Council that an administrator of AMES Australia be appointed. | S. 3.3.35(1)(g) amended by No. 32/2022 s. 37(1)(i). |
| (2) If the Minister is satisfied that the Board of AMES Australia 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(2) amended by No. 32/2022 s. 37(2). |

3.3.36 Notice of proposal

S. 3.3.36(1)
amended by
No. 32/2022
s. 38(1)(a).

(1) If the Minister proposes to exercise the Minister's powers under section 3.3.35, the Minister—

S. 3.3.36(1)(a)
amended by
No. 32/2022
s. 38(1)(b).

(a) must give the Board of AMES Australia notice in writing of the proposal and the reasons for the proposal; and

S. 3.3.36(1)(b)
amended by
No. 32/2022
s. 38(1)(b).

(b) must consider any submissions whether oral or in writing made to the Minister by the Board of AMES Australia 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.

S. 3.3.36(2)
amended by
No. 32/2022
s. 38(2).

(2) If the Minister decides to censure or dismiss the Board of AMES Australia or recommend the appointment of an administrator to the Board of AMES Australia, the Minister must—

S. 3.3.36(2)(a)
amended by
No. 32/2022
s. 38(2)(c).

(a) give notice in writing of the censure, dismissal or appointment to the Board of AMES Australia; and

S. 3.3.36(2)(b)
amended by
No. 32/2022
s. 38(2)(c).

(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 of AMES Australia—

(i) a copy of the notice; and

(ii) a report of the circumstances leading to the action; and

S. 3.3.36
(2)(b)(iii)
amended by
No. 32/2022
s. 38(2)(c).

(iii) a copy of any written submission made by the Board of AMES Australia.

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 AMES Australia for the period and subject to the terms and conditions that are specified in the appointment. | S. 3.3.37(1) amended by No. 32/2022 s. 39(1). |
| (2) An administrator appointed under this section has and may exercise all of the powers and is subject to all the functions of the Board of AMES Australia and the chief executive officer of AMES Australia. | S. 3.3.37(2) amended by No. 58/2007 s. 19(1), substituted by No. 32/2022 s. 39(2). |
| (3) On the appointment of an administrator, the members of the Board of AMES Australia cease to hold office. | S. 3.3.37(3) amended by No. 32/2022 s. 39(3). |
| (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. | S. 3.3.37(5) amended by No. 32/2022 s. 39(4). |
| (6) If a notice is published under subsection (5) in relation to AMES Australia— | S. 3.3.37(6) amended by No. 32/2022 s. 39(5)(a). |
| (a) members of the Board of AMES Australia shall be appointed in accordance with this Part; and | S. 3.3.37(6)(a) amended by Nos 73/2012 s. 31(2), 32/2022 s. 39(5)(b). |

(b) on the date specified in the notice—

- (i) the appointment of the administrator is revoked; and
- (ii) the Board of AMES Australia is re-established.

S. 3.3.37
(6)(b)(ii)
amended by
No. 32/2022
s. 39(5)(b).

S. 3.3.38
(Heading)
amended by
No. 32/2022
s. 40(1).

S. 3.3.38
amended by
No. 32/2022
s. 40(2).

3.3.38 Saving of acts of Board of AMES Australia

Nothing done by the Board of AMES Australia is in any way abated or affected by the dismissal of the Board of AMES Australia 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.

3.3.40 Employment of staff

S. 3.3.40(1)
amended by
Nos 73/2012
s. 31(3)(a)(i),
32/2022
s. 41(1)(a).

- (1) Subject to any direction given by the Minister, AMES Australia—

S. 3.3.40(1)(a)
amended by
Nos 58/2007
s. 19(2),
32/2022
s. 41(1)(b).

- (a) must employ a chief executive officer of AMES Australia; and

S. 3.3.40(1)(b)
amended by
Nos 73/2012
s. 31(3)(a)(ii),
32/2022
s. 41(1)(b).

- (b) may employ such other staff as is necessary to enable AMES Australia to perform its functions and exercise its powers.

(2) AMES Australia, in employing persons under this section, does not represent the Crown.

S. 3.3.40(2)
amended by
Nos 73/2012
s. 31(3)(b),
32/2022
s. 41(2).

(3) AMES Australia may, by instrument under its common seal, delegate to the chief executive officer of AMES Australia any power of AMES Australia under this section, other than this power of delegation.

S. 3.3.40(3)
amended by
Nos 58/2007
s. 19(3),
73/2012
s. 31(3)(b)(c),
32/2022
s. 41(3).

3.3.41 Minister may object to chief executive officer appointment

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

(1) Before appointing a person as chief executive officer of AMES Australia, AMES Australia must notify the Minister in writing of the proposal to make the appointment.

S. 3.3.41(1)
amended by
Nos 58/2007
s. 19(3),
73/2012
s. 31(4)(a),
32/2022
s. 42(1).

(2) The Minister may, within 15 days after receiving a notification under subsection (1) and after considering the proposal from AMES Australia, give AMES Australia notice in writing of the Minister's objection to the proposed appointment.

S. 3.3.41(2)
amended by
No. 73/2012
s. 31(4)(b),
substituted by
No. 32/2022
s. 42(2).

(3) AMES Australia must not appoint a person as a chief executive officer of AMES Australia if the Minister has objected to the appointment in accordance with subsection (2).

S. 3.3.41(3)
amended by
Nos 58/2007
s. 19(2),
73/2012
s. 31(4)(c),
32/2022
s. 42(3).

S. 3.3.42
amended by
Nos 73/2012
s. 31(5),
32/2022 s. 43.

3.3.42 Staff conditions

AMES Australia 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**.

S. 3.3.43
(Heading)
amended by
No. 32/2022
s. 44(1).

3.3.43 Chief executive officer of AMES Australia

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

S. 3.3.43(1)
amended by
No. 32/2022
s. 44(2)(a).

(1) The chief executive officer of AMES Australia—

S. 3.3.43(1)(a)
repealed by
No. 73/2012
s. 31(6).

* * * * *

S. 3.3.43(1)(b)
amended by
No. 32/2022
s. 44(2)(b)(c).

(b) is responsible for the day to day administration and management of AMES Australia in accordance with any policies or directions of the Board of AMES Australia and with the requirements of this Act.

S. 3.3.43(2)
amended by
No. 32/2022
s. 44(3)(a)(b).

(2) The chief executive officer of AMES Australia must satisfy the Board of AMES Australia that—

S. 3.3.43(2)(c)
amended by
No. 32/2022
s. 44(3)(c).

- (a) funds are spent; and
- (b) staff are carrying out functions; and
- (c) AMES Australia is generally managed and administered—

in accordance with the requirements of this Act.

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 9 June 2010, and that policy framework as amended or as remade or endorsed from time to time by the Ministerial Council;

S. 4.1.1(1)
def. of
AQTF
amended by
No. 71/2010
s. 4(2).

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;

S. 4.1.1(1)
def. of *child*
inserted by
No. 23/2021
s. 55.

child has the same meaning as in the **Child Wellbeing and Safety Act 2005** (other than Part 6A of that Act);

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;

S. 4.1.1(1)
def. of *course*
amended by
No. 45/2021
s. 15.

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, VCAL or the VPC; 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

(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;

effective complaint handling process means a complaint handling process established in accordance with Part 4.6A;

S. 4.1.1(1)
def. of
**effective
complaint
handling
process**
inserted by
No. 71/2010
s. 29.

foundation secondary course means a course pertaining to year 11 or 12 (other than a senior secondary course) leading to a foundation secondary qualification;

S. 4.1.1(1)
def. of
**foundation
secondary
course**
inserted by
No. 45/2021
s. 4(1).

foundation secondary qualifications means qualifications described under Level 1 in the AQF;

S. 4.1.1(1)
def. of
**foundation
secondary
qualifications**
inserted by
No. 45/2021
s. 4(1).

S. 4.1.1(1)
def. of
*government
training
contract*
inserted by
No. 73/2012
s. 13.

government training contract means any of the following—

- (a) a VET funding contract;
- (b) a performance agreement entered into under section 3.1.4(1) before the repeal of that section by section 4 of the **Education Legislation Amendment (Governance) Act 2012**;
- (c) a performance management agreement entered into under—
 - (i) section 3.1.4(4)(d) before the repeal of that section by section 4 of the **Education Legislation Amendment (Governance) Act 2012**; or
 - (ii) section 3.1.2(1)(c);
- (d) an agreement or arrangement providing for payments of grants, subsidies or loans entered into under—
 - (i) section 3.1.4(4)(e) before the repeal of that section by section 4 of the **Education Legislation Amendment (Governance) Act 2012**; or
 - (ii) section 3.1.2(1)(d);
- (e) a contract, agreement or arrangement, whenever entered into, for the provision of government-subsidised vocational education and training in another State or Territory;

high managerial agent in relation to a person or body means an employee, agent or officer (including an officer within the meaning of the Corporations Act) of the person or body with duties of such responsibility that his or her conduct may fairly be assumed to represent the person or body in relation to the provision of education and training by the person or body;

S. 4.1.1(1)
def. of
*high
managerial
agent*
inserted by
No. 71/2010
s. 4(4).

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;

* * * * *

S. 4.1.1(1)
def. of
*Ministerial
Council*
repealed by
No. 31/2018
s. 54.

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;

S. 4.1.1(1)
def. of
*principal
executive
officer*
inserted by
No. 71/2010
s. 4(4).

principal executive officer in relation to a person or body, means the person who has executive responsibility for the operation of the person or body;

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 AQTF 2010 Essential Conditions and Standards for Initial Registration and the AQTF 2010 Essential Conditions and Standards for Continuing Registration as endorsed by the Ministerial Council on 9 June 2010 and as amended or as remade or endorsed from time to time by the Ministerial Council;

S. 4.1.1(1)
def. of
RTO
standards
substituted by
No. 71/2010
s. 4(3),
amended by
No. 76/2013
s. 18(1).

sector regulator has the same meaning as in the **Child Wellbeing and Safety Act 2005**;

S. 4.1.1(1)
def. of **sector**
regulator
inserted by
No. 23/2021
s. 55.

S. 4.1.1(1)
def. of
*senior
secondary
course*
inserted by
No. 70/2008
s. 18,
substituted by
No. 27/2010
s. 58,
amended by
No. 45/2021
s. 4(2).

senior secondary course means a course leading to a senior secondary qualification or any other course pertaining to year 11 or 12 (other than a foundation secondary course);

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;

S. 4.1.1(1)
def. of
TVE
inserted by
No. 70/2008
s. 18,
repealed by
No. 39/2012
s. 43.

* * * * *

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.

- (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).

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;
 - (ab) register school boarding premises;

 - (b) register students for home schooling;

S. 4.2.2(1)(ab)
inserted by
No. 33/2020
s. 6(1)(a).

- (c) accredit courses and register qualifications (including qualifications developed outside Australia);
- (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; S. 4.2.2(1)(fa) inserted by No. 58/2007 s. 21.
- (fb) assess and reassess from time to time the financial capability of registered providers and registered non-Government schools; S. 4.2.2(1)(fb) inserted by No. 71/2010 s. 5(1), amended by No. 37/2015 s. 13(1).
- (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;
- (gaa) in relation to relevant entities for which the Authority is an integrated sector regulator— S. 4.2.2(1)(gaa) inserted by No. 23/2021 s. 56(1).
 - (i) provide education, information and advice on the Child Safe Standards to promote consistency in child safety outcomes; and
 - (ii) investigate, monitor and enforce compliance with the Child Safe Standards by relevant entities for which it is an integrated sector regulator; and

- (iii) collect, analyse and publish information and data regarding compliance with the Child Safe Standards by those relevant entities and provide that information and data to the Commission for Children and Young People as required; and
 - (iv) promote continuous improvement by relevant entities in relation to the safety of children, the prevention of child abuse and the proper response to allegations of child abuse;
- S. 4.2.2
(1)(gaab)
inserted by
No. 23/2021
s. 56(1).
- (gaab) exchange information and collaborate with persons and bodies in relation to the safety of children and compliance with the Child Safe Standards;
- S. 4.2.2
(1)(gaac)
inserted by
No. 23/2021
s. 56(1).
- (gaac) work collaboratively with the Commission for Children and Young People, sector regulators and other integrated sector regulators in relation to the safety of children and compliance with the Child Safe Standards;
- S. 4.2.2(1)(ga)
inserted by
No. 39/2012
s. 3(1).
- (ga) exercise the powers of the Authority in relation to the regulation of apprentices and related matters;
- S. 4.2.2(1)(h)
substituted by
No. 85/2009
s. 3(1).
- (h) ensure the public availability of meaningful and accurate information about—
 - (i) registered education and training organisations and their compliance with the requirements of this Chapter and any standards prescribed by the regulations; and
 - (ii) persons or bodies (other than schools) whose registration, approval or authorisation under Division 3, 4 or 5 of Part 4.3 has been cancelled or

- suspended (which may include the names and positions of the owners, directors, partners, high managerial agents or principal executive officer (as the case requires) of those persons or bodies) and the reasons for that cancellation or suspension; and
- (iii) persons or bodies (other than schools) whose approval under Part 4.5 has been cancelled or suspended (which may include the names and positions of the owners, directors, partners, high managerial agents or principal executive officer (as the case requires) of those persons or bodies) and the reasons for that cancellation or suspension;
- (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;
 - (ia) registered school boarding premises;
 - (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;

S. 4.2.2(1)
(i)(ia)
inserted by
No. 33/2020
s. 6(1)(b).

- (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;

- | | |
|---|---|
| (na) protect the interests of students as consumers of education or training services, whether delivered in schools or by providers of vocational education and training, further education, higher education or technical and further education; | S. 4.2.2(1)(na) inserted by No. 71/2010 s. 5(2), substituted by No. 37/2015 s. 13(2). |
| (nb) monitor compliance with, and enforce, the requirements relating to the provision of education or training or school boarding premises in this Chapter or relating to apprentices under Part 5.5; | S. 4.2.2(1)(nb) inserted by No. 71/2010 s. 5(2), amended by Nos 39/2012 s. 3(2), 33/2020 s. 6(1)(c). |
| (nc) investigate complaints against authorised officers; | S. 4.2.2(1)(nc) inserted by No. 71/2010 s. 5(2). |
| (nd) investigate complaints made against any of the following persons, bodies, schools or institutions in relation to a failure to comply with this Act, the regulations, a Ministerial Order or a condition of registration or approval— (i) a person, body, school or institution registered or approved under Part 4.3 or 4.5A; (ii) the parent responsible for the home schooling of a student registered under section 4.3.9; (iii) a provider of school boarding services; | S. 4.2.2(1)(nd) inserted by No. 31/2018 s. 55. |
| (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)(nd)(iii) inserted by No. 33/2020 s. 6(1)(d). S. 4.2.2(1)(o) substituted by No. 19/2008 s. 9. |

- (2) In addition to its functions under subsection (1), the Authority is responsible for—
- S. 4.2.2(2)(a)**
amended by
No. 33/2020
s. 6(2)(a).

(a) generally ensuring that minimum standards for the operation of Government and non-Government schools and school boarding premises in Victoria are established, maintained and met and that the standards are regularly reviewed;
 - S. 4.2.2(2)(b)**
amended by
No. 33/2020
s. 6(2)(b).

(b) administering policies and procedures for registration of Government and non-Government schools and school boarding premises;

(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.
 - S. 4.2.2(3)**
inserted by
No. 85/2009
s. 3(2),
substituted by
No. 71/2010
s. 5(3).

(3) In carrying out its functions under subsection (1)(d) and (f), the Authority is responsible for assessing whether providers or organisations are fit and proper persons or organisations to be registered or approved, having regard to the criteria set out in this Act, the regulations and any guidelines issued by the Authority.
 - S. 4.2.2(4)**
inserted by
No. 23/2021
s. 56(2).

(4) In carrying out its functions under subsection (1)(gaa), (gaab) and (gaac) in respect of a relevant entity for which it is an integrated sector regulator, the Authority must consider the most effective means of promoting compliance by the relevant entity with the Child Safe Standards.

- (5) Without limiting subsection (1)(gaab), the Authority may exchange information and collaborate with persons and bodies with functions or powers under a law of another State, a Territory or the Commonwealth relating to the monitoring or enforcement of compliance with standards (however described) that correspond to the Child Safe Standards.

S. 4.2.2(5)
inserted by
No. 23/2021
s. 56(2).

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 Chairperson on the nomination of the Minister; and
- (b) one is to be the Secretary or the nominee of the Secretary; and

S. 4.2.4(1)
amended by
No. 58/2007
s. 22,
substituted by
No. 71/2010
s. 6.

* * * * *

S. 4.2.4(1)(c)
repealed by
No. 39/2012
s. 44.

S. 4.2.4(2)
substituted by
No. 71/2010
s. 6.

- (d) 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 for appointment to the Authority, the Minister must have regard to ensuring that—
 - (a) members have skills and experience that are drawn from appropriate fields relevant to the performance of the functions of the Authority including the following fields—
 - (i) education, including school education, vocational education and training, adult, community and further education and higher education;
 - (ii) quality assurance, business management, institutional governance, law, finance and industry; and
 - (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.
- (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;
 - (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—

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

- (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;
- (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,
amended by
No. 71/2010
s. 7,
repealed by
No. 39/2012
s. 45.

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S. 4.2.7B
inserted by
No. 70/2008
s. 20,
repealed by
No. 39/2012
s. 46.

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.

4.2.9 Power to notify students about education and training organisations

- (1) This section applies if any action taken under this Act in relation to an education and training organisation may affect the delivery of services to students by that organisation.

S. 4.2.9
inserted by
No. 85/2009
s. 4.

- (2) The Authority may do either or both of the following—
- (a) direct the education and training organisation to notify any students enrolled by the organisation of the action and its effect on the delivery of services to the students by the education and training organisation; or
 - (b) by public notice or otherwise, notify the students of the action and its effect on the delivery of services by the education and training organisation.

- (3) In this section—

action means the suspension or cancellation of, or the imposition of a condition on, a registration, approval or authorisation under Division 3, 4 or 5 of Part 4.3 or an approval under Part 4.5.

education and training organisation means—

- (a) a person or body (other than a school) that is or was registered, approved or authorised under Division 3, 4 or 5 of Part 4.3; or
- (b) a person or body (other than a school) that is or was approved under Part 4.5.

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 Division.
- (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(1)
amended by
No. 31/2018
s. 65(5).**

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),
amended by
No. 7/2015
s. 5(1).

- (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; and

S. 4.3.1(6)(d)
inserted by
No. 7/2015
s. 5(2),
substituted by
No. 23/2021
s. 57(1).

- (d) the school has developed policies, procedures, measures and practices in accordance with a Ministerial Order for compliance with the Child Safe Standards; and

S. 4.3.1(6)(e)
inserted by
No. 23/2021
s. 57(1).

- (e) the school complies with the Child Safe Standards.

S. 4.3.1(6A)
inserted by
No. 7/2015
s. 5(3).

- (6A) The Authority may impose reasonable conditions on the registration of the school to take effect for the whole or any part of the period of registration.

- (6B) It is a condition of registration of a non-Government school that the school or any person involved in the management or operation of the school comply with any requirements of the Authority for the purposes of the monitoring or assessment of the school's financial capabilities conducted by the Authority in accordance with section 4.3.1A.

S. 4.3.1(6B)
inserted by
No. 37/2015
s. 14.

Note

The Authority may impose a condition on a non-Government school under section 4.3.1A(3) to put in place a protection scheme for school fees if the school is assessed by the Authority as being financially unviable or at risk of becoming financially unviable.

- (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.
- (8) In this Act the prescribed minimum standards for registration of schools are the matters required by subsection (6)(a) to (e).

S. 4.3.1(8)
inserted by
No. 3/2008
s. 5(3),
amended by
Nos 7/2015
s. 5(4),
23/2021
s. 57(2).

4.3.1A Authority may assess the financial capability of registered non-Government schools

S. 4.3.1A
inserted by
No. 37/2015
s. 15.

- (1) The Authority may at any time monitor, or conduct an assessment of, the financial capabilities of a non-Government school registered under this Division.
- (2) Any monitoring or assessment conducted under subsection (1) must be conducted in accordance with the regulations and the guidelines issued under section 4.3.8A.

- (3) If a school is assessed by the Authority as being financially unviable or at risk of becoming financially unviable, the Authority may do one or more of the following—
- (a) report to parents of students at the school on the result of the assessment, including the areas in which the school is no longer financially viable;
 - (b) in accordance with any Ministerial Order, impose a condition of registration on the school to put in place a protection scheme for fees that have been paid or are to be paid to the school in accordance with that Ministerial Order.
- (4) In this section—

fee includes any of the following—

- (a) a fee for tuition of a student;
- (b) a fee for an activity undertaken by a student within or outside of the school premises under the supervision of the school;
- (c) a refundable amount of money paid to the school in connection with the tuition of a student at the school.

Note

An example of an activity referred to in paragraph (b) is a camp or excursion organised by the school.

S. 4.3.2
amended by
Nos 58/2007
s. 23, 7/2015
s. 6.

4.3.2 Compliance with standards for registration

The Authority may satisfy itself whether or not a school continues to comply with all or any one or more of 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.

4.3.3 Review of operations of schools by Authority

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| (1) The Authority may arrange for a review and evaluation of the operation of a school registered under this Division in accordance with this section. | S. 4.3.3(1) substituted by No. 7/2015 s. 7(1). |
| (2) The Authority at any time may conduct a general review of the operation of a school to determine whether— | S. 4.3.3(2) amended by No. 7/2015 s. 7(2). |
| (a) having regard to the prescribed minimum standards the school has attained and continues to attain the standards required for registration; and | S. 4.3.3(2)(a) amended by No. 58/2007 s. 23. |
| (b) the school has complied with any condition imposed by the Authority on a registration under this Division. | S. 4.3.3(2)(b) amended by No. 33/2020 s. 18(1). |
| (2A) In addition to its power to conduct a general review under subsection (2), the Authority may at any time arrange for a specific review and evaluation of the operation of a school registered under this Division to determine if the school has attained, and continues to attain, a prescribed minimum standard for registration if the Authority believes on reasonable grounds that— | S. 4.3.3(2A) inserted by No. 7/2015 s. 7(3). |
| (a) there are matters concerning the safety of students at the school which require urgent action to be taken by the school; or | |

S. 4.3.3
(2A)(ab)
inserted by
No. 37/2015
s. 16.

(ab) in the case of a non-Government school, the school is financially unviable or may soon become financially unviable; or

(b) exceptional circumstances exist at the school which justify a specific review and evaluation of the operation of the school being undertaken by the Authority.

(2B) For the purposes of subsection (2A)(b), *exceptional circumstances* include, but are not limited to—

(a) a serious non-compliance with a prescribed minimum standard for registration by the school; and

(b) the repeated non-compliance with a prescribed minimum standard for registration by the school.

S. 4.3.3(3)
amended by
Nos 58/2007
s. 23, 7/2015
ss 7(4), 8,
33/2020
s. 18(2),
repealed by
No. 23/2021
s. 70.

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S. 4.3.3A
inserted by
No. 7/2015
s. 9.

4.3.3A Undertakings by school

(1) The Authority may accept a written undertaking given by the proprietor or principal of a registered school that is the subject of a review and evaluation of its operation under section 4.3.3 in connection with—

(a) any matter in relation to which the Authority has a power or function under this Act; or

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| <p>(b) any matter relating to non-compliance of the school with a prescribed minimum standard for registration.</p> | <p>S. 4.3.3A(1)(b) amended by No. 33/2020 s. 18(3).</p> |
| <p>(1A) For the avoidance of doubt, a person may give an undertaking under this section to establish a trust fund into which students' fees (within the meaning of section 4.3.1A(4)) are paid and setting out the circumstances in which funds may be withdrawn from that trust fund.</p> | <p>S. 4.3.3A(1A) inserted by No. 37/2015 s. 17.</p> |
| <p>(2) For the avoidance of doubt, an undertaking given under this section or a court order made under section 4.3.3D may not be inconsistent with this Act, the regulations or a prescribed minimum standard for registration of schools.</p> | <p>S. 4.3.3A(2) amended by No. 33/2020 s. 18(4).</p> |
| <p>(3) A person may withdraw or vary an undertaking at any time after obtaining the consent of the Authority.</p> | |
| <p>4.3.3B Copy of undertaking</p> <p>The Authority must give a copy of an undertaking given under section 4.3.3A to the person that gave the undertaking.</p> | <p>S. 4.3.3B inserted by No. 7/2015 s. 9.</p> |
| <p>4.3.3C Register of undertakings</p> <p>The Authority must—</p> <p>(a) maintain a register of undertakings; and</p> <p>(b) register each undertaking given under section 4.3.3A in the register of undertakings.</p> | <p>S. 4.3.3C inserted by No. 7/2015 s. 9.</p> |
| <p>4.3.3D Authority may apply for Court order if undertaking breached</p> <p>(1) If the Authority considers that a person has breached any of the terms of an undertaking given by the person under section 4.3.3A, the Authority</p> | <p>S. 4.3.3D inserted by No. 7/2015 s. 9.</p> |

may apply to the Magistrates' Court for an order under subsection (2).

- (2) If the Magistrates' Court is satisfied that the person has breached a term of the undertaking, the Magistrates' Court may make all or any of the following orders—
 - (a) an order directing the person to comply with the term of the undertaking;
 - (b) any other order that the Magistrates' Court considers appropriate.
- (3) If a body corporate is found to have breached an undertaking given under section 4.3.3A—
 - (a) each officer of the body corporate is deemed to have so breached the undertaking if the officer knowingly authorised or permitted the breach; and
 - (b) the Magistrates' Court may, against the officer, make all or any of the orders set out in subsection (2) that the Magistrates' Court thinks appropriate.

S. 4.3.3E
inserted by
No. 7/2015
s. 9.

4.3.3E Interim condition may be imposed on school before review completed

- (1) This section applies if the conduct of a review and evaluation of the operation of a school under section 4.3.3 has commenced but has not been completed.
- (2) The Authority may impose an interim condition on the registration of the school if the Authority believes, on reasonable grounds, that the condition is urgently required to ensure that the school continues to attain the prescribed minimum standards for registration.

- (3) The Authority must give the school a written notice stating the following—
 - (a) the interim condition proposed to be imposed on the school's registration;
 - (b) the reasons for the proposed condition;
 - (c) the time within which the school may make submissions under subsection (4).
- (4) The Authority must give the school 3 business days within which the school may make submissions to the Authority to show cause why the interim condition should not be imposed on the school's registration.
- (5) The Authority must consider any submissions made in accordance with subsection (4) to the Authority by the school.
- (6) If the Authority decides to impose the interim condition on the registration of the school, the Authority must give the school a written notice stating the following—
 - (a) the interim condition imposed on the school's registration;
 - (b) the reasons for imposing the condition;
 - (c) when the condition is to be satisfied.
- (7) The Authority, on the application of the school, may extend the period within which submissions may be made under subsection (4).

S. 4.3.3E(5)
amended by
No. 33/2020
s. 18(5).

4.3.3F Interim condition to be reviewed at completion of review

S. 4.3.3F
inserted by
No. 7/2015
s. 9.

- (1) After a review and evaluation of the operation of a school has been conducted under section 4.3.3 the Authority must review any interim condition imposed on the school under section 4.3.3E in accordance with subsection (2).

- (2) The Authority may—
 - (a) revoke the condition if the condition has been satisfied or, in the opinion of the Authority, the condition is no longer required; or
 - (b) confirm, subject to the school making submissions under section 4.3.3G, that the condition is to continue to be imposed on the school with or without variation.
- (3) If the Authority revokes a condition under subsection (2)(a), the Authority must give written notice to the school of that revocation, which takes effect when the notice is given to the school.
- (4) If the Authority confirms that a condition is to continue under subsection (2)(b), the condition is taken to be a condition to be imposed under section 4.3.4(2)(d).

S. 4.3.3G
inserted by
No. 7/2015
s. 9.

4.3.3G Procedure after decision to take action in respect of school

- (1) If the Authority is satisfied, after the conduct of a review and evaluation of a school in accordance with section 4.3.3, 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 section and section 4.3.4.
- (2) Before making a determination to take an action the Authority must give to the school affected a written notice stating the following—
 - (a) the action the Authority proposes to take;
 - (b) the reasons for taking that action;
 - (c) the time within which the school may make submissions under subsection (3).

- (3) The Authority must give the school affected the following period within which the school may make submissions to the Authority and to the Minister to show cause why the proposed action should not be taken—
- (a) in the case of a general review and evaluation, 28 business days after the school receives notice of the action;
 - (b) in the case of a specific review and evaluation, 10 business days after the school receives notice of the action.
- (4) The Authority must—
- (a) consider any submissions made in accordance with subsection (3) 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.
- (5) The Authority, on the application of the school, may extend the period within which submissions may be made under subsection (3)(b).

S. 4.3.3G(4)(a)
amended by
No. 33/2020
s. 18(6).

4.3.4 Action after review of a registered school

S. 4.3.4
(Heading)
amended by
No. 33/2020
s. 18(7).

- (1) The Authority may, after conducting a review and evaluation of the operation of a school or considering the report of a person or body 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.

S. 4.3.4(1)
amended by
Nos 7/2015
s. 10(1),
33/2020
s. 18(8).

S. 4.3.4(2)
amended by
No. 7/2015
s. 10(2)(3).

- (2) If the Authority determines that the school no longer complies with one or more of the prescribed minimum standards for registration, it may do any one or more of the following—
- (a) suspend or cancel the registration of the school;
 - (b) prohibit the school from enrolling any new students;
 - (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;
 - (d) impose conditions on the school's registration.

S. 4.3.4(2A)
inserted by
No. 70/2008
s. 21.

- (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.

S. 4.3.4(3)
repealed by
No. 37/2015
s. 18.

* * * * *

S. 4.3.4A
inserted by
No. 37/2015
s. 19.

4.3.4A Authority may suspend or cancel registration of school in other circumstances

- (1) In addition to its power to suspend or cancel the registration of a school under section 4.3.4(2)(a), the Authority may determine to suspend or cancel the registration of a non-Government school—

- (a) in any of the following circumstances—
 - (i) the Authority is satisfied that the school has ceased to operate as a school;
 - (ii) the Authority has been notified by the school that it will cease to operate as a school within 30 days after that notification;
 - (iii) the school's sole or main proprietor is a natural person who has become an insolvent under administration;
 - (iv) the school's sole or main proprietor is a body corporate that has been compulsorily wound up or is subject to an order to be compulsorily wound up; and
 - (b) if the Authority is satisfied that it is in the best interests of students enrolled at the school, or in the public interest, to suspend or cancel the registration of the school.
- (2) Before making a determination under subsection (1) the Authority must—
- (a) give to the school affected a written notice stating—
 - (i) the action it proposes to take; and
 - (ii) the reasons for taking that action; and
 - (iii) the time within which the school may make submissions under paragraph (b); and
 - (b) give the school affected the following period within which the school may make submissions to the Authority to show cause why the proposed action should not be taken—

- (i) in the case of a proposed suspension of registration, 3 business days after the school receives notice of the action;
 - (ii) in the case of a proposed cancellation of registration, 7 business days after the school receives notice of the action; and
 - (c) consider any submissions made to the Authority within the specified time under paragraph (b).
- (3) The Authority, on the application of the school, may extend the period within which submissions may be made under subsection (2)(b).

S. 4.3.4B
inserted by
No. 37/2015
s. 19.

4.3.4B Authority must give notice to school of action

- (1) The Authority must give to the school affected a written notice of a determination made under section 4.3.4 or 4.3.4A to take an action in respect of the school.
- (2) An action by the Authority referred to in subsection (1) takes effect on the later of the following—
 - (a) when a notice under subsection (1) is given to the school affected;
 - (b) on any later date specified in the notice.

4.3.5 Reports relating to 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.

S. 4.3.5
(Heading)
amended by
No. 33/2020
s. 18(9).

- (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.

S. 4.3.8A
inserted by
No. 7/2015
s. 11.

4.3.8A Authority may issue guidelines

S. 4.3.8A(1)
substituted by
No. 37/2015
s. 20.

- (1) The Authority may from time to time issue guidelines in relation to the following—
 - (a) the matters in section 4.3.1(6);
 - (b) the monitoring and conducting of assessments of the financial capabilities of non-Government schools registered under this Division.
- (2) The guidelines must not be inconsistent with this Act, the regulations or a Ministerial Order.
- (3) The guidelines may apply, adopt or incorporate any matter contained in any document issued or published by a body or person—
 - (a) whether wholly or partially or as amended by the guidelines; or
 - (b) as issued or published at the time that the guidelines are issued or at any time before then; or
 - (c) as amended from time to time.
- (4) The Authority must publish any guidelines issued under this section as soon as practicable in the Government Gazette.
- (5) Without limiting section 4.3.1(8), the regulations may require a registered school to comply with any guidelines issued under this section that apply to that school.

Division 1A—Registration of school boarding premises

Pt 4.3 Div. 1A
(Heading and
ss 4.3.8B–
4.3.8Z)
inserted by
No. 33/2020
s. 7.

4.3.8B Application for registration of school boarding premises

S. 4.3.8B
inserted by
No. 33/2020
s. 7.

- (1) The Authority may register a school boarding premises under this Division.
- (2) The following persons may apply to the Authority for registration of a school boarding premises—
 - (a) in the case of a school boarding premises at which school boarding services are to be provided by or on behalf of a registered Government school, the Secretary;
 - (b) in any other case, the person who proposes to establish and conduct the school boarding premises and provide school boarding services at the premises.
- (3) 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.
- (4) The Authority may require the applicant to provide further information or material in respect of the application that the Authority reasonably requires.

4.3.8C Authority must not register school boarding premises unless satisfied of certain matters

S. 4.3.8C
inserted by
No. 33/2020
s. 7.

- (1) The Authority must not register a school boarding premises unless the Authority is satisfied that—
 - (a) the policies of the provider of school boarding services at the premises relating to the discipline of students who are boarding at

- the premises are based on principles of procedural fairness and do not permit corporal punishment; and
- (b) the provider of school boarding services at the premises has ensured that the premises and those services comply with the minimum standards for registration of school boarding premises that are prescribed by the regulations or by this Act including standards relating to the following—
- (i) the provider's acceptance policies for students who wish to board at the premises;
 - (ii) the welfare of students boarding at the premises;
 - (iii) governance of the provider of school boarding services at the premises;
 - (iv) the probity of the provider of school boarding services at the premises and any person responsible for managing the premises;
 - (v) processes for the review and evaluation of the premises and the school boarding services to be provided at the premises; and
- (c) if the provider of school boarding services at the premises has accepted a student to board at the premises and knows, or ought reasonably to know, that the student has been diagnosed as being at risk of anaphylaxis, the provider has developed an anaphylaxis management policy containing matters required by a Ministerial Order to be included in the policy; and

- (d) the provider of school boarding services at the premises has developed policies, procedures, measures and practices in accordance with a Ministerial Order for compliance with the Child Safe Standards; and
- (e) the provider complies with the Child Safe Standards.
- (2) The requirements in subsection (1)(a), (c), (d) and (e) are prescribed minimum standards for registration of school boarding premises.

S. 4.3.8C(1)(d) substituted by No. 23/2021 s. 58(1).

S. 4.3.8C(1)(e) inserted by No. 23/2021 s. 58(1).

S. 4.3.8C(2) amended by No. 23/2021 s. 58(2).

Note

Prescribed minimum standards for registration of school boarding premises may also be prescribed by the regulations under subsection (1)(b).

4.3.8D Conditions of registration

- (1) The Authority may impose reasonable conditions on the registration of a school boarding premises to take effect for the whole or any part of the period of registration.
- (2) It is a condition of registration of a non-government school boarding premises that the provider of school boarding services at the premises and any person involved in the management of the provider or in the operation of the premises must comply with any requirements of the Authority for the purposes of the monitoring or the assessment of the provider's financial capabilities conducted by the Authority in accordance with section 4.3.8E.

S. 4.3.8D inserted by No. 33/2020 s. 7.

Note

The Authority may impose a condition under section 4.3.8E(3)(b) on the registration of a non-government school boarding premises requiring the provider of school boarding services at the premises to put in place a protection scheme for school boarding fees if the provider is assessed by the Authority as being financially unviable or at risk of becoming financially unviable.

- (3) It is a condition of registration of a school boarding premises that the provider of school boarding services at the premises or any person involved in the management of the provider or in the operation of the premises participates in the review and evaluation process under this Division unless section 4.3.8F(c) applies.

S. 4.3.8E
inserted by
No. 33/2020
s. 7.

4.3.8E Authority may assess the financial capability of providers of school boarding services at registered non-government school boarding premises

- (1) The Authority may at any time monitor, or conduct an assessment of, the financial capabilities of the provider of school boarding services at a non-government school boarding premises registered under this Division.
- (2) The Authority must conduct any monitoring or assessment under subsection (1) in accordance with the regulations and the guidelines issued under section 4.3.8Z.
- (3) If a provider of school boarding services at a non-government school boarding premises is assessed by the Authority as being financially unviable or at risk of becoming financially unviable, the Authority may do one or more of the following—
 - (a) report to parents of students boarding at the premises on the result of the assessment, including the areas in which the provider is no longer financially viable;

(b) in accordance with any Ministerial Order, impose a condition of registration on the premises that the provider put a protection scheme in place for fees that have been paid or are to be paid to the provider in accordance with that Ministerial Order.

(4) In this section—

fee includes any of the following—

- (a) a fee for the school boarding services provided to a student at a non-government school boarding premises;
- (b) a fee for an activity undertaken by a student within or outside of a non-government school boarding premises that is supervised by the provider of school boarding services at the premises;
- (c) a refundable amount of money paid to the provider of school boarding services at a non-government school boarding premises in connection with the provision of school boarding services at the premises.

4.3.8F Compliance with minimum standards for registration of school boarding premises

S. 4.3.8F
inserted by
No. 33/2020
s. 7.

The Authority may satisfy itself whether or not the provider of school boarding services at a registered school boarding premises has ensured that the premises or those services continue to comply with the prescribed minimum standards for registration of school boarding premises on the basis of—

- (a) the conduct of a review and evaluation of the operation of the premises by the Authority under section 4.3.8G or 4.3.8H; or

- (b) a report from—
 - (i) in the case of a Government school boarding premises, the Secretary; and
 - (ii) in the case of a non-government school boarding premises, the provider of the school boarding services at that premises; or
- (c) a report of the conduct of a review and evaluation by a person or body approved by the Authority to review a registered school boarding premises or a group of registered school boarding premises.

S. 4.3.8G
inserted by
No. 33/2020
s. 7.

4.3.8G General review of operation of registered school boarding premises by Authority

- (1) The Authority may arrange for a review and evaluation of the operation of a registered school boarding premises in accordance with this section and section 4.3.8I.
- (2) The Authority at any time may conduct a general review of the operation of a registered school boarding premises to determine whether the provider of school boarding services at the premises has ensured—
 - (a) that the premises and those services have complied and continue to comply with the prescribed minimum standards for registration of school boarding premises; and
 - (b) whether or not the premises and those services have complied with any condition imposed on the registration of the premises by the Authority or under this Division.

4.3.8H Specific review of operation of registered school boarding premises by Authority

S. 4.3.8H
inserted by
No. 33/2020
s. 7.

- (1) In addition to conducting a general review and evaluation under section 4.3.8G, the Authority may arrange for a specific review and evaluation of the operation of a registered school boarding premises in accordance with this section and section 4.3.8I.
- (2) The Authority may at any time arrange for a specific review and evaluation of the operation of a registered school boarding premises to determine if the provider of school boarding services at the premises has ensured that the premises and those services continue to comply with a prescribed minimum standard for registration of school boarding premises if the Authority believes on reasonable grounds that—
 - (a) there are matters concerning the safety of students boarding at the premises that require urgent action to be taken by the provider; or
 - (b) in the case of a non-government school boarding premises, the provider of school boarding services at the premises is financially unviable or may soon become financially unviable; or
 - (c) exceptional circumstances exist at the premises that justify a specific review and evaluation of the operation of the premises being undertaken by the Authority.
- (3) For the purposes of subsection (2)(c), ***exceptional circumstances*** include, but are not limited to—
 - (a) a serious non-compliance with a prescribed minimum standard for registration of school boarding premises; and

(b) the repeated non-compliance with a prescribed minimum standard for registration of school boarding premises.

S. 4.3.8I
inserted by
No. 33/2020
s. 7,
repealed by
No. 23/2021
s. 71.

* * * * *

S. 4.3.8J
inserted by
No. 33/2020
s. 7.

4.3.8J Undertakings by provider of school boarding services

- (1) The Authority may accept a written undertaking given by the provider of school boarding services at a registered school boarding premises, which is the subject of a review and evaluation of its operation under section 4.3.8G or 4.3.8H, in connection with any matter—
 - (a) in relation to which the Authority has a power or function under this Act; or
 - (b) relating to non-compliance of the premises with a prescribed minimum standard for registration of school boarding premises.
- (2) For the avoidance of doubt, a provider of school boarding services may give an undertaking under this section to establish a trust fund into which students' fees (within the meaning of section 4.3.8E(4)) are paid and setting out the circumstances in which funds may be withdrawn from that trust fund.
- (3) An undertaking given under this section or a court order made under section 4.3.8M must not be inconsistent with this Act, the regulations or a prescribed minimum standard for registration of school boarding premises.

- (4) A provider of school boarding services may withdraw or vary an undertaking at any time after obtaining the consent of the Authority.

4.3.8K Copy of undertaking

The Authority must give a copy of an undertaking given under section 4.3.8J to the provider of school boarding services who gave the undertaking.

S. 4.3.8K
inserted by
No. 33/2020
s. 7.

4.3.8L Register of undertakings

The Authority must—

- (a) maintain a register of undertakings; and
- (b) register each undertaking given under section 4.3.8J in the register of undertakings.

S. 4.3.8L
inserted by
No. 33/2020
s. 7.

4.3.8M Authority may apply for Court order if undertaking breached

- (1) If the Authority considers that a provider of school boarding services has breached any of the terms of an undertaking given by the provider under section 4.3.8J, the Authority may apply to the Magistrates' Court for an order under subsection (2).
- (2) If the Magistrates' Court is satisfied that the provider of school boarding services has breached a term of the undertaking, the Magistrates' Court may make all or any of the following orders—
 - (a) an order directing the provider to comply with the term of the undertaking;
 - (b) any other order that the Magistrates' Court considers appropriate.

S. 4.3.8M
inserted by
No. 33/2020
s. 7.

- (3) If a body corporate is found to have breached an undertaking given under section 4.3.8J—
 - (a) each officer of the body corporate is deemed to have breached the undertaking if the officer knowingly authorised or permitted the breach; and
 - (b) the Magistrates' Court may make all or any of the orders set out in subsection (2) against the officer that the Magistrates' Court thinks appropriate.

S. 4.3.8N
inserted by
No. 33/2020
s. 7.

4.3.8N Interim condition may be imposed on registered school boarding premises before review completed

- (1) This section applies if the conduct of a review and evaluation of the operation of a registered school boarding premises under section 4.3.8G or 4.3.8H has commenced but has not been completed.
- (2) The Authority may impose an interim condition on the registration of the premises if the Authority believes, on reasonable grounds, that the condition is urgently required to ensure that the provider of school boarding services at the premises ensures that the premises and those services continue to comply with the prescribed minimum standards for registration of school boarding premises.
- (3) The Authority must give the provider of school boarding services at the premises a written notice stating the following—
 - (a) the interim condition proposed to be imposed on the registration of the premises;
 - (b) the reasons for the proposed condition;
 - (c) the time within which the provider may make submissions under subsection (4).

- (4) The Authority must give the provider of school boarding services at the premises 3 business days within which the provider may make submissions to the Authority to show cause why the interim condition should not be imposed on the registration of the premises.
- (5) The Authority must consider any submissions made in accordance with subsection (4) to the Authority by the provider.
- (6) If the Authority decides to impose the interim condition on the registration of the premises, the Authority must give the provider of school boarding services at the premises a written notice stating the following—
 - (a) the interim condition imposed on the registration of the premises;
 - (b) the reasons for imposing the condition;
 - (c) when the condition is to be satisfied.
- (7) The Authority, on the application of the provider of school boarding services at the premises, may extend the period within which submissions may be made under subsection (4).

4.3.8O Interim condition on school boarding premises to be reviewed at completion of review

S. 4.3.8O
inserted by
No. 33/2020
s. 7.

- (1) After a review and evaluation of the operation of a registered school boarding premises has been conducted under section 4.3.8G or 4.3.8H the Authority must review any interim condition imposed on the premises under section 4.3.8N in accordance with subsection (2).
- (2) The Authority may—
 - (a) revoke the interim condition if the condition has been satisfied or, in the opinion of the Authority, the condition is no longer required; or

- (b) confirm, subject to the provider of school boarding services at the school boarding premises making submissions under section 4.3.8P, that the condition is to continue to be imposed on the premises with or without variation.
- (3) If the Authority revokes a condition under subsection (2)(a), the Authority must give written notice of that revocation to the provider of school boarding services at the school boarding premises, which takes effect when the notice is given to the provider.
- (4) If the Authority confirms that a condition is to continue under subsection (2)(b), the condition is taken to be a condition imposed under section 4.3.8Q(2)(d).

S. 4.3.8P
inserted by
No. 33/2020
s. 7.

4.3.8P Procedure after decision to take action in respect of registered school boarding premises

- (1) If the Authority is satisfied, after the conduct of a review and evaluation of a registered school boarding premises under section 4.3.8G or 4.3.8H, that it is in the interests of the students boarding at the premises, or in the public interest, that the Authority should take any action referred to in section 4.3.8Q, the Authority may take that action in accordance with this section and section 4.3.8Q.
- (2) Before making a determination to take an action the Authority must give to the provider of school boarding services at the school boarding premises a written notice stating the following—
 - (a) the action the Authority proposes to take;
 - (b) the reasons for taking that action;
 - (c) the time within which the provider may make submissions under subsection (3).

- (3) The Authority must give the provider of school boarding services at the school boarding premises the following period (as the case requires) within which the provider may make submissions to the Authority and to the Minister to show cause why the proposed action should not be taken—
 - (a) in the case of a general review and evaluation, 28 business days after the provider receives notice of the action;
 - (b) in the case of a specific review and evaluation, 10 business days after the provider receives notice of the action.
- (4) The Authority must—
 - (a) consider any submissions made to the Authority in accordance with subsection (3); 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.
- (5) The Authority, on the application of the provider of school boarding services at the school boarding premises, may extend the period within which submissions may be made under subsection (3)(b).

4.3.8Q Action after review of a registered school boarding premises

- (1) The Authority, after conducting a review and evaluation of the operation of a registered school boarding premises or considering the report of a person or body referred to in section 4.3.8F who has conducted a review and evaluation of the premises, may determine that the provider of school boarding services at the premises has not ensured that the premises and those services continue to comply with the prescribed minimum

**S. 4.3.8Q
inserted by
No. 33/2020
s. 7.**

standards for registration of school boarding premises.

- (2) If the Authority determines that the school boarding premises or the school boarding services no longer comply with the prescribed minimum standards for registration of school boarding premises, it may do any one or more of the following—
- (a) suspend or cancel the registration of the premises;
 - (b) prohibit the provider of school boarding services at the premises from accepting any new students to board at the premises;
 - (c) require the provider of school boarding services at the premises to report to parents of students boarding at the premises that the premises does not comply with the prescribed minimum standards for registration of school boarding premises;
 - (d) impose conditions on the registration of the premises.
- (3) The Authority may substitute an action (other than the cancellation of registration) under subsection (2) in relation to a school boarding premises with another action that is less onerous if the Authority considers that—
- (a) the provider of school boarding services at the premises has partially complied with the requirements of the original action; and
 - (b) the substituted action is sufficient to ensure that the premises will comply with the prescribed minimum standards for registration of school boarding premises.

4.3.8R Authority may suspend or cancel registration of school boarding premises in other circumstances

S. 4.3.8R
inserted by
No. 33/2020
s. 7.

- (1) In addition to its power to suspend or cancel the registration of a school boarding premises under section 4.3.8Q(2)(a), the Authority may determine to suspend or cancel the registration of a non-government school boarding premises—
- (a) in any of the following circumstances—
- (i) the Authority is satisfied that the premises has ceased to operate as a school boarding premises;
 - (ii) the Authority has been notified by the provider of school boarding services at the premises that the premises will cease to operate as a school boarding premises within 30 days after that notification;
 - (iii) the provider of school boarding services at the premises is a natural person who has become an insolvent under administration;
 - (iv) the provider of school boarding services at the premises is a body corporate that has been compulsorily wound up or is subject to an order to be compulsorily wound up; and
- (b) if the Authority is satisfied that it is in the best interests of students boarding at the premises, or in the public interest, to suspend or cancel the registration of the premises.
- (2) Before making a determination under subsection (1) the Authority must—
- (a) give to the provider of school boarding services at the premises a written notice stating—

- (i) the action the Authority proposes to take; and
 - (ii) the reasons for taking that action; and
 - (iii) the time within which the provider may make submissions under paragraph (b); and
- (b) give to the provider of school boarding services at the premises the following period within which the provider may make submissions to the Authority to show cause why the proposed action should not be taken—
- (i) in the case of a proposed suspension of registration of the premises, 3 business days after the provider receives notice of the action;
 - (ii) in the case of a proposed cancellation of registration of the premises, 7 business days after the provider receives notice of the action; and
- (c) consider any submissions made to the Authority within the specified time under paragraph (b).
- (3) The Authority, on the application of the provider of school boarding services at the non-government school boarding premises, may extend the period within which submissions may be made under subsection (2)(b).

S. 4.3.8S
inserted by
No. 33/2020
s. 7.

4.3.8S Authority must give notice to provider of school boarding services of action

- (1) The Authority must give to the provider of school boarding services at a school boarding premises a written notice of a determination made under section 4.3.8Q or 4.3.8R to take an action in respect of the premises.

- (2) An action by the Authority referred to in subsection (1) takes effect on the later of the following—
- (a) when a notice under subsection (1) is given to the provider;
 - (b) on any later date specified in the notice.

4.3.8T Provider of school boarding services must give notice of action taken in relation to school boarding premises to students' parents

S. 4.3.8T
inserted by
No. 33/2020
s. 7.

The provider of school boarding services at a school boarding premises must notify the parents of each student who is boarding at the premises of any notice under section 4.3.8S(1) given to the provider of a determination of the Authority to suspend or cancel the registration of the premises or to impose a condition on the registration of the premises as soon as is practicable after receiving the notice.

4.3.8U Authority to notify parents of its actions if provider does not notify them

S. 4.3.8U
inserted by
No. 33/2020
s. 7.

If the Authority becomes aware that a provider of school boarding services at a school boarding premises has not notified parents of students boarding at the premises of the matters referred to in section 4.3.8T, the Authority must notify the parents of those matters as soon as is practicable.

4.3.8V Reports relating to registered school boarding premises

S. 4.3.8V
inserted by
No. 33/2020
s. 7.

- (1) The provider of school boarding services at a registered school boarding premises 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 registered school boarding premises or a group of registered school boarding premises, to provide a report required by subsection (1) for the premises or group of registered school boarding premises that 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.

S. 4.3.8W
inserted by
No. 33/2020
s. 7.

4.3.8W Notice of registration of school boarding premises to be displayed

The provider of school boarding services at a registered school boarding premises must ensure that there is legibly printed or painted in a conspicuous place near the main entrance to the premises—

- (a) the name of the premises; and
- (b) the name of the provider; and
- (c) a statement of the fact that the premises is registered.

S. 4.3.8X
inserted by
No. 33/2020
s. 7.

4.3.8X Providers of school boarding services must keep record of location of students

The provider of school boarding services at a registered school boarding premises must ensure that a record is kept at the premises of the location of every student boarding at the premises at any time of the day or night in accordance with the regulations.

Penalty: 5 penalty units.

4.3.8Y Register of school boarding premises

- (1) The Authority must make and keep a record of the school boarding premises that are registered by the Authority in a division of the State Register.
- (2) The record of registered school boarding premises must include—
 - (a) the name of the premises; and
 - (b) the name of the provider of school boarding services at the premises.

S. 4.3.8Y
inserted by
No. 33/2020
s. 7.

4.3.8Z Authority may issue guidelines

- (1) The Authority may from time to time issue guidelines in relation to the following—
 - (a) the matters referred to in sections 4.3.8C and 4.3.8D;
 - (b) the monitoring and conducting of assessments of the financial capabilities of providers of school boarding services at non-government school boarding premises registered under this Division.
- (2) The guidelines must not be inconsistent with this Act, the regulations or a Ministerial Order.
- (3) The guidelines may apply, adopt or incorporate any matter contained in any document issued or published by a body or person—
 - (a) whether wholly or partially or as amended by the guidelines; or
 - (b) as issued or published at the time that the guidelines are issued or at any time before then; or
 - (c) as amended from time to time.
- (4) The Authority must publish any guidelines issued under this section as soon as practicable in the Government Gazette.

S. 4.3.8Z
inserted by
No. 33/2020
s. 7.

- (5) Without limiting section 4.3.8C(2), the regulations may require a registered school boarding premises and the school boarding services provided at the premises to comply with any guidelines issued under this section that apply to the premises.

Division 2—Registration of students for home schooling

4.3.9 Authority to register students for home schooling

S. 4.3.9
amended by
No. 58/2007
s. 24 (ILA
s. 39B(1)).

- (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(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 registration

Pt 4.3 Div. 3
(Heading)
amended by
No. 71/2010
s. 8.

4.3.9A Application of Division

This Division only applies to the registration of persons or bodies or schools in respect of accredited senior secondary courses, registered senior secondary qualifications, accredited foundation secondary courses and registered foundation secondary qualifications.

S. 4.3.9A
inserted by
No. 71/2010
s. 9,
amended by
No. 45/2021
s. 5.

Example

Senior secondary courses can include programs provided for the Victorian Certificate of Education (VCE), the Victorian Certificate of Applied Learning (VCAL) and the International Baccalaureate Diploma (IBD).

Foundation secondary courses can include programs provided for the Victorian Pathways Certificate (VPC).

Note

A person or body or school will also need to comply with Division 4 in relation to the provision of senior secondary courses that are vocational and education or further education courses.

Example to
s. 4.3.9A
substituted by
No. 45/2021
s. 16.

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 an accredited senior secondary course, registered senior secondary qualification, accredited foundation secondary course or registered foundation secondary 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;

S. 4.3.10(2)
amended by
Nos 71/2010
s. 10(1),
39/2012
s. 62(3),
45/2021 s. 6.

S. 4.3.10(2)(d)
amended by
No. 58/2007
s. 25.

- (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.
- (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.

S. 4.3.10(5)(6)
repealed by
No. 71/2010
s. 10(2).

* * * * *

- (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;
- (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).

(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.

S. 4.3.11(1A)
inserted by
No. 58/2007
s. 26(3).

(1B) Without limiting subsection (1), it is a prescribed minimum standard for registration under this Division that a person, body or school covered by section 4.3.10(2)(a), (b) or (d) for which the Authority is an integrated sector regulator comply with the Child Safe Standards.

S. 4.3.11(1B)
inserted by
No. 23/2021
s. 59(1).

(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 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.

S. 4.3.11(3)
amended by
No. 23/2021
s. 59(2).

(3) The Authority may from time to time issue guidelines about the matters referred to in subsection (1), (1B) 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.

- (1A) Despite subsection (1), if a registered school is registered with respect to the provision of an accredited senior secondary course or an accredited foundation secondary course, that registration remains in force until it is suspended or cancelled under subsection (3), (5) or (6). **S. 4.3.12(1A) inserted by No. 27/2010 s. 59(1), amended by No. 45/2021 s. 7.**
- (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).
- (5) The registration of a registered school with respect to an accredited senior secondary course or an accredited foundation secondary course is cancelled if any of the following things occur—
- (a) in the case of registration with respect to the VCE, VCAL or the VPC, the Victorian Curriculum and Assessment Authority withdraws its acceptance; **S. 4.3.12(5) inserted by No. 27/2010 s. 59(2), amended by No. 45/2021 s. 7.**
 - (b) in the case of registration with respect to the International Baccalaureate Diploma, the International Baccalaureate Organisation withdraws its approval;
 - (c) the accreditation of the course is cancelled by the Authority under Part 4.4;
 - (d) the Authority cancels the registration of the school under section 4.3.4;

- (e) the Authority imposes a condition on the registration of the school under section 4.3.4 prohibiting the school from providing education for students in years 11 and 12;
- (f) the school is no longer registered in respect of providing education for students in years 11 and 12.

S. 4.3.12(6)
inserted by
No. 27/2010
s. 59(2),
amended by
No. 45/2021
s. 7.

- (6) The registration of a registered school with respect to an accredited senior secondary course or an accredited foundation secondary course is suspended if the Authority suspends the registration of the school under section 4.3.4, the period of suspension being the same as the period of suspension of the school's registration.

Pt 4.3 Div. 4
(Heading)
substituted by
No. 71/2010
s. 11.

Division 4—Nationally recognised vocational education and training

S. 4.3.12A
inserted by
No. 71/2010
s. 12.

4.3.12A Intent of Division

The intent of this Division is to establish a system for the registration and regulation of vocational education and training organisations, which is consistent with, and implements, the AQTF.

S. 4.3.13
amended by
No. 39/2012
s. 62(4).

4.3.13 Application of Division

This Division only applies to vocational education and training and further education.

S. 4.3.13(2)
repealed by
No. 71/2010
s. 13.

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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 for registration

A person, body or principal of a school may apply to the Authority for registration on the National Register of the person, body or school as an education and training organisation.

S. 4.3.15
substituted by
No. 71/2010
s. 14.

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.
- (2A) In deciding the application, the Authority must take into account—
 - (a) whether the applicant or a high managerial agent of the applicant—
 - (i) has ever become bankrupt or taken the benefit of any law for the relief of bankrupt debtors, or compounded with their creditors or made an assignment of their property for their benefit; or
 - (ii) has ever been a director of a company or body that has been wound up; or

S. 4.3.16(2A)
inserted by
No. 71/2010
s. 15(1).

- (iii) has ever been disqualified from managing corporations under Part 2D.6 of the Corporations Act; or
 - (b) whether the applicant or a high managerial agent of the applicant has ever been convicted of—
 - (i) a category A offence; or
 - (ii) an offence that involves fraud or dishonesty; or
 - (iii) an offence against a Consumer Act within the meaning of the **Australian Consumer Law and Fair Trading Act 2012** or a law relating to company administration, including financial administration; or
 - (iv) an offence equivalent to an offence described in subparagraph (i), (ii) or (iii) in another jurisdiction; or
 - (c) whether the applicant or a high managerial agent of the applicant has ever had their registration under this Division suspended or cancelled; or
 - (d) whether the applicant or a high managerial agent of the applicant has ever had conditions imposed on their registration under this Division during the registration period; or
 - (e) whether the applicant or a high managerial agent of the applicant has ever breached a government training contract; or
- S. 4.3.16**
(2A)(b)(i)
amended by
Nos 31/2018
s. 34, 33/2020
s. 18(10).
- S. 4.3.16**
(2A)(b)(iii)
amended by
No. 4/2017
s. 17(1)(a).
- S. 4.3.16**
(2A)(d)
amended by
No. 73/2012
s. 14(1).
- S. 4.3.16**
(2A)(e)
inserted by
No. 73/2012
s. 14(2),
amended by
No. 23/2021
s. 60(a).

- (f) whether the applicant or a high managerial agent of the applicant has ever failed to comply with the Child Safe Standards, if the applicant is a relevant entity for which the Authority is an integrated sector regulator. **S. 4.3.16(2A)(f) inserted by No. 23/2021 s. 60(b).**
- (2B) In deciding the application, the Authority must also take into account whether the applicant has an effective complaint handling process to handle complaints by past, current or prospective students if the applicant is required to have such a process under Part 4.6A. **S. 4.3.16(2B) inserted by No. 71/2010 s. 30(1).**
- Note**
See Part 4.6A for what constitutes an effective complaint handling process.
- (2C) In deciding the application, the Authority may conduct a compliance audit of the applicant and the relevant premises (within the meaning of section 5.8.3B) from which the applicant proposes to operate. **S. 4.3.16(2C) inserted by No. 32/2022 s. 57(1).**
- (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
 - (ba) the applicant has a clearly demonstrated capacity to provide vocational education and training of a satisfactory standard; and **S. 4.3.16 (3)(ba) inserted by No. 71/2010 s. 15(2).**

S. 4.3.16
(3)(bb)
inserted by
No. 71/2010
s. 26(1).

- (bb) the Authority is satisfied that the applicant—
- (i) has the principal purpose of providing education and training; or

Note

See subsection (4C) which allows applicants to provide certain prescribed ancillary services and not fall outside of having the principal purpose of providing education and training.

- (ii) is a school that is registered under this Act; and

S. 4.3.16
(3)(bc)
inserted by
No. 71/2010
s. 15(2).

- (bc) the applicant has paid any fee fixed by the Minister in respect of the application; and

S. 4.3.16
(3)(bd)
inserted by
No. 71/2010
s. 15(2),
amended by
No. 32/2022
s. 57(2)(a).

- (bd) the Authority is satisfied that any other criterion prescribed by the regulations has been complied with.

S. 4.3.16
(3)(c)
amended by
No. 71/2010
s. 15(3),
repealed by
No. 32/2022
s. 57(2)(b).

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S. 4.3.16(3A)
inserted by
No. 71/2010
s. 30(2).

- (3A) The Authority must not grant the application unless the Authority is satisfied that the applicant has an effective complaint handling process to handle complaints by past, current or prospective students if the applicant is required to have such a process under Part 4.6A.

Note

See Part 4.6A for what constitutes an effective complaint handling process.

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S. 4.3.16(4)
repealed by
No. 32/2022
s. 57(3).

(4A) Despite subsection (3)(bb), the following persons or bodies are not required to have the principal purpose of providing education and training—

S. 4.3.16(4A)
inserted by
No. 71/2010
s. 26(2).

- (a) a University;
- (b) a TAFE institute;
- (c) AMES Australia;

S. 4.3.16
(4A)(c)
substituted by
No. 32/2022
s. 45.

- (d) a school;
- (e) a person or body receiving a grant subsidy or loan by the Adult, Community and Further Education Board (within the meaning of Part 3.3) in relation to the provision of adult, community and further education;
- (f) a public sector body within the meaning of the **Public Administration Act 2004**;
- (g) any department or public statutory authority of the Commonwealth or of another State or Territory;
- (h) a prescribed person or body or person or body of a prescribed class of person or body;
- (i) a person or body exempted by the Minister under subsection (4B) from the requirement to have the principal purpose of providing education and training under subsection (3)(bb).

S. 4.3.16(4B)
inserted by
No. 71/2010
s. 26(2).

- (4B) The Minister may grant an exemption to a person or body from the requirement to have the principal purpose of providing education and training under subsection (3)(bb) if—
- (a) the person or body is a community based organisation; or
 - (b) the person or body provides education and training services on a not-for-profit basis; or
 - (c) the person or body provides education and training only to its staff members or staff members of related entities.

S. 4.3.16(4C)
inserted by
No. 71/2010
s. 26(2).

- (4C) For the purposes of subsection (3)(bb)(i), the principal purpose of providing education and training includes the provision of prescribed ancillary services to students.

S. 4.3.16(5)
amended by
Nos 71/2010
ss 15(4), 30(3),
32/2022
s. 57(4).

- (5) Subsections (2), (2A), (2B), (2C), (3) and (3A) do not limit the grounds on which the Authority may decide not to grant the application.

S. 4.3.16(5A)
inserted by
No. 71/2010
s. 15(5),
repealed by
No. 32/2022
s. 57(5).

* * * * *

- (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; or
 - (c) if a condition is imposed during the registration period, immediately after the decision is made to impose the condition.
- (10) If the Authority decides not to grant the application, the Authority must immediately give the applicant a notice of its decision.

S. 4.3.16(9)(b)
amended by
No. 71/2010
s. 15(6)(a).

S. 4.3.16(9)(c)
inserted by
No. 71/2010
s. 15(6)(b).

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).

S. 4.3.17(2)(a)
substituted by
No. 45/2021
s. 19.

(2) For an RTO registered under section 4.3.16, the following conditions are imposed for the RTO's period of registration—

(a) subject to section 4.3.17A, the RTO must comply with requirements stated to apply to an RTO under the RTO standards;

S. 4.3.17
(2)(ab)
inserted by
No. 23/2021
s. 61.

(ab) the RTO must comply with the Child Safe Standards, if the RTO is a relevant entity for which the Authority is an integrated sector regulator;

(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;

(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;

- (da) the RTO must pay the fees for registration fixed by the Minister;
- (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).

**S. 4.3.17
(2)(da)
inserted by
No. 71/2010
s. 16(1).**

- (2A) The conditions imposed by the Authority under section 4.3.16(6) or 4.3.21(2) must—
 - (a) relate to the obligations of an RTO under this Act or the regulations or the RTO standards; and
 - (b) be imposed for the purpose of—
 - (i) improving compliance with those obligations; or
 - (ii) preventing, or minimising the risk of, non-compliance with those obligations; or
 - (iii) protecting the interests of students enrolled with the RTO or the public interest.

**S. 4.3.17(2A)
inserted by
No. 71/2010
s. 16(2).**

Note

Section 4.3.12A refers to the intent of this Division, which is to establish a scheme for the registration and regulation of

vocational education and training organisations that is consistent with, and implements, the AQTF.

S. 4.3.17(2B)
inserted by
No. 71/2010
s. 16(2).

(2B) Conditions may be imposed under section 4.3.16(6) on or during the period of registration.

S. 4.3.17(2C)
inserted by
No. 71/2010
s. 16(2).

(2C) The conditions imposed under section 4.3.16(6) may be conditions that apply to a particular RTO or that apply generally to RTOs or a class of RTOs.

S. 4.3.17(2D)
inserted by
No. 71/2010
s. 16(2).

(2D) The Authority must give an RTO or RTOs 28 days to make written submissions on a proposal to impose a condition on the registration of the RTO or RTOs during the period of registration and must consider any submissions before deciding whether or not to impose the condition.

(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.

S. 4.3.17A
inserted by
No. 45/2021
s. 20.

4.3.17A The Authority may extend the 12 month period regarding an RTO's management of the transition from superseded training packages

(1) For the purposes of enabling an RTO to comply with the requirements stated to apply to the RTO under the RTO standards, the Authority may extend the 12 month period referred to in Condition 9 of the AQTF 2010 Essential Conditions and Standards for Continuing

Registration regarding an RTO's management of the transition from superseded training packages.

- (2) For the purposes of subsection (1), the Authority may extend the 12 month period on its own initiative or on an application from an RTO or an interested party.
- (3) An application referred to under subsection (2) must be—
 - (a) made in the form approved by the Authority; and
 - (b) accompanied by the relevant fee fixed by the Minister.
- (4) The applicant must give the Authority any further information it requires to investigate and decide the application.
- (5) The Authority must not extend the 12 month period unless it is satisfied that—
 - (a) there would be a disadvantage to vocational education and training students if the Authority did not extend the 12 month period; or
 - (b) exceptional circumstances exist.
- (6) If the Authority decides to extend the 12 month period, either as a result of an application or on its own initiative, the Authority must ensure that details of the extension are published as soon as practicable in the Government Gazette and on the Authority's website.
- (7) A decision made by the Authority to extend the 12 month period under this section applies to all RTOs that include the relevant superseded qualification in the RTOs' scope of registration as a result of the superseded training package.

(8) In this section—

AQTF 2010 Essential Conditions and Standards for Continuing Registration means the AQTF 2010 Essential Conditions and Standards for Continuing Registration as endorsed by the Ministerial Council on 9 June 2010 and as amended from time to time by the Ministerial Council;

interested party includes an industry group or a training provider but does not include a vocational education and training student or group of vocational education and training students.

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.

S. 4.3.18A
inserted by
No. 71/2010
s. 17.

4.3.18A Guidelines

- (1) The Authority may issue guidelines in relation to the following—
 - (a) matters relating to the criteria for registration or refusal of registration under this Division;
 - (b) matters relating to the criteria or grounds for—
 - (i) the suspension or cancellation of registration under this Division; or
 - (ii) the amendment of the scope of such registration or the registered conditions on such registration; or
 - (iii) the imposing of a new condition on such registration;

- (c) conditions imposed on registration by the Authority including—
 - (i) the matters in relation to which conditions may be imposed; and
 - (ii) the types of conditions that may be imposed; and
 - (iii) the circumstances in which conditions may be imposed; and
 - (iv) the measures to be taken by RTOs to comply with those conditions;
- (d) matters relating to the RTO standards including matters relating to—
 - (i) the planning, operation and management of the business of RTOs, including financial management;
 - (ii) assessing and monitoring the financial capabilities of RTOs;
 - (iii) quality assurance, review and evaluation processes of RTOs;
- (e) matters relating to student learning outcomes and welfare services achieved or provided by RTOs;
- (f) matters relating to teaching, learning and assessment provided by RTOs;
- (g) matters relating to governance, probity and compliance with statutory requirements carried out or achieved by RTOs;
- (ga) matters relating to compliance with the Child Safe Standards;
- (h) matters relating to the keeping of records by RTOs;

**S. 4.3.18A
(1)(ga)
inserted by
No. 23/2021
s. 62.**

- (i) matters relating to the circumstances in which the Authority may register an RTO for less than 5 years.
- (2) The Authority in preparing the guidelines must consider—
 - (a) the RTO standards; and
 - (b) any guidelines issued under a law of the Commonwealth or of another State or Territory implementing the principles set out in the AQTF relating to the registration of vocational education and training organisations.
- (3) The guidelines must not be inconsistent with—
 - (a) this Act or the regulations; or
 - (b) the RTO standards.
- (4) The guidelines may apply, adopt or incorporate any matter contained in any document issued, or published by a body or person whether—
 - (a) wholly or partially or as amended by the guidelines; or
 - (b) as issued or published at the time that the guidelines are issued or at any time before then; or
 - (c) as amended from time to time.
- (5) The regulations may require a person, body or school to comply with any guidelines issued under this section.

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.

S. 4.3.19(3)(b)
amended by
No. 32/2022
s. 58(a).

* * * * *

S. 4.3.19(3)(c)
repealed by
No. 32/2022
s. 58(b).

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

S. 4.3.21(1)
amended by
No. 71/2010
ss 27(1), 30(4).

- (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), (3A) or (3B) arises.

S. 4.3.21(2)
amended by
No. 71/2010
ss 27(1), 30(4).

- (2) On one or more of the grounds mentioned in subsection (3), (3A) or (3B), 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.

S. 4.3.21(3)
substituted by
No. 71/2010
s. 18.

- (3) The grounds are as follows—
- (a) the registration, or part of the scope of registration, was obtained because of incorrect or misleading information;
- (b) the RTO has contravened a condition of registration;

- (c) the RTO or a high managerial agent of the RTO has not complied with or does not have a record of compliance with RTO standards;
- (d) the RTO or a high managerial agent of the RTO—
 - (i) has become bankrupt or taken the benefit of a law for the relief of bankrupt debtors, or compounded with their creditors or made an assignment of their property for their benefit; or
 - (ii) is a director of a company or body that has been wound up; or
 - (iii) has been disqualified from managing corporations under Part 2D.6 of the Corporations Act; or
- (e) the RTO or a high managerial agent of the RTO has been convicted of—
 - (i) a category A offence; or S. 4.3.21
(3)(e)(i)
amended by
Nos 31/2018
s. 35, 33/2020
s. 18(11).
 - (ii) an offence that involves fraud or dishonesty; or
 - (iii) an offence against a Consumer Act within the meaning of the **Australian Consumer Law and Fair Trading Act 2012** or a law relating to company administration, including financial administration; or S. 4.3.21
(3)(e)(iii)
amended by
No. 4/2017
s. 17(1)(b).
 - (iv) an offence equivalent to an offence described in subparagraph (i), (ii) or (iii) in another jurisdiction;
- (f) the RTO has not paid the required registration fees; S. 4.3.21(3)(f)
amended by
No. 73/2012
s. 15(1).

S. 4.3.21(3)(g)
inserted by
No. 73/2012
s. 15(2).

(g) the RTO has breached a government training contract.

S. 4.3.21(3A)
inserted by
No. 71/2010
s. 27(2).

(3A) A further ground is that the RTO has ceased to have the provision of education and training as its principal purpose, unless an exemption under section 4.3.16(4A) applies.

Note

See section 4.3.16(4C) which allows applicants to provide certain prescribed ancillary services and not fall outside of having the principal purpose of providing education and training.

S. 4.3.21(3B)
inserted by
No. 71/2010
s. 30(5).

(3B) A further ground is that the RTO does not have an effective complaint handling process to handle complaints by past, current or prospective students, which the applicant is required to have under Part 4.6A.

Note

See Part 4.6A for what constitutes an effective complaint handling process.

- (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.
- (11) Failure to comply with subsection (10) does not affect a cancellation of the registration of an RTO.

4.3.21A Faster action in exceptional circumstances

- (1) The powers under this section are in addition to, and not in derogation of, the powers conferred by section 4.3.21(9).
- (2) Subject to this section, the Authority may suspend the registration, or part of the scope of the registration, of an RTO or cancel the registration of an RTO under section 4.3.21, without delay, if the Authority is satisfied that exceptional circumstances exist.
- (3) The Authority must give the RTO at least 3 working days to make submissions if the Authority intends to suspend the registration, or part of the scope of the registration, of the RTO.
- (4) The Authority must give the RTO at least 7 days to make submissions if the Authority intends to cancel the registration of the RTO.

**S. 4.3.21A
inserted by
No. 71/2010
s. 19.**

- (5) The Authority may take the action referred to in this section concurrently with any action under section 4.5.5 in relation to an RTO.
- (6) In this section *exceptional circumstances* include, but are not limited to the following—
- (a) the RTO has committed a serious breach of occupational health and safety laws;
 - (b) the RTO has notified the Authority or its students that it will cease trading or cease conducting operations and that notice is given less than 28 days before it proposes to cease trading or cease conducting operations;
 - (c) urgent action is required—
 - (i) because of significant non-compliance by the RTO with the RTO standards; and
 - (ii) to safeguard or ensure the continuity or quality of the education of the students of the RTO;
 - (d) circumstances in which—
 - (i) there is an unacceptable risk of harm to a child; and
 - (ii) suspension or cancellation (as the case requires) is necessary to prevent or reduce the risk of that harm occurring.

S. 4.3.21A
(6)(c)(ii)
amended by
No. 23/2021
s. 63(a).

S. 4.3.21A
(6)(d)
inserted by
No. 23/2021
s. 63(b).

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—

S. 4.3.24(a)
amended by
No. 70/2008
s. 23.

- (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.

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.
- (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.
- (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.

4.3.29A RTO contracts taken to include fair contract terms

**S. 4.3.29A
inserted by
No. 71/2010
s. 35.**

- (1) This section does not apply in respect of a contract entered into between an RTO and a student or a prospective student for the provision of vocational education and training before the commencement of this section.
- (2) If the regulations prescribe terms to be taken to be included in a contract entered into between an RTO and a student or a prospective student for the provision of vocational education and training, those terms are taken to be terms of that contract and any other term of that contract that is inconsistent with those terms is void.
- (3) Subsection (2) does not apply to—
 - (a) a public sector body within the meaning of the **Public Administration Act 2004**; or
 - (b) any department or public statutory authority of the Commonwealth or of another State or Territory; or
 - (c) a prescribed person or body or person or body of a prescribed class of person or body.

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) Parts 3A and 5A of the **Subordinate Legislation Act 1994** apply to a notice under section 4.3.30 or 4.3.31 as if the notice were a legislative instrument within the meaning of that Act laid before each House of the Parliament under section 16B 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

S. 4.3.32(3)
substituted by
No. 14/2013
s. 17.

- (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;
 - (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—
- (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.
- (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.

S. 4.3.36(6)
inserted by
No. 58/2007
s. 27.

- (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. **S. 4.3.36(7) inserted by No. 58/2007 s. 27.**
- (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. **S. 4.3.36(8) inserted by No. 58/2007 s. 27.**
- (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(9) inserted by No. 58/2007 s. 27.**
- * * * * *
- S. 4.3.37 inserted by No. 70/2008 s. 24, repealed by No. 39/2012 s. 47.**

Division 7—Reserve step-in powers

Pt 4.3 Div. 7 (Heading and ss 4.3.38–4.3.53) inserted by No. 71/2010 s. 50.

4.3.38 Definitions

In this Division—

ESOS Act means the Education Services for Overseas Students Act 2000 of the Commonwealth;

RTO does not include any person or body exempted under section 4.3.16(4A) from the requirement to have the principal purpose of providing education and training.

S. 4.3.38 inserted by No. 71/2010 s. 50.

S. 4.3.38 def. of RTO amended by No. 32/2022 s. 46.

Note

Persons and bodies exempted from this requirement include universities, TAFE institutes, AMES Australia and schools. Persons and bodies may also be exempted by the regulations or the Minister.

S. 4.3.39
inserted by
No. 71/2010
s. 50.

4.3.39 Displacement of other laws

This Division is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act in relation to the provisions of that Act.

Note

Section 5G of the Corporations Act provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision for the purposes of that section, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not operate to the extent necessary to avoid the inconsistency.

S. 4.3.40
inserted by
No. 71/2010
s. 50.

4.3.40 Notices relating to appointment of external administrator under Corporations Act

- (1) A person, other than the Authority, must not make an application to the court under Chapter 5 of the Corporations Act for the appointment of an external administrator of an RTO unless the person has first given the Authority written notice of that application.

Penalty: 20 penalty units.

- (2) An administrator of an RTO that is appointed under section 436A, 436B or 436C of the Corporations Act must give the Authority a copy of the notice of appointment required to be lodged under section 450A of that Act before the end of the next business day after the appointment.

Penalty: 20 penalty units.

4.3.41 Application for order for judicial administration

- (1) The Authority may apply to the Supreme Court for an order that an RTO be placed under judicial administration.
- (2) The RTO is entitled to be heard in relation to an application by the Authority under this section.

S. 4.3.41
inserted by
No. 71/2010
s. 50.

4.3.42 Order for judicial administration

On an application under section 4.3.41, the Supreme Court may make an order that an RTO be placed under judicial administration if the Court is satisfied that it is in the interests of the RTO's students having regard to the following matters—

S. 4.3.42
inserted by
No. 71/2010
s. 50.

- (a) whether the RTO is, or is likely to become, unable to deliver services to students in accordance with its obligations;
- (b) whether the RTO has failed to comply with this Act, the regulations, the ESOS Act or the RTO standards;
- (c) whether there are reasonable grounds for believing that the RTO is inefficiently or incompetently managed, and that the inefficient or incompetent management represents a substantial risk—
 - (i) of non-compliance by the RTO with the RTO standards; or
 - (ii) that the RTO will be unable to deliver services.

4.3.43 Commencement of judicial administration

The judicial administration of an RTO commences—

- (a) at the time specified in the order for judicial administration as the time at which the judicial administration is to commence; or

S. 4.3.43
inserted by
No. 71/2010
s. 50.

- (b) if no time is so specified, when the order is made.

S. 4.3.44
inserted by
No. 71/2010
s. 50.

4.3.44 Appointment of judicial administrator

- (1) If the Supreme Court orders the judicial administration of an RTO, the Court must, by its order, appoint a judicial administrator of the RTO.
- (2) The appointment may be for a period specified in the order, which must not exceed one month.
- (3) The Supreme Court may by order extend the appointment of the judicial administrator.
- (4) The Supreme Court may at any time cancel the appointment of a judicial administrator and appoint another person as judicial administrator.

S. 4.3.45
inserted by
No. 71/2010
s. 50.

4.3.45 Remuneration of judicial administrator

- (1) The Supreme Court may give directions as to—
 - (a) the remuneration and allowances that a judicial administrator is to receive; and
 - (b) who is to pay the remuneration and allowances.
- (2) The Supreme Court may charge the judicial administrator's remuneration and allowances on the property of the RTO under judicial administration in such order of priority in relation to any existing charges on that property as the Court thinks fit.

S. 4.3.46
inserted by
No. 71/2010
s. 50.

4.3.46 Administration to vest in judicial administrator

If the Supreme Court has made an order placing an RTO under judicial administration, then, at the time the judicial administration commences—

- (a) any person vested with the administration of the RTO immediately before that time is divested of that administration; and

- (b) the administration of the RTO vests in the judicial administrator appointed by the Court.

4.3.47 Powers and duties of judicial administrator

S. 4.3.47
inserted by
No. 71/2010
s. 50.

- (1) If a judicial administrator is appointed to control the affairs of an RTO, the judicial administrator—
- (a) is taken to be the governing body of the RTO; and
 - (b) has and may exercise all of the powers of the governing body of the RTO; and
 - (c) has such other powers as the Supreme Court directs; and
 - (d) must have regard to the interests of the students of the RTO; and
 - (e) subject to paragraph (d), is subject to all of the duties of the governing body of the organisation; and
 - (f) must comply with this Act, the regulations and the RTO standards; and

Note

The administrator of an RTO may also have to comply with the ESOS Act if the RTO is required to comply with that Act.

- (g) must consult with—
- (i) the Authority; and
 - (ii) in the case of an RTO that is also registered under the ESOS Act, the head of the Commonwealth department administering that Act—

S. 4.3.47
(1)(g)(ii)
amended by
No. 4/2017
s. 17(1)(c).

in carrying out his or her duties or in exercising his or her powers or functions under this Division.

- (2) The powers conferred by this section are in addition to powers conferred on a judicial administrator by any other provision of this Division.

S. 4.3.48
inserted by
No. 71/2010
s. 50.

4.3.48 Supreme Court's control of judicial administrator

- (1) A judicial administrator is subject to the control of the Supreme Court.
- (2) In addition to duties imposed by this Division, a judicial administrator has such duties as the Supreme Court directs.
- (3) The judicial administrator must report to the Supreme Court at the times that the Court directs.
- (4) A judicial administrator may apply to the Supreme Court at any time for instructions—
 - (a) as to the way in which the judicial administration should be conducted; or
 - (b) in relation to any matter arising during the judicial administration.
- (5) Before applying to the Supreme Court for instructions, the judicial administrator must—
 - (a) inform the Authority that he or she intends to make the application; and
 - (b) give the Authority written details of the application.
- (6) The Authority is entitled to be heard on the application.

S. 4.3.49
inserted by
No. 71/2010
s. 50.

4.3.49 Application by Authority for instructions to judicial administrator

- (1) The Authority may apply to the Supreme Court for an order that the Court give instructions to the judicial administrator relating to the conduct of the judicial administration of an RTO.

- (2) The judicial administrator is entitled to be heard on the application.

4.3.50 Request by Authority for information

S. 4.3.50
inserted by
No. 71/2010
s. 50.

- (1) The Authority may ask a judicial administrator to give the Authority information about one or more of the following in a reasonable time specified in the request—
- (a) the conduct of the judicial administration;
 - (b) the financial position of the RTO under judicial administration.
- (2) The judicial administrator must comply with the Authority's request.

4.3.51 Duration of judicial administration

S. 4.3.51
inserted by
No. 71/2010
s. 50.

- (1) If the Supreme Court orders that an RTO be placed under judicial administration, the RTO remains under judicial administration until the judicial administration is cancelled or ends.
- (2) The Supreme Court may extend a period of judicial administration.

4.3.52 Effect of cancellation or ending of judicial administration

S. 4.3.52
inserted by
No. 71/2010
s. 50.

At the time when the judicial administration of the RTO is cancelled or ends—

- (a) the judicial administrator is divested of the administration of the RTO; and
- (b) the administration of the RTO vests in the person or body that would have been the governing body of the RTO if the judicial administrator not been appointed.

S. 4.3.53
inserted by
No. 71/2010
s. 50.

4.3.53 How judicial administrator is to administer

The judicial administrator of an RTO must conduct the judicial administration as efficiently and economically as possible having regard to the interests of the students of that RTO.

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

S. 4.4.2(1)
amended by
No. 70/2008
s. 26(a).

(1) The Authority may accredit a course or a part of a course if it is satisfied—

S. 4.4.2(1)(a)
amended by
No. 70/2008
s. 26(b).

(a) the following matters are appropriate to the qualification (if any) to which the course or part of the course leads—

S. 4.4.2(1)(a)(i)
amended by
No. 70/2008
s. 26(c).

(i) the aims and learning outcomes of the course or part of the course;

S. 4.4.2(1)(a)(ii)
amended by
No. 70/2008
s. 26(d).

(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;

(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)(b)
amended by
No. 70/2008
s. 26(e).

(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)(c)
amended by
No. 70/2008
s. 26(e).

(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

(d) that the fee for the application and investigation fixed by the Minister has been paid.

- (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 under the AQTF. **S. 4.4.2(2) substituted by No. 71/2010 s. 20.**
- (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; **S. 4.4.2(3)(b) amended by No. 70/2008 s. 26(f).**
 - (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. **S. 4.4.2(3)(c) amended by No. 70/2008 s. 26(f).**
- (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. **S. 4.4.2(5) amended by No. 70/2008 s. 26(g).**
- (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(6) amended by No. 70/2008 s. 26(h).**

S. 4.4.2(7)
amended by
No. 70/2008
s. 26(h).

(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(8)
amended by
No. 70/2008
s. 26(i).

(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.

(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

S. 4.4.3(1)
amended by
No. 70/2008
s. 27(a).

(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(2)
amended by
No. 70/2008
s. 27(b).

(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).

- (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.

4.4.4 Review of higher education courses

**S. 4.4.4
amended by
No. 70/2008
s. 28.**

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, body or school that is registered under Division 3 or 4 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)
amended by
No. 71/2010
s. 21.**

**S. 4.4.5(1)(b)
amended by
No. 58/2007
s. 28.**

by the issue of a written statement or otherwise.

Education and Training Reform Act 2006
No. 24 of 2006
Part 4.4—Accreditation and qualifications

S. 4.4.5(2)
amended by
No. 71/2010
s. 21.

- (2) If a person, body or school that is registered under Division 3 or 4 of Part 4.3 ceases to exist, the Authority may do any thing that the person, body or school was authorised to do under subsection (1).

Part 4.5—Overseas students

4.5.1 Approval to provide courses for overseas students

- (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(1) amended by No. 58/2007 s. 29(1).**
- (1A) The Authority must not approve an education or training organisation or institution under this section unless the Authority is satisfied that the organisation or institution has the principal purpose of providing education and training. **S. 4.5.1(1A) inserted by No. 71/2010 s. 24.**
- (1B) For the purposes of subsection (1A), the principal purpose of providing education and training includes the provision of prescribed ancillary services to students. **S. 4.5.1(1B) inserted by No. 71/2010 s. 24.**
- (1C) Subsection (1A) does not apply if—
- (a) the Authority acting as a designated authority within the meaning of the Education Services for Overseas Students Act 2000 of the Commonwealth is not required to certify for the purposes of that Commonwealth Act that the organisation or institution has the principal purpose of providing education; and **S. 4.5.1(1C) inserted by No. 71/2010 s. 24, substituted by No. 71/2010 s. 28.**
- Note**
- See section 9(2)(c)(i) of the Education Services for Overseas Students Act 2000 of the Commonwealth.
- (b) the organisation or institution is exempted under section 4.3.16(4A) from the requirement to have the principal purposes of providing education and training.

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;

S. 4.5.1(2)(ba)
inserted by
No. 23/2021
s. 64(1).

(b) guidelines issued by the Authority;

(ba) in the case of a school, a University or an education or training organisation or institution, whether the school, University or education or training organisation or institution complies with the Child Safe Standards;

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.

S. 4.5.1(2A)
inserted by
No. 23/2021
s. 64(2).

(2A) It is a condition of an approval of a school, University or other institution that is a relevant entity for which the Authority is an integrated sector regulator that the school, University or institution comply with the Child Safe Standards.

- (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.
- (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—

S. 4.5.3(1)(a)
substituted by
No. 23/2021
s. 65.

- (i) in the case of a school, University or institution that is a relevant entity, is not complying with the Child Safe Standards; or
 - (ii) is otherwise no longer suitable to be approved; or
- (b) any fee relating to the approval has not been paid.

S. 4.5.3(1A)
inserted by
No. 71/2010
s. 25.

- (1A) Without limiting subsection (1), it is a ground for suspension or cancellation of an approval if the organisation or institution has ceased to have the provision of education and training as its principal purpose and the organisation or institution would be required to have that principal purpose if it applied for an approval under section 4.5.1.

Note

See section 4.5.1(1B) which allows applicants to provide certain prescribed ancillary services and not fall outside of having the principal purpose of providing education and training.

- (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.

* * * * *

**S. 4.5.4(3)
repealed by
No. 23/2021
s. 72.**

(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 or made subject to a condition, the Authority may, in accordance with this Part—

**S. 4.5.4(4)
substituted by
No. 85/2009
s. 5(1).**

- (a) suspend or cancel that approval; or
- (b) impose a condition on that approval.

(5) A suspension, cancellation or condition may be proposed by the Authority giving notice in writing of the proposed suspension, cancellation or condition and giving reasons to the school, University or institution affected.

**S. 4.5.4(5)
amended by
No. 85/2009
s. 5(2).**

(6) Subject to section 4.5.5, 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 or condition should not be imposed and must consider any submissions made.

**S. 4.5.4(6)
amended by
No. 85/2009
s. 5(3).**

(7) Subsections (5) and (6) do not apply to an institution (other than a University or a school) if it—

**S. 4.5.4(7)
inserted by
No. 85/2009
s. 5(4).**

- (a) has ceased to trade or to conduct operations;
or
- (b) has become bankrupt; or
- (c) in the case of a body corporate, is the subject
of a winding up order.

S. 4.5.4(8)
inserted by
No. 85/2009
s. 5(4).

(8) In the circumstances set out in subsection (7), the Authority may cancel or suspend the approval of the institution immediately.

S. 4.5.4(9)
inserted by
No. 85/2009
s. 5(4).

(9) The Authority must advise the institution in writing, without delay, of the cancellation or suspension under subsection (8) of the approval of the institution and the reasons for that cancellation or suspension.

S. 4.5.5
inserted by
No. 85/2009
s. 6.

4.5.5 Faster action in exceptional circumstances

- (1) This section applies if an institution (other than a school or University) has approval under this Part to provide a specified course to overseas students.
- (2) Following a review under section 4.5.4, the Authority may give the institution at least 3 working days instead of 28 days to make submissions under section 4.5.4(6) if—
 - (a) the Authority intends to suspend the approval; and
 - (b) the Authority is satisfied that exceptional circumstances exist.
- (3) Following a review under section 4.5.4, the Authority may give the institution at least 7 days instead of 28 days to make submissions under section 4.5.4(6) if—
 - (a) the Authority intends to cancel the approval;
and
 - (b) the Authority is satisfied that exceptional circumstances exist.

- (4) In this section *exceptional circumstances* include, but are not limited to the following—
- (a) the institution has committed a serious breach of occupational health and safety laws;
 - (b) the institution has notified the Authority or its students that it will cease trading or cease conducting operations and that notice is given less than 28 days before it proposes to cease trading or cease conducting operations;
 - (c) urgent action is required—
 - (i) because of significant non-compliance by the institution with the standards required for approval; and
 - (ii) to safeguard or ensure the continuity or quality of the education of the students of the institution;
 - (d) circumstances in which—
 - (i) there is an unacceptable risk of harm to a child; and
 - (ii) suspension or cancellation (as the case requires) is necessary to prevent or reduce the risk of that harm occurring.

S. 4.5.5(4)(c)(ii)
amended by
No. 23/2021
s. 66(a).

S. 4.5.5(4)(d)
inserted by
No. 23/2021
s. 66(b).

Part 4.5A—Overseas exchange students

Pt 4.5A
(Heading and
ss 4.5.4A–
4.5.4F)
inserted by
No. 58/2007
s. 31.

4.5A.1 Approval of overseas secondary student exchange organisations

S. 4.5.4A
inserted by
No. 58/2007
s. 31,
renumbered
as s. 4.5A.1 by
No. 19/2008
s. 14(a).

(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.

S. 4.5A.1(1A)
inserted by
No. 23/2021
s. 67(1).

(1A) In deciding whether to grant approval, the Authority must have regard to whether the person, organisation or registered school complies with the Child Safe Standards.

(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.

S. 4.5A.1(3)
amended by
No. 23/2021
s. 67(2).

(3) The Authority may from time to time issue guidelines, including guidelines regarding compliance with the Child Safe Standards, 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

- (1) Subject to subsection (2), 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
Nos 19/2008
s. 14(b)(ii),
23/2021
s. 68(1)(2)
(ILA s. 39B(1)).

- (2) It is a condition of an approval of a person, organisation or registered school that is a relevant entity for which the Authority is an integrated sector regulator that the person, organisation or school comply with the Child Safe Standards.

S. 4.5A.2(2)
inserted by
No. 23/2021
s. 68(2).

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).

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).

4.5A.4 Duration and renewal of approval

S. 4.5A.4(1)
amended by
No. 19/2008
s. 14(d)(ii).

- (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. 4.5A.4(3)
amended by
No. 19/2008
s. 14(d)(iii).

- (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.

S. 4.5.4E
inserted by
No. 58/2007
s. 31,
renumbered
as s. 4.5A.5 by
No. 19/2008
s. 14(e).

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.

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 Authority is satisfied that the person, organisation or school—

- (a) breaches a condition of its approval imposed under section 4.5A.2 or this section; or
- (b) in the case of a person, organisation or registered school that is a relevant entity, does not comply with the Child Safe Standards.

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),
substituted by
No. 23/2021
s. 69.

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.
- (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.
- (3) The Authority must also include in the division persons, bodies or schools who are registered on the National Register under Division 4 of Part 4.3.
- (4) The division must specify in relation to the persons, bodies or schools referred to in subsection (3), the details required to be specified on the National Register in respect of those persons, bodies or schools.
- (5) If a person, body or school referred to in subsection (3) is no longer registered on the National Register the Authority must remove the person, body or school and its details from the State Register.

S. 4.6.2(1)
amended by
No. 42/2016
s. 14(4).

S. 4.6.2(1)(b)
amended by
No. 58/2007
s. 32.

S. 4.6.2(2)(c)
amended by
No. 58/2007
s. 32.

S. 4.6.2(3)
inserted by
No. 71/2010
s. 22(1).

S. 4.6.2(4)
inserted by
No. 71/2010
s. 22(1).

S. 4.6.2(5)
inserted by
No. 71/2010
s. 22(1).

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

S. 4.6.4(1)
repealed by
No. 71/2010
s. 22(2).

* * * * *

- (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 and the State Register.

S. 4.6.4(4)
amended by
No. 71/2010
s. 22(3)(a).

- (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 and the State Register.

S. 4.6.4(5)
amended by
No. 71/2010
s. 22(3)(b).

Part 4.6A—Complaint handling and dispute resolution

Pt 4.6A
(Heading)
substituted by
No. 71/2010
s. 32.

Pt 4.6A
(Heading and
ss 4.6A.1–
4.6A.6)
inserted by
No. 71/2010
s. 31.

Division 1—Handling of complaints by RTOs

Pt 4.6A Div. 1
(Heading)
inserted by
No. 31/2018
s. 56.

4.6A.1 Definition of RTO in this Division

S. 4.6A.1
(Heading)
amended by
No. 33/2020
s. 18(12).

S. 4.6A.1
inserted by
No. 71/2010
s. 31,
amended by
No. 31/2018
s. 57(1).

In this Division, except section 4.6A.6, *RTO* does not include any person or body exempted under section 4.3.16(4A) from the requirement to have the principal purpose of providing education and training.

Note to
s. 4.6A.1
amended by
No. 32/2022
s. 47.

Note

Persons and bodies exempted from this requirement include universities, TAFE institutes, AMES Australia and schools. Persons and bodies may also be exempted by the regulations or the Minister.

S. 4.6A.2
inserted by
No. 71/2010
s. 31.

4.6A.2 Complaint handling process

An RTO must establish a process in accordance with the regulations for the handling of complaints by persons who are past, current or prospective students of the RTO and who are affected by decisions, actions or omissions by the RTO in relation to the provision of vocational education and training.

4.6A.3 Register of complaints

- (1) An RTO must keep a register of complaints in accordance with this section of all complaints made to it under the complaints handling process.

Penalty: 10 penalty units for a natural person and 50 penalty units for a body corporate.

- (2) The purposes of the register of complaints are—

(a) to assist in the management of the complaint handling process required under this Division and the regulations; and

(b) to enable the Authority to audit compliance by the RTO with the complaint handling process requirements under this Division and the regulations.

- (3) The register of complaints must contain the following matters—

- (a) the name of the person who made the complaint;
- (b) the date on which the complaint was made;
- (c) the date on which the complaint was resolved or closed (if applicable);
- (d) a reference to the RTO's complete records relating to the complaint kept in accordance with section 4.6A.5;
- (e) any other prescribed matter.

S. 4.6A.3
inserted by
No. 71/2010
s. 31.

S. 4.6A.3(2)(a)
amended by
No. 31/2018
s. 57(2).

S. 4.6A.3(2)(b)
amended by
No. 31/2018
s. 57(2).

S. 4.6A.4
inserted by
No. 71/2010
s. 31.

4.6A.4 Access to register of complaints

An RTO must make the register of complaints available during business hours at the principal office of the RTO for inspection by a person authorised by the Authority.

Penalty: 10 penalty units for a natural person and 50 penalty units for a body corporate.

S. 4.6A.5
inserted by
No. 71/2010
s. 31.

4.6A.5 RTO must keep complete records of complaints

- (1) An RTO must keep all records relating to the handling of a complaint by the RTO under its complaint handling process.
- (2) The records required to be kept under this section must be kept separately to the register of complaints.

S. 4.6A.5A
inserted by
No. 71/2010
s. 33.

4.6A.5A Referral of complaint under approved scheme if not resolved by RTO

- (1) This section applies if a complaint made to an RTO under its complaint handling process is not resolved within 30 days and the RTO is a member of an approved dispute resolution and student welfare scheme.
- (2) The complainant may refer the matter to the person appointed to handle disputes under an approved dispute resolution and student welfare scheme, if—
 - (a) the scheme applies to a class of persons that includes the complainant; and
 - (b) the matter falls within the scope of the dispute resolution processes provided for in the scheme.

Note

See section 4.6A.6 for complaints by students if no approved scheme applies.

4.6A.5B Approval of dispute resolution and student welfare scheme

S. 4.6A.5B
inserted by
No. 71/2010
s. 33.

- (1) The Minister may, by notice published in the Government Gazette, approve a dispute resolution and student welfare scheme for the purposes of this Division.
- (2) In determining whether to approve a scheme under this section, the Minister must have regard to—
 - (a) the matters set out in Schedule 7; and
 - (b) any criteria set out in the regulations.

S. 4.6A.5B(1)
amended by
No. 31/2018
s. 57(3).

4.6A.5C RTO must disclose whether member of dispute resolution and student welfare scheme

S. 4.6A.5C
inserted by
No. 71/2010
s. 33,
amended by
No. 31/2018
s. 57(4).

An RTO must disclose in the prescribed manner to past, current and prospective students whether it is a member of a dispute resolution and student welfare scheme approved under this Division.

Penalty: 10 penalty units for a natural person and 50 penalty units for a body corporate.

4.6A.6 Student may make complaint to Authority

S. 4.6A.6
inserted by
No. 71/2010
s. 31.

- (1) Without limiting any other means available for making or resolving a complaint, a past, current or prospective student of an RTO may make a complaint to the Authority in relation to—
 - (a) an alleged contravention by the RTO of this Act or the regulations; or
 - (b) an alleged contravention by the RTO of the RTO standards.
- (2) The Authority may appoint a person or body to handle complaints made to the Authority under this section.

S. 4.6A.6(3)
substituted by
No. 37/2014
s. 10(Sch.
item 49.2).

- (3) Subsection (1) does not apply in respect of complaints made against Victoria Police.

Pt 4.6A Div. 2
(Heading and
ss 4.6A.7,
4.6A.8)
inserted by
No. 31/2018
s. 58.

Division 2—Investigation of complaints by Authority

S. 4.6A.7
inserted by
No. 31/2018
s. 58.

4.6A.7 Person may make a complaint to Authority

S. 4.6A.7(1)
substituted by
No. 33/2020
s. 8.

- (1) A person (the *complainant*) may make a complaint to the Authority alleging that a person, body, school or institution registered or approved under Part 4.3 or 4.5A or a provider of school boarding services at a registered school boarding premises (the *provider*) or a parent responsible for the home schooling of a student registered under section 4.3.9 has failed to comply with this Act, the regulations, a Ministerial Order or a condition of the registration or approval.
- (2) A complaint under subsection (1) must—
- (a) be in writing; and
 - (b) be made no more than 12 months after the complainant first became aware of the alleged non-compliance.

S. 4.6A.8,
inserted by
No. 31/2018
s. 58.

4.6A.8 Authority must investigate a complaint

The Authority must investigate a complaint made in accordance with section 4.6A.7 unless—

- (a) the Authority is of the opinion that the complaint is trivial, vexatious or without substance; or

- (b) the Authority is of the opinion that before making the complaint, the complainant had not attempted to raise the complaint with the provider or parent; or
- (c) the complainant had raised the complaint with the provider or parent but the Authority is of the opinion that—
 - (i) the provider or parent has not been given a reasonable time within which to respond to the complaint; or
 - (ii) the provider or parent has responded satisfactorily to the complaint; or
- (d) the Authority is of the opinion that the complaint can be dealt with, and it is more appropriate that the complaint be dealt with, by another person, body, court or tribunal.

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.

S. 4.7.1A
inserted by
No. 33/2020
s. 9.

4.7.1A Person may not conduct an unregistered school boarding premises

A person must not carry on or conduct a school boarding premises unless the school boarding premises 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—

* * * * *

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

S. 4.7.3
amended by
No. 45/2021
s. 8(1)(2) (ILA
s. 39B(1)).

(1) 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, body or school 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.

(2) A person, body or school must not provide or offer to provide an accredited course leading to a foundation secondary qualification registered on the State Register unless that person, body or school is registered on the State Register as being authorised to provide the course.

S. 4.7.3(2)
inserted by
No. 45/2021
s. 8(2).

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 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.

* * * * *

- (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 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 University 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.

S. 4.7(2)(c)
amended by
No. 61/2016
s. 39.

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.

S. 4.7.9
amended by
Nos 58/2007
s. 33, 45/2021
s. 9(1)(2) (LA
s. 39B(1)).

4.7.9 Offence in relation to qualifications

- (1) 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, body or school 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(2)
inserted by
No. 45/2021
s. 9(2).

- (2) A person, body or school must not award, confer or issue, or offer to award, confer or issue, a foundation secondary qualification registered on the State Register unless that person, body or school 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. 4.7.10
inserted by
No. 71/2010
s. 37.

4.7.10 RTO must keep certain information or documents available for inspection

- (1) An RTO must keep, at relevant premises within the meaning of Division 3 of Part 5.8, the following information or documents available for inspection by an authorised officer who is exercising a power under that Division—
- (a) a list of all the students enrolled in courses provided by the RTO at the relevant premises; and
 - (b) the name of the owner and occupier of the relevant premises; and

- (c) a copy of any information prescribed by this Act or the regulations to be made available to students about the RTO's complaint handling processes and the rights of students to lodge complaints with the RTO or the Authority; and
- (d) a copy of a certificate of public liability insurance relating to the relevant premises.

Penalty: 20 penalty units in the case of a natural person and 50 penalty units in the case of a body corporate.

- (2) Subsection (1) does not apply to Victoria Police.

S. 4.7.10(2)
substituted by
No. 37/2014
s. 10(Sch.
item 49.3).

4.7.11 False or misleading information

A person must not knowingly in purported compliance with this Act or the regulations—

- (a) give information or make a statement that is false or misleading in a material particular to the Authority; or
- (b) produce a document that is false or misleading in a material particular to the Authority without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 60 penalty units in the case of a natural person and 300 penalty units in the case of a body corporate.

S. 4.7.11
inserted by
No. 71/2010
s. 37.

S. 4.7.12
inserted by
No. 71/2010
s. 37.

4.7.12 RTO must keep student records

- (1) An RTO must keep records relating to current and former students in accordance with this section.

Penalty: 20 penalty units in the case of a natural person and 100 penalty units in the case of a body corporate.

- (2) Student records kept under this section must—
- (a) be accurate and up to date; and
 - (b) contain the particulars prescribed in the regulations; and
 - (c) be kept in the form prescribed in the regulations; and
 - (d) be kept for the time prescribed in the regulations.

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
 - (da) to extend the 12 month period regarding an RTO's management of the transition from superseded training packages as a result of an application made in accordance with section 4.3.17A; 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

S. 4.8.1(da)
inserted by
No. 45/2021
s. 21.

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).

- (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.
- (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.

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.
- (3) For the avoidance of doubt, the Authority may permit details of students registered for home schooling under Part 4.3 to be disclosed in accordance with Parts 6A and 7A of the **Child Wellbeing and Safety Act 2005**.

S. 4.9.1(3)
inserted by
No. 11/2018
s. 28.

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 any information it has obtained in the course of performing its functions or exercising its powers under this Chapter to a prescribed person or body if the information relates to the performance of a function of that person or body.

S. 4.9.4(1)
amended by
No. 73/2012
s. 16(1)(a),
substituted by
7/2015,
s. 12(1).

S. 4.9.4(1AAA)
inserted by
7/2015,
s. 12(1),
amended by
No. 33/2020
s. 10.

(1AAA) The Authority may ask a prescribed person or body to give the Authority information that may assist the Authority in determining whether or not a school, a school boarding premises or the school boarding services provided at that premises comply with any of the prescribed minimum standards for registration of schools or the prescribed minimum standards for registration of school boarding premises.

S. 4.9.4(1AA)
inserted by
No. 73/2012
s. 16(2),
amended by
Nos 76/2013
s. 19(2),
4/2017
s. 17(1)(d).

(1AA) The Secretary may disclose to the Authority, a department of the Commonwealth Government or another registering body information he or she has about, or arising from, the breach of, or failure to comply with, a government training contract by an RTO.

S. 4.9.4(1A)
inserted by
No. 70/2008
s. 31(1),
substituted by
No. 39/2012
s. 48(1),
amended by
No. 73/2012
s. 16(3).

(1A) Without limiting subsection (1), the Authority or the Secretary may disclose information or give a document in its or his or her custody to any of the following persons upon a written request from that person—

S. 4.9.4(1A)(a)
amended by
No. 73/2012
s. 109(2).

- (a) the National VET Regulator known as the Australian Skills Quality Authority established under the National Vocational Education and Training Regulator Act 2011 of the Commonwealth;
- (b) the Tertiary Education Quality and Standards Agency established under the Tertiary Education Quality and Standards Agency Act 2011 of the Commonwealth;
- (c) the Secretary or a designated authority within the meaning of the Education Services for Overseas Students Act 2000 of the Commonwealth.

(2) A person disclosing information or giving a document under subsection (1) or (1A) or under a law of another jurisdiction corresponding to subsection (1) or (1A) does not contravene an obligation not to disclose the information or give the document, whether imposed by an Act or by another rule of law.

S. 4.9.4(2)
amended by
Nos 70/2008
s. 31(2),
39/2012
s. 48(2),
7/2015
s. 12(2).

(3) In this section—

government training contract has the same meaning as in section 4.1.1(1);

S. 4.9.4(3)
inserted by
No. 73/2012
s. 16(4),
substituted by
No. 7/2015
s. 12(3).

prescribed person or body means any of the following—

S. 4.9.4(3) def.
of *prescribed
person or
body*
amended by
No. 4/2017
s. 17(1)(e).

- (a) the Secretary;
- (b) the Secretary to a Department (within the meaning of section 4(1) of the **Public Administration Act 2004**);
- (c) a public sector body;
- (d) a municipal council;
- (e) a registering body;
- (f) a school registering body;
- (g) a department of the Commonwealth Government or of another State or Territory Government;
- (h) an agency of the Commonwealth;

school registering body means a body equivalent to the Authority in another jurisdiction that is responsible for the registration of schools.

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;
 - (ba) to issue policies, guidelines and directions to an institution, person or body established by or under this Act or continued in operation under this Act;
 - (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;

S. 5.2.1(2)(ba)
inserted by
No. 10/2021
s. 36(1).

* * * * *

S. 5.2.1
(2)(d)(iii)
repealed by
No. 73/2012
s. 6(3).

- (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;
- S. 5.2.1(2)(e)**
amended by
Nos 76/2011
s. 7(1),
32/2022
s. 48(1).
- (e) to require any education or training institution to supply the Minister with any information that the Minister may reasonably require for the effective monitoring, development and planning of education and training in or related to Victoria;
- S. 5.2.1(2)(f)**
inserted by
No. 76/2011
s. 7(2),
amended by
No. 32/2022
s. 48(2).
- (f) to require any TAFE institute or AMES Australia to supply the Minister with any information that the Minister may reasonably require in relation to the exercise of any powers and the performance of any functions of that body outside Victoria.
- S. 5.2.1(3)**
amended by
No. 76/2013
s. 10(a)(b).
- (3) An institution, person or body established by or under this Act or continued in operation under this Act must comply with—
- S. 5.2.1(3)(a)**
amended by
No. 76/2013
s. 10(c).
- (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 or body; and
- (b) a requirement under section (2)(e) issued in writing by the Minister.
- Note**
s. 5.2.1(3)
inserted by
No. 10/2021
s. 36(2).
- Note**
See section 2.6.5 in relation to Ministerial advice to the Institute.
- S. 5.2.1(4)**
amended by
No. 10/2021
s. 36(3)(a).
- (4) Despite the powers given to the Minister under subsections (1) and (2), the Minister may not give any policy, guideline or 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;
 - (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;
- (c) the Institute in relation to the following matters under Part 2.6 that relate to a particular person—
 - (i) the granting of, or refusal to grant, registration to a person;
 - (ii) the renewal or reinstatement of, or refusal to renew or reinstate, a person's registration;
 - (iii) the extension, suspension or cancellation of a person's registration;
 - (iv) if a person's registration has been suspended, the continuation or revocation of that suspension;

**S. 5.2.1
(4)(b)(iv)
amended by
No. 10/2021
s. 36(3)(b).**

**S. 5.2.1(4)(c)
inserted by
No. 10/2021
s. 36(3)(c).**

- (v) the imposition, amendment, variation or revocation of a condition, limitation or restriction on a person's registration;
 - (vi) the recording, exclusion or removal of a matter on the Register of Disciplinary Action;
 - (vii) a request or requirement from the Institute for a person to provide information to the Institute;
 - (viii) the conduct of a national criminal history check or a State police record check on a person;
 - (ix) the conduct of a preliminary assessment or an investigation in respect of a person;
 - (x) the conduct of a hearing by a hearing panel or medical panel in respect of a person;
 - (xi) the determination and findings of a matter by a hearing panel or medical panel in respect of a person.
- (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) The Victorian Academy of Teaching and Leadership must include in its 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 (3) to the Academy and that is expressed to apply to the Academy.

S. 5.2.1(6)
repealed by
No. 10/2021
s. 36(4), new
s. 5.2.1(6)
inserted by
No. 32/2021
s. 5.

- (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**.

S. 5.2.6
substituted by
No. 70/2008
s. 32.

5.2.6 Vesting of land in Minister administering this Act

S. 5.2.6(1)
amended by
No. 28/2010
s. 14(1).

- (1) All land acquired for the purposes of this Act (except land purchased for the purposes of Part 5.7A) 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.
- (5A) Subsection (5) does not apply to the proceeds of the sale or other disposition of any part of the Mildura schools land under Part 5.7A or a disposition in fee simple of any part of that land that has otherwise occurred.
- (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.

S. 5.2.6(5A)
inserted by
No. 28/2010
s. 14(2).

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, 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;
 - (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
Nos 58/2007
s. 35(a),
37/2015 s. 21.

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 or the regulations, 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
- (e) the power to fix fees; or
- (f) the power to appoint authorised officers or school attendance officers; or
- (g) this power to delegate.

S. 5.2.9(d)
amended by
No. 58/2007
s. 35(b).

5.2.9A Delegation of Minister's powers

S. 5.2.9A
inserted by
No. 73/2012
s. 7.

- (1) The Minister, by instrument, may delegate to all the directors of the board of a TAFE institute or all the members of the council of a dual sector university any power or function under Division 2 of Part 5.4.
- (2) If a power or function has been delegated to all the directors of the board of a TAFE institute or all the members of the council of a dual sector university under subsection (1), the directors of that board or the members of that council may delegate the power or function to—
- (a) any person holding office under this Act or any person employed under this Act or involved in the administration of this Act; and
 - (b) in the case of the directors of the board of a TAFE institute, any person employed by the TAFE institute under Part 3.1; and
 - (c) in the case of a dual sector university, any person employed on the staff of the university—

S. 5.2.9A(1)
amended by
No. 76/2013
s. 11.

S. 5.2.9A(2)
amended by
No. 76/2013
s. 11.

S. 5.2.9A(2)(c)
amended by
No. 76/2013
s. 11.

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

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

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.

S. 5.2.12
repealed by
No. 37/2015
s. 22.

* * * * *

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.

(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.

**S. 5.2.13(1A)
inserted by
No. 70/2008
s. 33.**

(2) The Minister's powers to fix fees may be exercised by fixing different fees for different classes of applications or investigations.

(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(3)
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(4)
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.

**S. 5.2.13(5)
inserted by
No. 58/2007
s. 36.**

(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) Subject to section 2.5.5(1A), any staff employed for the purposes of the following provisions must be employed by the Secretary under Part 3 of the **Public Administration Act 2004**—
 - (a) Part 2.5;
 - (b) Division 1 of Part 3.1;
 - (c) Division 2 of Part 3.3;
 - (d) Chapter 4;
 - (e) this Chapter.

S. 5.3.1(2)
substituted by
No. 9/2021
s. 4.

Note

Section 2.5.5(1A) allows the Victorian Curriculum and Assessment Authority to employ staff for limited purposes.

- (3) Staff employed for the purposes of Part 2.6A, in addition to any staff employed by the Secretary in the teaching service under Part 2.4, must be employed by the Secretary under Part 3 of the **Public Administration Act 2004**.

S. 5.3.1(3)
inserted by
No. 32/2021
s. 6.

5.3.2 Secretary's other functions and powers

The Secretary is responsible for implementing any policy or decision of the Minister.

S. 5.3.2
amended by
No. 73/2012
s. 8(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 sections 2.4.3(1)(c) and (d) and 2.4.61A(1).

S. 5.3.3(1)
amended by
Nos 19/2008
s. 10, 42/2016
s. 11.

- (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).
- (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.

S. 5.3.3(2)
amended by
No. 58/2007
s. 37.

5.3.4 Secretary may request criminal record check of employee

S. 5.3.4
(Heading)
amended by
No. 19/2014
s. 13(1).

- (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

S. 5.3.4(2)
amended by
No. 19/2014
s. 13(2).

S. 5.3.4(3)
amended by
No. 19/2014
s. 13(2).

relevant person that is necessary to conduct the check of the person's criminal record.

- (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 check of the person's criminal record.
- (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.
- (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.
- (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.

Part 5.3A—Victorian student numbers and Student Register

Division 1—Introductory

Pt 5.3A
(Heading and
ss 5.3A.1–
5.3A.19)
inserted by
No. 19/2008
s. 11.

5.3A.1 Definitions

S. 5.3A.1
inserted by
No. 19/2008
s. 11.

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—

S. 5.3A.1
def. of
*education or
training
provider*
substituted by
Nos 28/2010
s. 15, 71/2010
s. 23,
amended by
Nos 39/2012
s. 49, 76/2013
s. 12.

- (a) a person, body or school registered by the Authority under Division 1 or 3 of Part 4.3; or
- (b) a person, body or school registered under Division 4 of Part 4.3; or
- (c) a training organisation that is treated as being registered on the National Register under section 4.3.14; or
- (d) a person or body receiving a grant subsidy or loan by the Adult, Community and Further Education Board (within the meaning of Part 3.3) in relation to the provision of adult, community and further education;

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.

5.3A.2 Application of Part

This Part applies to students of less than 25 years of age.

S. 5.3A.2
inserted by
No. 19/2008
s. 11.

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

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).

(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.

(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.

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).

S. 5.3A.6
inserted by
No. 19/2008
s. 11.

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

S. 5.3A.9
inserted by
No. 19/2008
s. 11,
amended by
Nos 28/2010
s. 16, 73/2012
s. 106,
substituted by
No. 32/2022
s. 49.

5.3A.9 Authorisations for use of Victorian student numbers or related information

- (1) The Secretary may authorise, in writing, a person, body or class of persons or bodies to access, use or disclose one or more Victorian student numbers or related information.
- (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;
 - (f) as required or authorised by or under law;
 - (g) a purpose prescribed in the regulations;
 - (h) a purpose specified in a Ministerial Order.
- (3) An authorisation under subsection (1) may be subject to conditions.
- (4) The Secretary may revoke an authorisation under subsection (1) at any time.

5.3A.9A Secretary to have regard to guidelines when giving or revoking an authorisation

S. 5.3A.9A
inserted by
No. 32/2022
s. 50.

The Secretary must have regard to—

- (a) guidelines issued under section 5.3A.10A(2)(a) (if any) before giving an authorisation under section 5.3A.9(1); and
- (b) guidelines issued under section 5.3A.10A(2)(c) (if any) before revoking an authorisation under section 5.3A.9(4).

5.3A.10 Authorised users must act in accordance with Division 3 of Part 5.3A

S. 5.3A.10
inserted by
No. 19/2008
s. 11,
amended by
No. 23/2017
s. 36,
substituted by
No. 32/2022
s. 51.

- (1) An authorised user must not access, use or disclose the Victorian student number or related information except in accordance with this Division.

Penalty: 30 penalty units.

- (2) This section does not apply to an authorised user who is a statutory authority.

5.3A.10A Guidelines

S. 5.3A.10A
inserted by
No. 32/2022
s. 52.

- (1) The Secretary must issue guidelines addressing the following matters—
 - (a) the manner in which an authorised user may access, use or disclose the Victorian student number or related information for a purpose specified in section 5.3A.9(2);
 - (b) the storage and destruction of the Victorian student number or related information in the Student Register;
 - (c) any prescribed matter;
 - (d) any matter specified in a Ministerial Order.
- (2) Without limiting subsection (1), the Secretary may also issue guidelines addressing the following matters—

- (a) matters to be considered in relation to giving an authorisation under section 5.3A.9(1);
 - (b) the types of persons, bodies or classes or persons or bodies who may be authorised by the Secretary under section 5.3A.9(1);
 - (c) matters to be considered in relation to revoking an authorisation under section 5.3A.9(4);
 - (d) notification of the making of an authorisation;
 - (e) reporting requirements for authorised users;
 - (f) any other matter determined by the Secretary;
 - (g) any prescribed matter;
 - (h) any matter specified in a Ministerial Order.
- (3) Guidelines issued under this section take effect on the date specified in the guidelines.
- (4) The Secretary must publish any guidelines issued under this section on an appropriate Internet site as soon as possible after the guidelines are issued.
- (5) The Secretary may review guidelines issued under this section at any time and may issue amended guidelines as the Secretary considers necessary.
- (6) Guidelines issued under this section are not legislative instruments within the meaning of the **Subordinate Legislation Act 1994**.

5.3A.10B Authorised users must comply with guidelines

- (1) An authorised user must comply with guidelines issued by the Secretary (if any) under section 5.3A.10A that relate to the authorised user.
- (2) An authorised user's failure to comply with guidelines issued by the Secretary under section 5.3A.10A does not constitute an offence against section 5.3A.10(1).

S. 5.3A.10B
inserted by
No. 32/2022
s. 52.

5.3A.10C Application of Privacy and Data Protection Act 2014 to certain authorised users

- (1) This section applies to an authorised user that is not—
 - (a) an organisation within the meaning of the **Privacy and Data Protection Act 2014**; or
 - (b) subject to the Privacy Act 1988 of the Commonwealth, or that Act as applied as a law of Victoria by any other law.
- (2) The **Privacy and Data Protection Act 2014** applies to the handling of personal information or unique identifiers by an authorised user under this Division as if the authorised user were an organisation within the meaning of that Act.

S. 5.3A.10C
inserted by
No. 32/2022
s. 52.

5.3A.11 Student, parent or guardian may access Student Register information

- (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

S. 5.3A.11
inserted by
No. 19/2008
s. 11.

(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
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,
amended by
Nos 23/2017
s. 36, 11/2018
s. 29,
substituted by
No. 32/2022
s. 53.

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) as required or authorised by or under law; or

- (c) in the exercise of any other function, power or duty under this Part.

5.3A.15 False representation

S. 5.3A.15
inserted by
No. 19/2008
s. 11.

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—

- (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

S. 5.3A.16
inserted by
No. 19/2008
s. 11.

In this Division, *commencement date* means the day that section 11 of the **Education and Training Reform Amendment Act 2008** comes into operation.

5.3A.17 Secretary to allocate current students with Victorian student numbers

S. 5.3A.17
inserted by
No. 19/2008
s. 11.

- (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.
- (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

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).

(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.

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

Division 1—Work experience and structured workplace learning arrangements

Pt 5.4 Div. 1
(Heading)
amended by
No. 70/2008
s. 34.

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 of Division in relation to work experience and structured workplace learning arrangements

(1) The provisions of this Division relating to work experience arrangements also apply to a student in an accredited senior secondary course or an accredited foundation secondary course (within the meaning of section 4.1.1)—

- (a) at a TAFE institute; or
- (b) provided by a person or body registered under section 4.3.10 with respect to that course—

as if—

- (c) the student were a student at a registered school; and
- (d) the chief executive officer (however described) of the TAFE institute, person or body were the principal of the school; and
- (e) a member of staff of the TAFE institute, person or body were a teacher of the school.

(2) The provisions of this Division relating to structured workplace learning arrangements also apply to a student in an accredited senior secondary course or an accredited foundation secondary course (within the meaning of section 4.1.1) provided by a person or body registered under section 4.3.10 with respect to that course as if—

- (a) the student were a student at a registered school; and
- (b) the chief executive officer (however described) of the person or body were the principal of the school; and

S. 5.4.2
substituted by
No. 76/2011
s. 8.

S. 5.4.2(1)
amended by
No. 45/2021
s. 10.

S. 5.4.2(2)
amended by
No. 45/2021
s. 10.

- (c) a member of staff of the person or body were a teacher of the 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.

- (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);
 - (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.
- (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;
 - (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;
 - (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.
- (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
 - (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.
- (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 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** and the **Workplace Injury Rehabilitation and Compensation Act 2013**, 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).

S. 5.4.9(6)
amended by
No. 67/2013
s. 649(Sch. 9
item 13(1)).

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.
- (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 licence under Division 2 of Part 2 of the **Child Employment Act 2003** is not required for the employment of a

S. 5.4.11(3)
amended by
No. 27/2022
ss 45(1), 76.

child in accordance with a work experience arrangement.

S. 5.4.11(4)
repealed by
No. 27/2022
s. 45(2).

* * * * *

- (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).
- (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.

- (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 including a person who is not beyond the age of compulsory school attendance;

Example

A person may, in certain circumstances, cease his or her secondary education and enrol in a post-secondary education course despite not being over compulsory school age. In these circumstances the person will be a post-secondary student.

practical placement agreement means an agreement entered into under section 5.4.14(1);

S. 5.4.13
def. of
***post-
secondary
student***
amended by
No. 76/2011
s. 9.

TAFE provider means—

- (a) a vocational education and training organisation or further education organisation registered under section 4.3.16; or
- (b) a training organisation that is treated as being registered on the National Register under section 4.3.14.

S. 5.4.13
def. of
**TAFE
provider**
substituted by
No. 76/2011
s. 10.

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 Minister 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.

S. 5.4.14(2)(b)
amended by
No. 73/2012
s. 8(2).

5.4.15 Determination about the placement of post-secondary students

- (1) The Minister 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.

S. 5.4.15(1)
amended by
No. 73/2012
s. 8(3).

S. 5.4.15(2)(c)
amended by
No. 73/2012
s. 8(3).

- (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 Minister 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** and the **Workplace Injury Rehabilitation and Compensation Act 2013**, 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.

S. 5.4.16(5)
amended by
No. 67/2013
s. 649(Sch. 9
item 13(2)).

5.4.17 Suspension of conditions for students

- (1) The Minister 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.

S. 5.4.17(1)
amended by
No. 73/2012
s. 8(4).

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 Authority 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;

S. 5.5.2(1)
amended by
No. 39/2012
s. 4.

- (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 Authority 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.

S. 5.5.2(4)
amended by
No. 39/2012
s. 4.

S. 5.5.3
amended by
No. 39/2012
s. 5.

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 Authority 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 26 of the **Long Service Leave Act 2018**, be taken to have effect as if it did.

S. 5.5.5(3)
amended by
No. 12/2018
s. 58.

- (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 Authority's approval to enter into a training contract with an apprentice

S. 5.5.6
(Heading)
amended by
No. 39/2012
s. 6(1).
S. 5.5.6
amended by
No. 39/2012
s. 6(2).

An employer must not employ a person under a training contract unless the employer is approved by the Authority 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

S. 5.5.7(1)
amended by
No. 39/2012
s. 7.

- (1) In determining whether to approve an employer to employ a person under a training contract the Authority must have regard to the employer's ability to comply with the training contract.

S. 5.5.7(2)
amended by
No. 39/2012
s. 7.

- (2) Without limiting the generality of subsection (1), the Authority 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;
- (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 Authority thinks fit.
- (4) The Authority may revoke an approval at any time and in any circumstances including those where a condition of the approval is breached.

S. 5.5.7(3)(b)
amended by
No. 39/2012
s. 7.

S. 5.5.7(4)
amended by
No. 39/2012
s. 7.

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

S. 5.5.10(1)
amended by
No. 39/2012
s. 8.

(1) A training contract must be in the form, and contain the particulars, approved by the Authority.

S. 5.5.10(2)
amended by
No. 39/2012
s. 8.

(2) The Authority 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.

S. 5.5.10(3)
amended by
No. 39/2012
s. 8.

(3) The Authority may refuse to approve a training contract if the Authority is of the opinion that the training contract does not comply with this Part or any determination of the Authority 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.

S. 5.5.11(2)
amended by
No. 39/2012
s. 9.

(2) If an apprentice has no parent or guardian or no parent or guardian resident in Victoria and capable of acting, the Authority may approve a person to act instead of the parent or guardian.

S. 5.5.11(3)
amended by
No. 39/2012
s. 9.

(3) If an apprentice is under the age of 18 years and the Authority is satisfied that it is in the interests of the employer and the apprentice, the Authority may consent to the training contract being executed by the employer and the apprentice only.

- (4) The Authority 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.

S. 5.5.11(4)
amended by
No. 39/2012
s. 9.

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 Authority or a person or body nominated by the Authority within 14 days after the date the employment of the apprentice commences or any further time allowed by the Authority; 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 Authority 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 Authority 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).

S. 5.5.12(1)(a)
amended by
No. 39/2012
s. 10.

S. 5.5.12(2)
amended by
No. 39/2012
s. 10.

S. 5.5.12(3)
amended by
No. 39/2012
s. 10.

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 Authority, a person or body nominated by the Authority or an approved training agent within 3 months after the date of commencement of the training contract.

S. 5.5.13(c)
amended by
No. 39/2012
s. 11.

5.5.14 Term of a training contract

- (1) The Authority 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 Authority 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 Authority 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.

S. 5.5.14(1)
amended by
No. 39/2012
s. 12.

S. 5.5.14(2)
amended by
No. 39/2012
s. 12.

S. 5.5.14(3)
amended by
No. 39/2012
s. 12.

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 Authority 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 Authority under subsection (2) are in addition to any other powers of the Authority under this Part.

S. 5.5.15(2)
amended by
No. 39/2012
s. 13.

S. 5.5.15(3)
amended by
No. 39/2012
s. 13.

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 Authority may, on the application of the employer—

S. 5.5.16(2)
amended by
No. 39/2012
s. 14.

S. 5.5.16(2)(a)
amended by
No. 39/2012
s. 14.

- (a) order the suspension of the training contract for any period that the Authority thinks fit; or
- (b) order the cancellation of the training contract.

S. 5.5.16(3)
amended by
No. 39/2012
s. 14.

- (3) The Authority 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.

S. 5.5.17
(Heading)
amended by
No. 39/2012
s. 15(1).

5.5.17 Authority to determine grievances in certain circumstances

S. 5.5.17(1)
amended by
No. 39/2012
s. 15(2).

- (1) The Authority 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.

- (2) The Authority must not determine any question or difference about whether money is or is not due by an employer to an apprentice.
- (3) The Authority 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 Authority under this section is not entitled to legal representation.
- (5) A person must not contravene any order made by the Authority under this section.
- Penalty: 5 penalty units.

S. 5.5.17(2)
amended by
No. 39/2012
s. 15(2).

S. 5.5.17(3)
amended by
No. 39/2012
s. 15(2).

S. 5.5.17(4)
amended by
No. 39/2012
s. 15(2).

S. 5.5.17(5)
amended by
No. 39/2012
s. 15(2).

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 Authority under section 4.2.7, the Authority 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 Authority under sections 5.5.6, 5.5.7, 5.5.11(2), (3) and (4), 5.5.14 and 5.5.16(2).

S. 5.5.21(1)
amended by
No. 39/2012
s. 16.

- (2) The Authority 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.

S. 5.5.21(2)
amended by
No. 39/2012
s. 16(b).

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 Authority under section 5.5.21 may apply to the Authority 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 Authority allows.
- (2) The Authority 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 Authority.

S. 5.5.22(1)
amended by
No. 39/2012
s. 17.

S. 5.5.22(2)
amended by
No. 39/2012
s. 17.

S. 5.5.22
(2)(c)(ii)
amended by
No. 39/2012
s. 17.

Division 6—General

5.5.23 Register of apprentices

The Authority must establish and maintain a register of apprentices who have entered into training contracts which have been lodged under section 5.5.12.

S. 5.5.23
amended by
No. 39/2012
s. 18.

S. 5.5.24
amended by
No. 39/2012
s. 19.

5.5.24 Subsidies

The Authority 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.

S. 5.5.25
amended by
No. 39/2012
s. 20.

5.5.25 Fees for certificates

The Authority may charge a fee fixed by the Minister for the issue of any certificate or duplicate certificate for the purposes of this Part.

S. 5.5.26
inserted by
No. 37/2015
s. 23.

5.5.26 Information sharing

- (1) The Authority may disclose any information the Authority has obtained in the course of performing its functions or exercising its powers under this Part to any of the following persons or bodies if the information relates to the performance of a function of that person or body—
 - (a) the Secretary;
 - (b) a public sector body;
 - (c) a department of the Commonwealth Government.

- (2) The Authority, when disclosing information under subsection (1) or under a law of another jurisdiction corresponding to subsection (1), does not contravene an obligation not to disclose the information or give the document, whether imposed by an Act or by another rule of law.

S. 5.5.26(1)(c)
amended by
No. 4/2017
s. 17(1)(f).

Part 5.6—Volunteer workers compensation

5.6.1 Definitions

(1) In this Part—

Accident Compensation Conciliation Service has the same meaning as in the **Workplace Injury Rehabilitation and Compensation Act 2013**;

S. 5.6.1(1)
def. of
*Accident
Compensation
Conciliation
Service*
inserted by
No. 13/2022
s. 16.

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 **Workplace Injury Rehabilitation and Compensation Act 2013**;

S. 5.6.1(1)
def. of
Authority
amended by
No. 67/2013
s. 649(Sch. 9
item 13(3)).

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;

S. 5.6.1(1)
def. of
*domestic
partner*
substituted by
No. 12/2008
s. 73(1)(Sch. 1
item 18.1),
amended by
No. 4/2009
s. 37(Sch. 1
item 11.1).

domestic partner of a person means—

- (a) a person who is in a registered domestic 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);

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;

S. 5.6.1(1)
def. of
*provisional
payments*
inserted by
No. 5/2021
s. 39.

provisional payments means payments provided for under—

- (a) Division 10 of Part 5 of the **Workplace Injury Rehabilitation and Compensation Act 2013**; and
- (b) Division 2BA of Part IV of the **Accident Compensation Act 1985**;

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)—

S. 5.6.1(2)(a)
amended by
No. 4/2009
s. 37(Sch. 1
item 11.2(a)).

(a) *registered domestic relationship* has the same meaning as in the **Relationships Act 2008**; and

S. 5.6.1(2)(b)
amended by
No. 4/2009
s. 37(Sch. 1
item 11.2(b)).

(b) in determining whether persons who are not in a registered domestic 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
 - (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.

(2A) If a volunteer school worker or volunteer student worker who is entitled to make a claim for compensation under this Part does so in respect of a personal injury that is a mental injury, the worker is entitled to be paid provisional payments in relation to that mental injury.

S. 5.6.2(2A)
inserted by
No. 5/2021
s. 40(1).

(2B) Subsection (2A) does not apply—

S. 5.6.2(2B)
inserted by
No. 5/2021
s. 40(1).

(a) if the claim for compensation was made before the commencement of section 11 of the **Workplace Injury Rehabilitation and Compensation Amendment (Provisional Payments) Act 2021**; or

(b) if a claim for compensation relating to the same mental injury and circumstances has previously been determined.

(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 or provisional payments shall, in respect of personal injury suffered on or after 4 p.m. on 31 August 1985 but before 1 July 2014, be paid in accordance with and subject to the **Accident Compensation Act 1985** as if within

S. 5.6.2(4)
amended by
Nos 58/2007
s. 38, 67/2013
s. 649(Sch. 9
item 13(4)),
5/2021
s. 40(2).

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(5)
inserted by
No. 67/2013
s. 649(Sch. 9
item 13(5)),
amended by
No. 5/2021
s. 40(2).

- (5) The compensation or provisional payments shall, in respect of personal injury suffered on or after 1 July 2014, be paid in accordance with and subject to the **Workplace Injury Rehabilitation and Compensation Act 2013** as if, within the meaning of that Act at the time the person 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. 5.6.2A
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.

- (1A) If judgment is obtained, or a compromise or settlement is made, in respect of proceedings referred to in section 326 of the **Workplace Injury Rehabilitation and Compensation Act 2013** in respect of an injury, the Authority or the Crown as the employer is not liable—

S. 5.6.2A(1A)
inserted by
No. 67/2013
s. 649(Sch. 9
item 13(6)).

- (a) where pecuniary loss damages (within the meaning of section 325 of the **Workplace Injury Rehabilitation and Compensation Act 2013**) are awarded, to make payments under section 164, 169 or 170 of that Act in respect of the injury; or
- (b) where damages for pain and suffering (within the meaning of section 325 of the **Workplace Injury Rehabilitation and Compensation Act 2013**) are awarded, to make payments under Division 5 of Part 5 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,
VCAT and the Accident Compensation
Conciliation Service 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 or the
**Workplace Injury Rehabilitation and
Compensation Act 2013** (as the case
requires); and

S. 5.6.4(a)
amended by
Nos 67/2013
s. 649(Sch. 9
item 13(7)),
13/2022
s. 17(a).

- (b) if the County Court, the Magistrates' Court, VCAT or the Accident Compensation Conciliation Service exercises that jurisdiction such of the provisions of those Acts as are applicable apply with the necessary adaptations and modifications.

S. 5.6.4(b)
amended by
No. 13/2022
s. 17(b).

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 and provisional payments under section 5.6.2, the Authority—

S. 5.6.5
amended by
Nos 58/2007
s. 40, 5/2021
s. 41.

- (a) represents the Crown; and
- (b) has the same powers, rights and authorities as an employer has under the **Workers Compensation Act 1958**, the **Accident Compensation Act 1985** or the **Workplace Injury Rehabilitation and Compensation Act 2013** (as the case requires) in regard to the corresponding matter relating to a worker under that Act.

S. 5.6.5(b)
amended by
No. 67/2013
s. 649(Sch. 9
item 13(8)).

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 or provisional payments under section 5.6.2 out of the WorkCover Authority Fund under the **Workplace Injury Rehabilitation and Compensation Act 2013**.
- (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—

S. 5.6.6(2)
amended by
Nos 67/2013
s. 649(Sch. 9
item 13(9)),
5/2021 s. 42.

- (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**.

S. 5.7.1(3)
amended by
No. 58/2007
s. 41.

- (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).

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.

Part 5.7A—Mildura schools land

Division 1—Introductory

Pt 5.7A
(Headings
and
ss 5.7A.1–
5.7A.28)
inserted by
No. 28/2010
s. 17.

5.7A.1 Purpose of this Part

- (1) The purpose of this Part is to re-enact and modernise the provisions of the **Mildura College Lands Act 1916**.
- (2) The provisions of the **Mildura College Lands Act 1916** gave legislative force to a trust over certain land in the Mildura region, the trust being set up by George and William Chaffey in 1887 to benefit an agricultural college to be built in that region, but which ultimately benefited the Mildura Agricultural High School and its successors and subsequently other schools in that region.

S. 5.7A.1
inserted by
No. 28/2010
s. 17.

5.7A.2 Definitions

In this Part—

beneficiary schools means the schools declared to be beneficiary schools in the Order made under section 5.7A.6 and any Order made under section 5.7A.7;

Note

Section 6.1.18(9) is a transitional provision, which provides that, until an Order is made under section 5.7A.6, a beneficiary school is taken to be any school listed as a beneficiary in Schedule 2 to the **Mildura College Lands Act 1916** before its repeal.

beneficiary schools region means that part of the municipal district of the Mildura Rural City Council that is bounded by the Murray River, Meridian Road, Wood Road and the imaginary extension of Meridian Road in a

S. 5.7A.2
inserted by
No. 28/2010
s. 17.

direct line north to the Murray River, the imaginary extension of Wood Road in a direct line to Wilga Road, Wilga Road until it intersects with the Calder Highway, the Calder Highway from Wilga Road until it intersects with Castle Crossings Road, Castle Crossings Road from the Calder Highway until it intersects with Kulkyne Way and the imaginary extension of Castle Crossings Road from that intersection in a direct line east to the Murray River;

S. 5.7A2
def. of *Central Plan Office*
repealed by
No. 53/2017
s. 74.

* * * * *

Mildura schools land has the meaning set out in section 5.7A.3;

school means a registered school;

special fund means the fund established under Division 4;

trustee agreement means an agreement referred to in section 5.7A.18;

trustee company means the trustee company that enters into a trustee agreement with the Minister under section 5.7A.18;

valuer-general means the valuer-general within the meaning of the **Valuation of Land Act 1960**;

S. 5.7A3
inserted by
No. 28/2010
s. 17.

5.7A.3 Mildura schools land

For the purposes of this Part, the *Mildura schools land* means—

- (a) all the parcels of land shown as the Mildura schools land on the plans numbered LEGL./09–397 and LEGL./09–398 and lodged in the Central Plan Office; and

(b) any additional land purchased and held by the Minister for the purposes of this Part—
but does not include any part of the Mildura schools land sold by the Minister under this Part or otherwise disposed of in fee simple.

Note

Under section 5.7A.5, Orders are made varying the Mildura schools land when any of that land is sold or additional land is purchased by the Minister under this Part, or any of the lots of land comprising the Mildura schools land are subdivided or consolidated. Each Order will approve a consolidated plan or plans, which must incorporate all variations to the land as at the date of the Order. The plan or plans will replace the original plans referred to in this section and any subsequent consolidated plans.

5.7A.4 Land purchased under this Part to vest in the Minister administering this Part

**S. 5.7A.4
inserted by
No. 28/2010
s. 17.**

- (1) All land purchased for the purposes of this Part by the Minister is vested in the Minister administering Part 5.7A of the **Education and Training Reform Act 2006** and that Minister is deemed to be the registered proprietor of the land.
- (2) The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title and any other documentation that the Registrar of Titles considers necessary, must make any amendments in the Register that are necessary because of the operation of subsection (1).

5.7A.5 Variation to Mildura schools land by Order

**S. 5.7A.5
inserted by
No. 28/2010
s. 17.**

- (1) The Governor in Council may by Order vary the Mildura schools land by doing any one or more of the following—
 - (a) removing land from the Mildura schools land that has been sold by the Minister under this Part or otherwise disposed of in fee simple;

- (b) adding land to the Mildura schools land that has been purchased by the Minister for the purposes of this Part;
 - (c) changing the number of lots of land that comprise the Mildura schools land because of a subdivision or consolidation of any part or parts of that land.
- (2) An Order under this section varying the Mildura schools land must approve a consolidated plan or plans of that land incorporating all variations to the land made under this section up to the date of the Order.
- (3) An Order under this section must be made on the recommendation of the Minister.
- (4) The Minister must not make a recommendation under subsection (3) unless the Minister has received the appropriate consolidated plan or plans and any other necessary plan, which has been—
 - (a) signed by the Surveyor-General; and
 - (b) lodged at the Central Plan Office.
- (5) An Order under this section must be made as soon as practicable—
 - (a) after any part of the Mildura schools land is sold by the Minister under this Part or otherwise disposed of in fee simple; or
 - (b) land is purchased by the Minister for the purposes of this Part; or
 - (c) the number of the lots of land that comprise the Mildura schools land is changed because of a subdivision or consolidation of any part or parts of that land.

- (6) An Order under this section—
- (a) must be published as soon as practicable after it is made in—
 - (i) the Government Gazette; and
 - (ii) a newspaper circulating generally throughout the beneficiary schools region; and
 - (b) takes effect on the day that it is published in the Government Gazette or, if a later day is specified in the Order, on that day.
- (7) An Order under this section approving a consolidated plan or plans of the Mildura schools land revokes and replaces any existing approved consolidated plan or plans for the Mildura schools land.

5.7A.6 First Order declaring beneficiary schools

- (1) Subject to subsection (2), the Governor in Council must by Order declare every school listed as a beneficiary in Schedule 2 to the **Mildura College Lands Act 1916**, which is operating as a school immediately before the repeal of that Act, to be a beneficiary school for the purposes of this Part.
- (2) If the name of a school listed as a beneficiary in Schedule 2 to the **Mildura College Lands Act 1916** immediately before the repeal of that Act has changed before that repeal, the declaration of that school in subsection (1) must refer to the new name of the school.
- (3) The Order under this section—
- (a) must be published as soon as practicable after it is made in—
 - (i) the Government Gazette; and

S. 5.7A.6
inserted by
No. 28/2010
s. 17.

- (ii) a newspaper circulating generally throughout the beneficiary schools region; and
- (b) takes effect on the day that it is published in the Government Gazette or, if a later day is specified in the Order, on that day.

Note

Section 6.1.18(9) is a transitional provision, which provides that, until an Order is made under section 5.7A.6, a beneficiary school is taken to be any school listed as a beneficiary in Schedule 2 to the **Mildura College Lands Act 1916** before its repeal.

S. 5.7A.7
inserted by
No. 28/2010
s. 17.

5.7A.7 Further Orders varying beneficiary schools

- (1) The Governor in Council may by Order vary the beneficiary schools declared in the Order under section 5.7A.6 or in an Order under this section by doing any or all of the following—
 - (a) declaring an additional school to be a beneficiary school for the purposes of this Part;
 - (b) revoking a previous declaration of a school as a beneficiary school for the purposes of this Part;
 - (c) changing the name of a school declared to be a beneficiary school for the purposes of this Part.
- (2) An Order under this section varying the beneficiary schools must approve a consolidated list of schools declared to be beneficiary schools for the purposes of this Part incorporating all variations to those schools made under this section up to the date of the Order.
- (3) An Order under this section approving a consolidated list of beneficiary schools revokes and replaces any existing approved consolidated list of beneficiary schools.

- (4) An Order under this section must be made on the recommendation of the Minister.
- (5) An Order under this section—
 - (a) must be published as soon as practicable after it is made in—
 - (i) the Government Gazette; and
 - (ii) a newspaper circulating generally throughout the beneficiary schools region; and
 - (b) takes effect on the day that it is published in the Government Gazette or, if a later day is specified in the Order, on that day.
- (6) The Minister must not make a recommendation under subsection (4) unless the Minister is of the opinion that the school is in the beneficiary schools region.
- (7) If the name of a beneficiary school is varied, the variation of the name does not affect the school's entitlement to be paid an amount under section 5.7A.21.

5.7A.8 Orders to be tabled in Parliament

S. 5.7A.8
inserted by
No. 28/2010
s. 17.

- (1) The Minister must cause a copy of any Order under this Division to be laid before each House of the Parliament on or before the 6th sitting day after the publication of the Order in the Government Gazette.
- (2) Section 16B of the **Subordinate Legislation Act 1994** applies to an Order under this Division as if the Order were a legislative instrument within the meaning of that Act published in the Government Gazette in accordance with section 16A of that Act.

S. 5.7A.8(1)
amended by
No. 14/2013
s. 18(1).

S. 5.7A.8(2)
substituted by
No. 14/2013
s. 18(2).

Division 2—Dealings with Mildura schools land

Subdivision 1—Leasing of land

S. 5.7A.9
inserted by
No. 28/2010
s. 17.

5.7A.9 Power of Minister to lease Mildura schools land

- (1) Subject to this Subdivision, the Minister may grant a lease of any part of the Mildura schools land.
- (2) A lease granted under this section—
 - (a) must be for a specific term determined by the Minister; and
 - (b) subject to this Subdivision, is subject to the terms, rent, covenants, conditions and restrictions determined by the Minister.

S. 5.7A.10
inserted by
No. 28/2010
s. 17.

5.7A.10 Rent to be determined on basis of valuation of land

Rent on a lease of land granted under this Subdivision must—

- (a) be determined on the basis of a valuation of the land by the valuer-general; and
- (b) be reviewed according to whichever of the following methods of review is provided for by the lease—
 - (i) at the end of every third year on the basis of a further valuation of the land by the valuer-general; or
 - (ii) at the end of each year of the lease by the application of the all groups consumer price index for Melbourne in original terms last published by the Australian Bureau of Statistics in that year.

S. 5.7A.10
(b)(ii)
substituted by
No. 44/2014
s. 33(Sch.
item 8),
amended by
No. 37/2015
s. 27.

5.7A.11 Valuation of land to include value of improvements

Any valuation by the valuer-general made for the purposes of this Subdivision must include in the valuation any improvements on the land unless—

- (a) those improvements were made by the current leaseholder; or
- (b) a payment in respect of those improvements was made by the current leaseholder to the previous leaseholder upon assignment of the lease to the current leaseholder.

S. 5.7A.11
inserted by
No. 28/2010
s. 17.

5.7A.12 Leaseholder may apply for review to VCAT

- (1) The holder of a lease of land granted under this Subdivision may apply to VCAT for review of a decision made by the valuer-general with respect to the valuation of the land for the purposes of this Subdivision.
- (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.

S. 5.7A.12
inserted by
No. 28/2010
s. 17.

5.7A.13 Ownership of improvements on leased land

- (1) The ownership of any improvements on any land leased under this Subdivision remains with the current leaseholder if that leaseholder—
 - (a) made the improvements; or
 - (b) paid the previous leaseholder for the improvements on assignment of the lease to the leaseholder.

S. 5.7A.13
inserted by
No. 28/2010
s. 17.

- (2) If a leaseholder owns improvements on land leased under this Subdivision and—
- (a) the lease is terminated; and
 - (b) there are no lawful assignees of the lease; and
 - (c) the leaseholder does not remove the improvements—
- the improvements become the property of the Minister.

Subdivision 2—Easements over land

S. 5.7A.14
inserted by
No. 28/2010
s. 17.

5.7A.14 Power of Minister to grant easements over Mildura schools land

The Minister may grant or create in favour of any person an easement over or in respect of any part of the Mildura schools land for the periods and on the terms and conditions determined by the Minister.

Subdivision 3—Sale and purchase of land

S. 5.7A.15
inserted by
No. 28/2010
s. 17.

5.7A.15 Minister holds Mildura schools land on trust for sale

The Mildura schools land is held by the Minister on trust for sale or other disposition of that land for the benefit of the beneficiary schools with power to postpone the sale or other disposition for an indefinite period.

S. 5.7A.16
inserted by
No. 28/2010
s. 17.

5.7A.16 Power of Minister to purchase additional land

The Minister may purchase land in fee simple for the purposes of this Part with money standing to the credit of the special fund.

Subdivision 4—Subdivision or consolidation of land

5.7A.17 Power of Minister to subdivide or consolidate land

The Minister may subdivide or consolidate any part or parts of the Mildura schools land for the purpose of—

- (a) leasing any part of the land under this Part;
or
- (b) selling any part of the land under this Part; or
- (c) any other disposition of the land in fee simple.

S. 5.7A.17
inserted by
No. 28/2010
s. 17.

Division 3—Distribution and use of rents and profits

5.7A.18 Power of Minister to enter agreement with trustee

Without limiting any other power of the Minister, he or she may enter into an agreement with a trustee company within the meaning of the **Trustee Companies Act 1984** for the provision by that company of services with respect to all or any part of the Mildura schools land or the management and administration of—

- (a) any rents and profits arising from the granting of a lease of any part of that land; or
- (b) the special fund.

S. 5.7A.18
inserted by
No. 28/2010
s. 17.

5.7A.19 Agreement to provide for establishment of funds for rents and profits

A trustee agreement must provide for one or more funds to be established by the trustee company for the benefit of the beneficiary schools into which the rents and profits referred to in section 5.7A.18(a) must be paid.

S. 5.7A.19
inserted by
No. 28/2010
s. 17.

S. 5.7A.20
inserted by
No. 28/2010
s. 17.

5.7A.20 Agreement to provide for costs to be paid out of funds

A trustee agreement must provide for the following costs to be paid out of the fund or funds referred to in section 5.7A.19—

- (a) the costs incurred in connection with any subdivision or consolidation of any part or parts of the Mildura schools land, for the purpose of leasing or selling any part of the land or for the purpose of any other disposition of any part of the land in fee simple, including the laying out and construction of any roads and streets;
- (b) the costs incurred by the Minister in connection with the administration of this Part.

S. 5.7A.21
inserted by
No. 28/2010
s. 17.

5.7A.21 Agreement to provide for money in funds to be distributed to beneficiary schools

(1) A trustee agreement must provide that, after costs have been deducted in accordance with section 5.7A.20 from the fund or funds referred to in section 5.7A.19, the remaining money standing to the credit of the fund or funds must be set aside and paid, subject to subsection (2), to each beneficiary school at the end of every quarter in accordance with the following—

- (a) if no direction is given by the Minister under section 5.7A.22, the following formula—

$$D = \frac{A}{B} \times C \text{ where—}$$

A is the number of students enrolled in the beneficiary school as at the preceding 28 February;

B is the total number of students enrolled in all beneficiary schools as at the preceding 28 February;

C is the total amount to be distributed from the fund or funds;

D is the amount to be paid to the school;

(b) any direction given by the Minister under section 5.7A.22.

(2) If the number of students enrolled in a beneficiary school that is entitled to be paid an amount under subsection (1) has not been ascertained by the trustee company by the end of the first quarter, the agreement is taken to provide that the trustee company is to pay that amount as soon as possible after ascertaining the number of students.

5.7A.22 School councils may recommend that distribution of income be varied

S. 5.7A.22
inserted by
No. 28/2010
s. 17.

If the school councils and governing bodies of all the beneficiary schools recommend to the Minister that the distribution of income amongst them be varied in a specified manner, the Minister may direct the trustee company to act in accordance with any such recommendation until superseded by a subsequent direction by the Minister under this section.

5.7A.23 Agreement to provide for reports by trustee company

S. 5.7A.23
inserted by
No. 28/2010
s. 17.

A trustee agreement must provide for the submission of quarterly financial reports by the trustee company to the Minister.

5.7A.24 Distribution amount to be paid to school

S. 5.7A.24
inserted by
No. 28/2010
s. 17.

(1) The school council or governing body of a beneficiary school entitled to be paid an amount under section 5.7A.21 may request that the Minister give approval for the amount to be paid

in parts as requested from time to time by the council or body.

- (2) The Minister may approve a request under subsection (1).
- (3) The trustee company must pay to the school council or governing body of a beneficiary school or a person or body acting on behalf of that council or governing body—
 - (i) if there is no approval given under subsection (2), the whole amount that the school is entitled to be paid under section 5.7A.21; or
 - (ii) the part of that amount that is from time to time requested in accordance with an approval under subsection (2).

S. 5.7A.25
inserted by
No. 28/2010
s. 17.

5.7A.25 Use of distributed money by school councils and governing bodies

- (1) The school council or governing body of a beneficiary school to or on behalf of which money is paid under section 5.7A.24 holds the money on trust for the benefit of that school.
- (2) The school council or governing body holding money for the benefit of a school under subsection (1) must use the money together with any interest earned on the money for any of the following purposes—
 - (a) the provision, erection, re-erection, extension, repair, maintenance and renewal of buildings;
 - (b) the maintenance of grounds;
 - (c) the provision and maintenance of equipment (including sports equipment) for or in connection with the school.

- (3) The school council or governing body of a beneficiary school may invest money paid to it under section 5.7A.24, including any interest earned on that money, which is not for the time being required for any of the purposes referred to in subsection (2).
- (4) A school council or governing body must invest any money paid to it under section 5.7A.24, including any interest earned on that money—
 - (a) in any manner in which a trustee may invest trust funds under the **Trustee Act 1958**; and
 - (b) in accordance with any guidelines issued by the Minister.

Division 4—Proceeds derived from disposition of land or creation of easement over land

5.7A.26 Proceeds of dispositions of land and easements to be paid into special fund

S. 5.7A.26
inserted by
No. 28/2010
s. 17.

- (1) The following must be paid into a fund to be established for this purpose (the *special fund*)—
 - (a) the proceeds arising from the sale or other disposition under this Part of any part of the Mildura schools land;
 - (b) the proceeds arising from any other disposition in fee simple of any part of the Mildura schools land;
 - (c) the proceeds arising from the granting of an easement over or in respect of any part of the Mildura schools land.
- (2) The proceeds paid into the special fund under subsection (1) must be invested in the purchase of land in fee simple for the purposes of this Part at a time to be determined by the Minister and, until so invested, must continue to be held in the special fund.

S. 5.7A.27
inserted by
No. 28/2010
s. 17.

5.7A.27 Income derived from proceeds treated as rent and profits

All income derived from money standing to the credit of the special fund must be applied in the same manner that would be applicable in accordance with Division 3 as if the income were rents and profits arising from a grant of a lease under Division 2 and this Part has effect in relation to the income accordingly.

S. 5.7A.28
inserted by
No. 28/2010
s. 17.

5.7A.28 Division has effect despite contrary law

This Division has effect despite any rule of law to the contrary or any provision to the contrary made by or under any Act (other than the **Charter of Human Rights and Responsibilities Act 2006**) or by any instrument.

Part 5.8—Enforcement

Division 1—Appointment of authorised officers

Pt 5.8 Div. 1
(Heading)
inserted by
No. 71/2010
s. 38.

5.8.1 Authorised officers

(1) The Secretary or the Authority may appoint any of the following persons as an authorised officer for the purposes of this Act relating to apprentices—

S. 5.8.1(1)
substituted by
No. 39/2012
s. 21.

(a) a person employed under the **Public Administration Act 2004** in the administration of Part 3.1, 3.2 or 5.5 or Chapter 4;

(b) a person employed by a TAFE institute or a university;

S. 5.8.1(1)(b)
amended by
Nos 73/2012
s. 109(3),
76/2013 s. 13,
69/2015 s. 14.

(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.

(4) The Authority may appoint any of the following persons as an authorised officer for the purposes of Subdivision 3 of Division 3—

S. 5.8.1(4)
inserted by
No. 71/2010
s. 39.

(a) a person employed under Part 3 of the **Public Administration Act 2004**; or

S. 5.8.1(5)
inserted by
No. 71/2010
s. 39.

(b) a person employed by a public entity within the meaning of section 5 of the **Public Administration Act 2004**.

- (5) The Secretary, Institute or Authority must not appoint an authorised officer under this section unless the Secretary, Institute or Authority is satisfied that the person is appropriately qualified or has successfully completed appropriate training.

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.

S. 5.8.2(3)
inserted by
No. 71/2010
s. 40.

- (3) On appointing an authorised officer under section 5.8.1(4) the Authority must issue a document to that officer, which must—
- (a) set out the name of the officer; and
 - (b) set out the powers under Subdivision 3 of Division 3, which the authorised officer is authorised to exercise; and
 - (c) include information about a person's right to make a complaint to the Authority about the exercise of a power by an authorised officer appointed under section 5.8.1(4).

5.8.2A Authorised officer must return identity card to Authority

S. 5.8.2A
inserted by
No. 71/2010
s. 41.

If an authorised officer's appointment under section 5.8.1(4) is revoked or expires, the officer must return his or her identity card to the Authority as soon as is practicable.

Penalty: 10 penalty units.

5.8.2AB Complaints against authorised officers

S. 5.8.2AB
inserted by
No. 31/2018
s. 59.

- (1) Any person may complain to the Authority about the exercise of a power under this Act by an authorised officer appointed by the Authority.
- (2) The Authority must—
 - (a) investigate any complaint made to the Authority; and
 - (b) provide a written report to the complainant on the results of the investigation.

Division 2—Enforcement powers that do not relate to RTOs

Pt 5.8 Div. 2
(Heading)
inserted by
No. 71/2010
s. 42.

5.8.2B Application of this Division

S. 5.8.2B
inserted by
No. 71/2010
s. 42.

This Division does not apply in respect of an RTO.

5.8.3 Powers of authorised officers

S. 5.8.3(1)
amended by
No. 39/2012
s. 22(1).

- (1) An authorised officer appointed by the Secretary or the Authority under section 5.8.1(1)—
 - (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
 - (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 under section 5.8.1(3) with any necessary help, may enter, at any time during ordinary working hours (except in the case of a school boarding premises in which case the hours of entry are between 7 a.m. and 9 p.m.) on any day, any premises—

S. 5.8.3(3)
amended by
Nos 39/2012
s. 22(2),
33/2020
s. 11(1)(a).

- (a) where, or where the officer has reasonable cause to believe that a school or a school boarding premises registered or required to be registered under Part 4.3 is being carried on or conducted; and **S. 5.8.3(3)(a) amended by No. 33/2020 s. 11(1)(b).**
- (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 **S. 5.8.3(3)(b) amended by No. 70/2008 s. 39(2).**
- (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)(ea) inserted by No. 58/2007 s. 42(a).**
- (f) in the case of a premises referred to in paragraph (a), may do any of the following— **S. 5.8.3(3)(f) amended by No. 3/2008 s. 6, substituted by No. 33/2020 s. 11(1)(c).**
- (i) make any inquiries;
- (ii) inspect or examine the attendance register of a school or the location records of students boarding at a school boarding premises;

- (iii) inspect and examine any documents relating to the prescribed minimum standards for registration of schools or the prescribed minimum standards for registration of school boarding premises;
- (iv) take copies or extracts from any documents that have been inspected or examined; 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

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|--|---|
| <p>(k) 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 that are specified in a notice under section 5.8.10 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</p> | <p>S. 5.8.3(3)(k) amended by Nos 58/2007 s. 42(b), 23/2021 s. 73(1).</p> |
| <p>(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.</p> | <p>S. 5.8.3(3)(l) inserted by No. 58/2007 s. 42(c), amended by No. 19/2008 s. 14(g).</p> |
| <p>(3A) Subject to subsections (4) and (5), while exercising a power of entry under this section, the authorised officer may—</p> <ul style="list-style-type: none">(a) search any part of the premises; and(b) inspect and examine any document or thing at the premises; and(c) observe any activity being conducted at the premises; and(d) seize any document or any other thing at the premises for the purposes of inspecting, examining or testing it; and(e) make copies of, or take extracts from, any document at the premises; and(f) take photographs, or make any type of recording or sketches, of any document, thing or activity at the premises. | <p>S. 5.8.3(3A) inserted by No. 23/2021 s. 73(2).</p> |

S. 5.8.3(4)
inserted by
No. 71/2010
s. 43,
amended by
No. 33/2020
s. 11(2).

- (4) An authorised officer may not exercise any power under this section in relation to premises used or used mainly as residential premises (other than a school boarding premises), except with the consent of the occupier.

S. 5.8.3(5)
inserted by
No. 71/2010
s. 43.

- (5) An authorised officer may not exercise any power under this section 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.

S. 5.8.3AA
inserted by
No. 23/2021
s. 74.

5.8.3AA Receipt must be given for any thing seized

- (1) An authorised officer must not seize any document or thing apparently in the possession or custody of a person under section 5.8.3 unless the authorised officer gives the person a receipt for the document or thing seized that—
- (a) identifies the document or thing; and
 - (b) states the name of the officer and the reason why the document or thing is being seized.
- (2) If an authorised officer is unable to discover the identity of—
- (a) the lawful owner of a document or thing seized under section 5.8.3; or
 - (b) the person from whose custody a document or thing is seized under section 5.8.3—
- the authorised officer must leave the premises from which the document or thing was seized.

5.8.3AB Copies of seized documents

- (1) If an authorised officer retains possession of a document seized from a person under section 5.8.3, the officer must give the person, within 21 days of the seizure, a copy of the document certified as correct by the authorised officer.
- (2) A copy of a document certified under subsection (1) is to be received in all courts and tribunals to be evidence of equal validity to the original.

S. 5.8.3AB
inserted by
No. 23/2021
s. 74.

5.8.3AC Retention and return of seized documents or things

- (1) If an authorised officer seizes a document or thing under section 5.8.3, the officer must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.
- (2) If the document or thing seized has not been returned within 3 months after it was seized, the authorised officer must take reasonable steps to return it unless—
 - (a) proceedings for the purpose for which the document or thing was retained have commenced within that 3-month period and those proceedings (including any appeal) have not been completed; or
 - (b) the Magistrates' Court makes an order under section 5.8.3AD extending the period during which the document or thing may be retained.

S. 5.8.3AC
inserted by
No. 23/2021
s. 74.

5.8.3AD Magistrates' Court may extend 3-month period

- (1) An authorised officer may apply to the Magistrates' Court—
 - (a) within 3 months after seizing a document or thing under section 5.8.3; or

S. 5.8.3AD
inserted by
No. 23/2021
s. 74.

(b) if an extension has been granted under this section, before the end of the period of the extension—

for an extension (not exceeding 3 months) of the period for which the officer may retain the document or thing but so that the total period of retention does not exceed 12 months.

- (2) The Magistrates' Court may order an extension under this section if it is satisfied that—
- (a) it is in the interests of justice; and
 - (b) the total period of retention does not exceed 12 months; and
 - (c) retention of the document or thing is necessary—
 - (i) for the purposes of an investigation into whether a contravention of this Act, the regulations or the Child Safe Standards has occurred; or
 - (ii) to enable evidence of a contravention of this Act, the regulations or the Child Safe Standards to be obtained for the purposes of a proceeding under this Act.
- (3) At least 7 days prior to the hearing of an application under this section, notice of the application must be sent to the owner of the document or thing described in the application.

Division 3—Enforcement powers relating to RTOs

Subdivision 1—General

Pt 5.8 Div. 3
(Heading and
ss 5.8.3A–
5.8.3Z)
inserted by
No. 71/2010
s. 44.

5.8.3A Application of Division

(1) This Division applies only in respect of an RTO.

S. 5.8.3A
inserted by
No. 71/2010
s. 44.

(2) In this Division *RTO* does not include Victoria Police.

S. 5.8.3A(2)
substituted by
No. 37/2014
s. 10(Sch.
item 49.4).

5.8.3B Definitions

In this Division—

S. 5.8.3B
inserted by
No. 71/2010
s. 44.

occupier in relation to relevant premises means a natural person who—

- (a) if the premises or part of the premises is being used for residential purposes, is the occupier of the premises or the part of the premises; or
- (b) in any other case, is or appears to be at least 16 years of age and who is or appears to be in charge of the premises;

relevant premises means any premises—

- (a) from which an RTO carries on the business of providing vocational education and training; or
- (b) from which the business of providing vocational education and training is carried out and that is occupied by an RTO; or

S. 5.8.3B
def. of
relevant law
substituted by
No. 23/2021
s. 75.

- (c) that is the registered office under the Corporations Act or the principal place of business of an RTO;

relevant law means—

- (a) this Act and the regulations; or
(b) the RTO standards within the meaning of Chapter 4; or
(c) an undertaking given under this Division that is subject to a court order; or
(d) in relation to an RTO that is a relevant entity, the Child Safe Standards.

Subdivision 2—Warnings

S. 5.8.3C
inserted by
No. 71/2010
s. 44.

5.8.3C Warning notice to public about RTO

- (1) If satisfied it is in the public interest to do so, the Authority may publish or cause to be published a notice containing statements or giving warnings or information about both or either of the following—
- (a) that an RTO specified in the notice is under investigation for compliance with a relevant law;
- (b) the possible risks involved in participating in activities or the kind of activities or using the services or the kind of services specified in the notice.
- (2) A notice under this section must be published in the Government Gazette and in a newspaper circulating generally throughout the State.

Subdivision 3—Powers of authorised officers

5.8.3D Authorised officers defined for this Subdivision

In this Subdivision *authorised officer* means an authorised officer appointed under section 5.8.1(4).

S. 5.8.3D
inserted by
No. 71/2010
s. 44.

5.8.3E Production of identity card

- (1) An authorised officer must produce for inspection his or her identity card and the document issued under section 5.8.2(3) setting out the powers under this Subdivision, which the officer is authorised to exercise—
 - (a) before exercising a power under this Subdivision, other than a requirement made by post; and
 - (b) at any other time during an inspection or search of any premises if asked to do so.
- (2) It is not necessary for an authorised officer to comply with a request to produce his or her identity card and document under subsection (1), if—
 - (a) the request is made by a person to whom the officer has already produced his or her identity card and document before or during the exercise of a power under this Subdivision; and
 - (b) the officer considers the request to be unreasonable or made for the purpose of delaying or hindering the exercise of a power under this Subdivision.

S. 5.8.3E
inserted by
No. 71/2010
s. 44.

5.8.3F Searches of premises to monitor compliance with a relevant law

- (1) For the purposes of monitoring compliance with the relevant law, an authorised officer may, subject to this section—

S. 5.8.3F
inserted by
No. 71/2010
s. 44.

- (a) enter and search any relevant premises;
 - (b) open an unlocked door, panel, object or other thing or open an unlocked place at the premises;
 - (c) move, but not take away, any thing on the premises that is not locked or sealed;
 - (d) check the existence of and inspect any facilities or equipment required to be installed, used or maintained on the premises by a relevant law;
 - (e) in the case of any document required to be kept on the premises by a relevant law—
 - (i) require the document to be produced for examination;
 - (ii) inspect and make copies of, or take extracts from, the document or arrange for the making of copies or the taking of extracts to be done on the premises or elsewhere;
 - (iii) remove the document for so long as is reasonably necessary to make copies or take extracts from the document;
 - (f) inspect any thing found on or in the premises that the officer believes on reasonable grounds provides, or may on further inspection provide, evidence of a contravention of a relevant law;
 - (g) use any assistants the officer considers necessary to exercise the powers conferred by this section.
- (2) Before requiring a person to comply with a requirement to assist the authorised officer in the exercise of a power under subsection (1) the officer must—

- (a) warn the person that a refusal or failure to comply with the requirement, without reasonable excuse, is an offence; and
 - (b) warn the person that it is an offence to hinder, obstruct or delay an authorised officer in the exercise of a power under subsection (1); and
 - (c) inform the person of the effect of section 5.8.3S.
- (3) An authorised officer may only enter relevant premises and exercise a power under subsection (1) at any reasonable hour in the daytime or at any time that the premises are open to the public, unless the occupier has consented to the entry and to the exercise of the power at a time outside of those times.
- (4) An authorised officer must not enter, or exercise a power under subsection (1) in, any part of relevant premises that is used for residential purposes.
- (5) An authorised officer must not enter relevant premises under this section if it is unattended.
- (6) If an authorised officer enters relevant premises under this section and finds it unattended, the officer must—
- (a) leave a notice for the occupier—
 - (i) informing the occupier that an entry has occurred; and
 - (ii) setting out the provisions of this Act under which the officer had entered the premises; and
 - (iii) setting out the officer's contact details; and
 - (b) immediately leave the premises.

- (7) An authorised officer may exercise powers under this section only to the extent that it is reasonably necessary to do so for the purposes of determining compliance with the relevant law.

S. 5.8.3G
inserted by
No. 71/2010
s. 44.

5.8.3G Entry and search of relevant premises with consent if alleged contravention

- (1) If an authorised officer believes, on reasonable grounds, that a person has contravened a relevant law and that there may be evidence of the alleged contravention at any relevant premises, the officer, with the consent of the occupier of the premises, may, subject to this section—
- (a) enter and search the premises;
 - (b) seize and take any thing found on the premises, which the officer believes on reasonable grounds, to be connected with the alleged contravention;
 - (c) in the case of any document on the premises, if the officer believes, on reasonable grounds, that it is connected with the alleged contravention, the officer may do all or any of the following—
 - (i) require the document to be produced for examination;
 - (ii) examine, make copies or take extracts from the document, or arrange for the making of copies or the taking of extracts to be done on the premises or elsewhere;
 - (iii) remove the document for so long as is reasonably necessary to make copies or take extracts from the document;

- (d) make any still or moving image or audio-visual recording that the officer believes, on reasonable grounds, is necessary for the purpose of establishing the alleged contravention;
 - (e) use any assistants the officer considers necessary to exercise the powers conferred by this section.
- (2) Before requiring a person to comply with a requirement to assist the authorised officer in the exercise of a power under subsection (1) the officer must—
- (a) warn the person that a refusal or failure to comply with the requirement, without reasonable excuse, is an offence; and
 - (b) warn the person that it is an offence to hinder, obstruct or delay an authorised officer in the exercise of a power under subsection (1); and
 - (c) inform the person of the effect of section 5.8.3S.
- (3) An authorised officer must not enter, or exercise a power under subsection (1) in, any part of relevant premises that is used for residential purposes.

5.8.3H Procedure for obtaining consent to searches under section 5.8.3F or 5.8.3G

S. 5.8.3H
inserted by
No. 71/2010
s. 44.

- (1) An authorised officer must not enter and search any relevant premises under section 5.8.3F or 5.8.3G with the consent of the occupier unless, before the occupier consents to that entry, the officer has—
- (a) produced for inspection his or her identity card and the document issued under section 5.8.2(3) setting out the powers under

- the relevant section, which the officer is authorised to exercise; and
- (b) informed the occupier—
- (i) of the purpose of the search; and
 - (ii) that the occupier may refuse to give consent to the entry and search or to the seizure of any thing found during the search; and
 - (iii) that the occupier may refuse to consent to the taking of any copy or extract from a document found on the premises during the search; and
 - (iv) that any thing seized or taken during the search with the consent of the occupier may be used in evidence in proceedings.
- (2) If an occupier consents to an entry and search, the authorised officer who requested consent must before entering the relevant premises ask the occupier to sign an acknowledgment stating—
- (a) that the occupier has been informed of the purpose of the search and that any thing seized or taken in the search with the consent of the occupier may be used in evidence in proceedings; and
 - (b) that the occupier has been informed that he or she may refuse to give consent to the entry and search or to the seizure of any thing or to the taking of any copy or extract; and
 - (c) that the occupier has consented to the entry and search; and
 - (d) the date and time that the occupier consented.

- (3) If an occupier consents to the seizure or taking of any thing during a search under section 5.8.3F or 5.8.3G, the authorised officer must, before seizing or taking the thing, ask the occupier to sign an acknowledgment stating—
 - (a) that the occupier has consented to the seizure or taking of the thing; and
 - (b) the date and time that the occupier consented.
- (4) An occupier who signs an acknowledgment must be given a copy of the signed acknowledgment before the authorised officer leaves the relevant premises.
- (5) If, in any proceeding, an acknowledgment is not produced to the court or a tribunal, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry and search or to the seizure or the taking of the thing.
- (6) For the purposes of this Part, a person does not obstruct or hinder an authorised officer by refusing to consent to an entry or the exercise of a power under section 5.8.3F or 5.8.3G.
- (7) Consent given under this section may be withdrawn at any time.
- (8) If consent given under this section is withdrawn, the exercise of any power under section 5.8.3F or 5.8.3G that is reliant on that consent must immediately cease.

5.8.3I Search warrants

- (1) An authorised officer may apply to a magistrate for the issue of a search warrant in relation to particular relevant premises or former relevant premises, if the officer believes on reasonable grounds that there is on the premises evidence that

**S. 5.8.3I
inserted by
No. 71/2010
s. 44.**

S. 5.8.3(2)
amended by
No. 6/2018
s. 68(Sch. 2
item 44).

a person or persons may have contravened a relevant law.

- (2) If a magistrate is satisfied, by the evidence, on oath or by affirmation or by affidavit, of the authorised officer that there are reasonable grounds to believe that there is a thing, document or device of a particular kind connected with a contravention of a relevant law on any relevant premises or former relevant premises, the magistrate may issue a search warrant, in accordance with the **Magistrates' Court Act 1989**, authorising an authorised officer named in the warrant, together with any other person or persons named or otherwise identified in the warrant and with any necessary equipment—
- (a) to enter the premises specified in the warrant; and
 - (b) to do all or any of the following—
 - (i) search for;
 - (ii) seize;
 - (iii) secure against interference;
 - (iv) examine and inspect—

a thing, document or device of a particular kind named or described in the warrant and which the officer believes, on reasonable grounds, to be connected with the alleged contravention; and
 - (c) in the case of any document of a particular kind, named or described in the warrant, if the officer believes, on reasonable grounds, that it is connected with the alleged contravention, do all or any of the following—
 - (i) require the document to be produced for inspection;

- (ii) examine, make copies or take extracts from the document, or arrange for the making of copies or the taking of extracts to be done on the premises or elsewhere;
 - (iii) remove the document for so long as is reasonably necessary to make copies or take extracts from the document.
- (3) A search warrant directed to a named authorised officer under subsection (2) may be executed by any authorised officer who is empowered under this Subdivision to apply for such a search warrant.
- (4) A search warrant issued under this section must state—
 - (a) the purpose for which the search is required and the nature of the alleged contravention; and
 - (b) any conditions to which the warrant is subject; and
 - (c) the premises to be searched; and
 - (d) the thing or things in respect of which the warrant is issued; and
 - (e) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
 - (f) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.
- (5) Except as provided by this Act, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

- (6) In this section *former relevant premises* means any premises—
- (a) from which an RTO carried on the business of providing vocational education and training within the last 6 months; or
 - (b) from which the business of providing vocational education and training was carried out and that was occupied by an RTO within the last 6 months.

S. 5.8.3J
inserted by
No. 71/2010
s. 44.

5.8.3J Announcement before entry

- (1) On executing a search warrant in respect of any premises, the authorised officer executing the warrant—
 - (a) must announce that he or she is authorised by the warrant to enter the premises; and
 - (b) if the officer has been unable to obtain unforced entry, must give any person at the premises an opportunity to allow entry to the premises.
- (2) An authorised officer need not comply with subsection (1) if he or she believes, on reasonable grounds that immediate entry to the premises is required to ensure—
 - (a) the safety of any person; or
 - (b) that the effective execution of the search warrant is not frustrated.

S. 5.8.3K
inserted by
No. 71/2010
s. 44.

5.8.3K Details of warrant to be given to occupier or person

- (1) If the occupier is present at any premises where a search warrant is being executed, the authorised officer must—
 - (a) identify himself or herself to the occupier; and
 - (b) give to the occupier a copy of the warrant.

- (2) If the occupier is not present at any premises where a search warrant is being executed, the authorised officer must—
- (a) identify himself or herself to a person at the premises; and
 - (b) give to the person a copy of the warrant.

5.8.3L Seizure of things not mentioned in the warrant

A search warrant under section 5.8.3I authorises an authorised officer executing the search warrant, in addition to the seizure of any thing of the kind described in the warrant, to seize any thing which is not of the kind described in the warrant if—

- (a) the authorised officer believes, on reasonable grounds, that the thing—
 - (i) is of a kind which could have been included in a search warrant issued under this Subdivision; or
 - (ii) will afford evidence about the contravention of a relevant law; and
- (b) in the case of seizure, the authorised officer believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction or its use in the contravention of a relevant law.

S. 5.8.3L
inserted by
No. 71/2010
s. 44.

5.8.3M Receipt must be given for any thing seized

- (1) An authorised officer must not seize a thing, document or device apparently in the possession or custody of a person under this Subdivision unless the authorised officer gives the person a receipt for the thing, document or device seized that—
- (a) identifies the thing, document or device; and

S. 5.8.3M
inserted by
No. 71/2010
s. 44.

(b) states the name of the officer and the reason why the thing, document or device is being seized.

(2) If an authorised officer is unable to discover the identity of—

(a) the lawful owner of a thing, document or device seized under this Subdivision; or

(b) the person from whose custody a thing, document or device is seized under this Subdivision—

the authorised officer must leave the premises from which the thing, document or device was seized.

S. 5.8.3N
inserted by
No. 71/2010
s. 44.

5.8.3N Copies of seized documents

(1) If an authorised officer retains possession of a document seized from a person under this Subdivision, the officer must give the person, within 21 days of the seizure, a copy of the document certified as correct by the authorised officer.

(2) A copy of a document certified under subsection (1) is to be received in all courts and tribunals to be evidence of equal validity to the original.

S. 5.8.3O
inserted by
No. 71/2010
s. 44.

5.8.3O Retention and return of seized documents or things

(1) If an authorised officer seizes a document or other thing under this Subdivision, the officer must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.

(2) If the document or thing seized has not been returned within 3 months after it was seized, the authorised officer must take reasonable steps to return it unless—

- (a) proceedings for the purpose for which the document or thing was retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or
- (b) the Magistrates' Court makes an order under section 5.8.3P extending the period during which the document or thing may be retained.

5.8.3P Magistrates' Court may extend 3 month period

**S. 5.8.3P
inserted by
No. 71/2010
s. 44.**

- (1) An authorised officer may apply to the Magistrates' Court—
 - (a) within 3 months after seizing a document or other thing under this Subdivision; or
 - (b) if an extension has been granted under this section, before the end of the period of the extension—

for an extension (not exceeding 3 months) of the period for which the officer may retain the document or thing but so that the total period of retention does not exceed 12 months.

- (2) The Magistrates' Court may order an extension under this section if it is satisfied that—
 - (a) it is in the interests of justice; and
 - (b) the total period of retention does not exceed 12 months; and
 - (c) retention of the document or other thing is necessary—
 - (i) for the purposes of an investigation into whether a contravention of a relevant law has occurred; or

(ii) to enable evidence of a contravention of a relevant law to be obtained for the purposes of a proceeding under this Act.

(3) At least 7 days prior to the hearing of an application under this section, notice of the application must be sent to the owner of the document or thing described in the application.

S. 5.8.3Q
inserted by
No. 71/2010
s. 44.

5.8.3Q Requirement to assist authorised officer during entry

To the extent that it is reasonably necessary to determine compliance with the relevant law, an authorised officer exercising a power of entry of premises under this Subdivision who produces his or her identity card and document issued under section 5.8.2(3) for inspection by the occupier of the premises or an agent or employee of the occupier may require that person—

- (a) to give information to the officer, orally or in writing; and
- (b) to produce documents, required to be kept at the premises by a relevant law, to the officer; and
- (c) to give reasonable assistance to the officer.

S. 5.8.3R
inserted by
No. 71/2010
s. 44.

5.8.3R Refusal or failure to comply with requirement

(1) A person must not, without reasonable excuse, refuse or fail to comply with a requirement of an authorised officer under this Subdivision.

Penalty: 60 penalty units in the case of a natural person and 300 penalty units in the case of a body corporate.

(2) Despite subsection (1), it is not an offence for a person to fail to comply with a requirement of an authorised officer under this Subdivision if the authorised officer did not comply with

section 5.8.3E(1) or either section 5.8.3F(2) or 5.8.3G(2) (as the case requires) before requiring the person to comply with the requirement.

5.8.3S Protection against self-incrimination

S. 5.8.3S
inserted by
No. 71/2010
s. 44.

- (1) It is a reasonable excuse for a natural person to refuse or fail to give information or do any other thing that the person is required to do by or under this Subdivision, if the giving of the information or the doing of that other thing would tend to incriminate the person.
- (2) Despite subsection (1), it is not a reasonable excuse for a natural person to refuse or fail to produce a document that the person is required to produce by or under this Subdivision, if the production of the document would tend to incriminate the person.

5.8.3T Offence to give false or misleading information

S. 5.8.3T
inserted by
No. 71/2010
s. 44.

A person must not knowingly—

- (a) give information to an authorised officer under this Subdivision that the person believes to be false or misleading in any material particular; or
- (b) produce a document to an authorised officer under this Subdivision that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 5 penalty units.

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S. 5.8.3U
inserted by
No. 71/2010
s. 44,
repealed by
No. 31/2018
s. 60.

Subdivision 4—Undertakings

S. 5.8.3V
inserted by
No. 71/2010
s. 44.

5.8.3V Undertakings

- (1) The Authority may accept a written undertaking given by an RTO in connection with—
 - (a) any matter in relation to which the Authority has a power or function under this Act; or
 - (b) any matter relating to a contravention of a relevant law.
- (2) For the avoidance of doubt, an RTO may give an undertaking under this Subdivision to establish a trust fund into which students' fees are paid and the circumstances in which funds may be withdrawn from that trust fund.
- (3) For the avoidance of doubt, an undertaking given or Court order made under this Subdivision may not be inconsistent with a relevant law.
- (4) An RTO may withdraw or vary an undertaking at any time, if the RTO has first obtained the consent of the Authority.

S. 5.8.3W
inserted by
No. 71/2010
s. 44.

5.8.3W Copy of undertaking

The Authority must give a copy of an undertaking given under section 5.8.3V to the RTO that gave the undertaking.

S. 5.8.3X
inserted by
No. 71/2010
s. 44.

5.8.3X Register of undertakings

The Authority must—

- (a) maintain a register of undertakings; and
- (b) register each undertaking given under this Subdivision in the register of undertakings.

5.8.3Y Authority may apply for Court order if undertaking breached

S. 5.8.3Y
inserted by
No. 71/2010
s. 44.

- (1) If the Authority considers that an RTO has breached any of the terms of an undertaking given by the RTO under this Subdivision, the Authority may apply to the Magistrates' Court for an order under subsection (2).
- (2) If the Magistrates' Court is satisfied that the RTO has breached a condition of the undertaking, the Magistrates' Court may make all or any of the following orders—
 - (a) an order directing the RTO to comply with the condition of the undertaking;
 - (b) an order directing the RTO to pay to the State an amount up to the amount of any financial benefit that the RTO has obtained directly or indirectly and that is reasonably attributable to the breach;
 - (c) any order that the Magistrates' Court considers appropriate directing the RTO to compensate any other person who has suffered loss, injury or damage as a result of the breach;
 - (d) any other order that the Magistrates' Court considers appropriate.
- (3) If a body corporate is found to have breached an undertaking given under this Subdivision—
 - (a) each officer of the body corporate is deemed to have so breached the undertaking if the officer knowingly authorised or permitted the breach; and
 - (b) the Magistrates' Court may, against the officer, make all or any of the orders set out in subsection (2) that the Magistrates' Court thinks appropriate.

Subdivision 4A—Injunctions

Pt 5.8 Div. 3
Subdiv. 4A
(Heading and
ss 5.8.3YA–
5.8.3YE)
inserted by
No. 39/2012
s. 36.

5.8.3YA Injunctions to restrain conduct

S. 5.8.3YA
inserted by
No. 39/2012
s. 36.

- (1) The Authority may apply to the County Court or the Magistrates' Court for the grant of an injunction restraining an RTO from engaging in conduct that constitutes—
 - (a) a contravention of a relevant law; or
 - (b) attempting or conspiring to contravene a relevant law; or
 - (c) intentionally assisting, encouraging or directing the contravention of a relevant law; or
 - (d) inducing or attempting to induce another RTO, whether by threats, promises or otherwise, to contravene a relevant law; or
 - (e) being in any way directly or indirectly, knowingly concerned in, or party to, the contravention by an RTO of a relevant law.
- (2) The Court may grant an injunction restraining an RTO from engaging in conduct of the kind referred to in paragraphs (a) to (e) of subsection (1)—
 - (a) if the Court is satisfied that the RTO is engaging in or has been engaging in conduct of that kind, whether or not it appears to the Court that the RTO intends to engage again or continue to engage in the conduct; or

S. 5.8.3YA
(1)(c)
substituted by
No. 31/2018
s. 61.

- (b) if it appears to the Court that, in the event that the injunction is not granted, it is likely that the RTO will engage in conduct of that kind, whether or not the RTO has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the RTO engages in conduct of that kind; or
 - (c) if the Court determines it to be appropriate, by consent of all the parties to the proceedings, whether or not the RTO has engaged in, or is likely to engage in conduct of that kind.
- (3) An application for an injunction under this section may be made *ex parte*.

5.8.3YB Injunctions to do an act or thing

- (1) The County Court or the Magistrates' Court, on the application of the Authority, may grant an injunction requiring an RTO to do any act or thing specified by the Court if the Court is satisfied that the RTO is engaging in or has been engaging in conduct that constitutes—
- (a) a contravention of a relevant law; or
 - (b) attempting or conspiring to contravene a relevant law; or
 - (c) intentionally assisting, encouraging or directing the contravention of a relevant law; or
 - (d) inducing or attempting to induce another RTO, whether by threats, promises or otherwise, to contravene a relevant law; or
 - (e) being in any way directly or indirectly, knowingly concerned in, or party to, the contravention by an RTO of a relevant law.

S. 5.8.3YB
inserted by
No. 39/2012
s. 36.

S. 5.8.3YB
(1)(c)
substituted by
No. 31/2018
s. 62.

- (2) The power of the Court under this section to grant an injunction requiring an RTO to do an act or thing may be exercised—
 - (a) whether or not it appears to the Court that the RTO intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
 - (b) whether or not the RTO has previously refused or failed to do that act or thing; and
 - (c) whether or not there is an imminent danger of substantial damage to any person if the RTO refuses or fails to do that act or thing.
- (3) Without limiting subsection (1), an injunction under this section may require an RTO—
 - (a) to institute a training program for the RTO's employees in relation to compliance with the relevant law;
 - (b) to refund money to past, current or prospective students of the RTO;
 - (c) to provide a service or to make a service or facility available to past, current or prospective students of the RTO;
 - (d) to disclose information about the RTO's business activities or business associates;
 - (e) to honour any promise made in the course of misleading or deceptive conduct or in a false representation.
- (4) An application for an injunction under this section may be made *ex parte*.

S. 5.8.3YC
inserted by
No. 39/2012
s. 36.

5.8.3YC Interim injunctions

- (1) The County Court or the Magistrates' Court may grant an interim injunction pending determination of an application under section 5.8.3YA, if, in the opinion of the Court it is desirable to do so—

- (a) whether or not it appears to the Court that the RTO intends to engage in or continue to engage in conduct of the kind referred to in paragraphs (a) to (e) of section 5.8.3YA(1); or
 - (b) whether or not the RTO has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the RTO engages in conduct of that kind.
- (2) The County Court or the Magistrates' Court may grant an interim injunction pending determination of an application under section 5.8.3YB in relation to an act or thing, if, in the opinion of the Court it is desirable to do so—
- (a) whether or not it appears to the Court that the RTO intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
 - (b) whether or not the RTO has previously refused or failed to do that act or thing; and
 - (c) whether or not there is an imminent danger of substantial damage to any person if the RTO refuses or fails to do that act or thing.
- (3) An application for an injunction under this section may be made *ex parte*.

5.8.3YD Power to rescind or vary injunctions

The County Court or the Magistrates' Court may rescind or vary an injunction granted by it under section 5.8.3YA or 5.8.3YB or an interim injunction granted by it under section 5.8.3YC.

S. 5.8.3YD
inserted by
No. 39/2012
s. 36.

S. 5.8.3YE
inserted by
No. 39/2012
s. 36.

5.8.3YE Other powers of the County Court or the Magistrates' Court unaffected

The powers conferred on the County Court or the Magistrates' Court under this Subdivision are in addition to, and do not limit, any other powers of the County Court or the Magistrates' Court, whether conferred by or under this Act or any other Act.

Subdivision 5—Infringements

S. 5.8.3Z
inserted by
No. 71/2010
s. 44.

5.8.3Z Infringements

- (1) An authorised officer appointed under section 5.8.1(4) may serve an infringement notice on an RTO in respect of a prescribed offence against this Act or the regulations if the inspector has reason to believe that the RTO committed the offence.
- (2) A prescribed offence referred to in subsection (1) is an infringement offence within the meaning of the **Infringements Act 2006**.
- (3) The infringement penalty for an offence referred to in subsection (1) is the prescribed infringement penalty in respect of that offence.

Pt 5.8 Div. 4
(Heading)
inserted by
No. 71/2010
s. 45.

Division 4—General

S. 5.8.4
substituted by
No. 71/2010
s. 46.

5.8.4 Offence to hinder, obstruct or delay an authorised officer

- (1) A person must not, without reasonable excuse, hinder, obstruct or delay an authorised officer who is exercising or attempting to exercise his or her functions or powers under this Part.

Penalty: 60 penalty units.

- (2) Despite subsection (1), it is not an offence for a person to hinder, obstruct or delay an authorised officer appointed under section 5.8.1(4) who is exercising or attempting to exercise his or her functions or powers under Subdivision 3 of Division 3 if the authorised officer did not comply with section 5.8.3E(1) or either section 5.8.3F(2) or 5.8.3G(2) (as the case requires) before exercising those functions or powers.

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.

S. 5.8.6(4)
amended by
No. 73/2012
s. 107.

- (4) Proceedings for offences against a provision of this Act (other than Part 2.6 or 5.5 or Chapter 4) or the regulations made under this Act 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.

S. 5.8.7
(Heading)
amended by
No. 71/2010
s. 47(1).

5.8.7 Offences by a body corporate etc.

S. 5.8.7(1)
amended by
No. 71/2010
s. 47(2)(3).

- (1) If a body corporate contravenes any provision of this Act, each officer (within the meaning of section 9 of the Corporations Act) of the body corporate is deemed to have contravened the same provision if that person knowingly authorised or permitted the contravention.

S. 5.8.7(2)
amended by
No. 71/2010
s. 47(2).

- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the body corporate has been proceeded against or convicted under that provision.

S. 5.8.7(3)
amended by
No. 71/2010
s. 47(2).

- (3) Nothing in this section affects any liability imposed on a body corporate for an offence committed by the body corporate 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.

5.8.7A Conduct by officers, employees or agents

**S. 5.8.7A
inserted by
No. 71/2010
s. 48.**

- (1) For the purposes of any proceedings under this Act, any conduct engaged in on behalf of a body corporate is deemed to have been engaged in also by the body corporate if the conduct was engaged in by an employee, agent or officer (within the meaning of section 9 of the Corporations Act) of the body corporate within the scope of the actual or apparent authority of the employee, agent or officer.
- (2) If, in any proceedings under this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show—
- (a) that the conduct was engaged in by an officer of the body corporate within the scope of the officer's actual or apparent authority and the officer had that state of mind; or
 - (b) that the conduct was engaged in by an agent of the body corporate and—
 - (i) the agent acted at the specific direction or with the specific consent or agreement of the body corporate; or
 - (ii) the agent had that state of mind; or
 - (iii) the body corporate was aware of the agent's state of mind when the conduct was engaged in.

- (3) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the intention, opinion, belief or purpose.

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 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 5.5.12; or

S. 5.8.8(3)(a)
amended by
No. 39/2012
s. 23(a).

(b) on any specified date a person or body did or did not have the approval of the Authority under section 5.5.6 to employ a person under a training contract—

S. 5.8.8(3)(b)
amended by
No. 39/2012
s. 23(b).

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 Victorian Skills Commission before its abolition is evidence of the making of that determination, resolution or decision by the Commission.

S. 5.8.8(4)
amended by
No. 73/2012
s. 8(5).

(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 (Miscellaneous Provisions) Act 1958**, as in force immediately before their repeal, 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 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.

S. 5.8.9
amended by
Nos 69/2009
s. 54(Sch. Pt 2
item 20.1),
71/2010
s. 72(2),
67/2014
s. 147(Sch. 2
item 15).

Division 5—Notices to produce

Pt 5.8 Div. 5
(Heading and
ss 5.8.10–
5.8.16)
inserted by
No. 23/2021
s. 76 (as
amended by
No. 32/2022
s. 62).

S. 5.8.10
inserted by
No. 23/2021
s. 76 (as
amended by
No. 32/2022
s. 62).

5.8.10 Notice to produce

- (1) This section applies if the Authority reasonably believes that any document or information is relevant—
 - (a) to determine whether a registered school is complying with the prescribed minimum standards for registration under Division 1 of Part 4.3; or
 - (b) to determine whether a provider of school boarding services at a registered school boarding premises is complying with the prescribed minimum standards for registration of school boarding premises under Division 1A of Part 4.3; or
 - (c) to determine whether a person, body or school registered under Division 3 of Part 4.3 is complying with the prescribed minimum standards; or
 - (d) for the purposes of a review under section 4.5.4; or
 - (e) to determine whether a person, organisation or registered school that is approved to operate a student exchange program is complying with the Child Safe Standards or any condition imposed under section 4.5A.2 or 4.5A.6.

- (2) The Authority may issue a written notice requiring the following to produce the document or information—
- (a) if the document or information is required for the purposes of a determination or review relating to a relevant entity for which the Authority is an integrated sector regulator, that relevant entity;
 - (b) if the document or information is required for the purposes of a determination or review relating to a registered school for which the Authority is an integrated sector regulator, a person involved in the management or operation of that registered school;
 - (c) if the document or information is required for the purposes of a determination or review relating to a provider of school boarding services at a registered school boarding premises for which the Authority is an integrated sector regulator, a person involved in the management or operation of that provider of school boarding services;
 - (d) if the document or information is required for the purposes of a determination or review relating to a relevant entity for which the Authority is an integrated sector regulator, other than a registered school or a provider of school boarding services at a registered school boarding premises, any person or body that the Authority reasonably believes possesses the document or information.
- (3) A notice under subsection (2)—
- (a) must be in the prescribed form (if any); and
 - (b) must specify the following—
 - (i) the person or body to which the notice is issued;

- (ii) the Child Safe Standards, prescribed minimum standards or condition to which the proposed determination of compliance relates or the matters set out in section 4.5.1 that are relevant to the review under section 4.5.4 (as appropriate);
 - (iii) the person, body or school that is the subject of the proposed determination or the school, University or institution that is the subject of the review under section 4.5.4 (as appropriate);
 - (iv) the document or information, or category of document or information, that must be produced;
 - (v) the date by which the document or information must be provided, being not less than 14 days after the day on which the notice is given to the person or body;
 - (vi) any enforcement action that may be taken against the person or body for failing to comply with the notice;
 - (vii) the maximum criminal and civil penalty for failing to comply with the notice;
 - (viii) how the person or body can comply with the notice;
 - (ix) any prescribed matters.
- (4) A person or body given a notice under subsection (2) must provide the information and each document described in the notice on or before the day specified in the notice to—

- (a) in the case of a school, University or institution that is the subject of a review under section 4.3.3, 4.3.8G, 4.3.8H or 4.5.4, the Authority or any person or committee appointed by the Authority; or
 - (b) in any other case, the Authority.
- (5) The Authority, by further written notice given at any time, may vary or revoke a notice to produce.

5.8.11 Application to Court

- (1) If a person or body, without reasonable excuse, fails to comply with a notice to produce issued under section 5.8.10, the Authority may apply to the County Court or Magistrates' Court for any or all of the following—
- (a) a declaration that the person or body has failed to comply with the notice to produce;
 - (b) an order requiring the person or body to pay a pecuniary penalty;
 - (c) an injunction under section 5.8.13.
- (2) The Court may make a declaration sought if the Court is satisfied that—
- (a) the person or body has failed to comply with the notice to produce; and
 - (b) the failure to comply was unreasonable.
- (3) The Court may grant an injunction in response to an application under subsection (1)(c) requiring a person or body to do a thing—
- (a) if the Court makes a declaration under subsection (2) that the person or body has failed to comply with a notice to produce; and
 - (b) whether or not the Court orders the person or body to pay a pecuniary penalty.

S. 5.8.11
inserted by
No. 23/2021
s. 76 (as
amended by
No. 32/2022
s. 62).

S. 5.8.12
inserted by
No. 23/2021
s. 76 (as
amended by
No. 32/2022
s. 62).

5.8.12 Civil penalty

- (1) If a Court makes a declaration under section 5.8.11(2) that a person or body has failed to comply with a notice to produce, the Court may order the person or body to pay to the Authority a pecuniary penalty not exceeding 120 penalty units, in the case of a body corporate, or 60 penalty units in any other case.
- (2) In determining the amount of the pecuniary penalty under subsection (1), the Court must take into account the following considerations—
 - (a) in the case of a person or body that is not an individual, the size of the person or body;
 - (b) the impact of the amount of the penalty on the person or body;
 - (c) whether the non-compliance by the person or body with the notice to produce was wilful or serious.
- (3) An order made under this section is taken, for the purposes of enforcement, to be an order made by the Court in a civil proceeding.
- (4) A pecuniary penalty paid to the Authority in accordance with an order made under this section must be paid by the Authority into the Consolidated Fund.

S. 5.8.13
inserted by
No. 23/2021
s. 76 (as
amended by
No. 32/2022
s. 62).

5.8.13 Injunctions

- (1) On an application by the Authority, the County Court or the Magistrates' Court may grant an injunction, in the terms the Court considers appropriate, if the Court is satisfied that a person, body or school—
 - (a) has failed to comply with a notice to produce issued under section 5.8.10; or

- (b) in the case of a registered school, is required to comply with the prescribed minimum standards for registration and has failed, or is likely to fail, to do so; or
 - (c) in the case of a provider of school boarding services at a registered school boarding premises, is required to comply with the prescribed minimum standards for registration of school boarding premises and has failed, or is likely to fail, to do so; or
 - (d) in the case of a person, body or school registered under Division 3 of Part 4.3, is required to comply with the prescribed minimum standards and has failed, or is likely to fail, to do so; or
 - (e) in the case of a school, a University or an institution approved to provide a course of study under Part 4.5, is required to comply with a condition imposed under section 4.5.1 or 4.5.4 and has failed, or is likely to fail, to do so; or
 - (f) in the case of a person, body or school that is approved to operate a student exchange program, is required to comply with the Child Safe Standards or a condition imposed under section 4.5A.2 or 4.5A.6 and has failed, or is likely to fail, to do so.
- (2) Without limiting subsection (1), the Court may grant an injunction under that subsection—
- (a) to restrain a person or body from engaging in specified conduct that the Court reasonably considers is likely to harm a child; or
 - (b) to restrain a person or body from providing specified services to children before the failure to comply is rectified; or

- (c) to restrain a person or body from employing or engaging children before the failure to comply is rectified; or
 - (d) to require a person or body to do a specified act or thing that the Court considers reasonably necessary to prevent, minimise or remedy the failure to comply; or
 - (e) to require a person or body to institute training programmes for persons employed or engaged by the person or body.
- (3) The power of the Court to grant an injunction under subsection (1) may be exercised whether or not the person or body—
- (a) is likely to fail to comply with the Child Safe Standards, the prescribed minimum standards, a notice to produce or a condition imposed under section 4.5.1, 4.5.4, 4.5A.2 or 4.5A.6 (as appropriate) in the future; or
 - (b) has previously failed to comply with the Child Safe Standards, the prescribed minimum standards, a notice to produce or a condition imposed under section 4.5.1, 4.5.4, 4.5A.2 or 4.5A.6 (as appropriate).
- (4) The Court may, if it considers that it is appropriate to do so, grant an injunction under subsection (1) by consent of all the parties to the proceeding, whether or not the Court is satisfied as required by subsection (1).

S. 5.8.14
inserted by
No. 23/2021
s. 76 (as
amended by
No. 32/2022
s. 62).

5.8.14 Interim injunctions

- (1) On the application of the Authority, the County Court or Magistrates' Court may grant an interim injunction, in the terms the Court considers appropriate, pending the determination of an application for an injunction under section 5.8.13.

- (2) An application for an interim injunction under subsection (1) may be made *ex parte*.

5.8.15 Offence to fail to comply with notice to produce

- (1) A person or body must not, without reasonable excuse, fail to comply with a notice to produce issued under section 5.8.10.

Penalty: In the case of a body corporate,
120 penalty units;

In any other case, 60 penalty units.

- (2) It is a reasonable excuse for a person or body to refuse or fail to comply with a notice to produce issued under section 5.8.10 if the person or body—
- (a) took all actions that were reasonable for the person or body to take in the circumstances; and
 - (b) believed on reasonable grounds that the person or body was not able to produce the document or information specified in the notice.
- (3) It is a reasonable excuse for a natural person to refuse or fail to comply with a notice to produce issued under section 5.8.10 if producing the document or information specified in the notice would tend to incriminate the person.

5.8.16 Infringement notices

- (1) An authorised officer appointed under section 5.8.1 may issue to or serve an infringement notice on any person or body that the authorised officer reasonably believes has committed a prescribed offence against this Division.

S. 5.8.15
inserted by
No. 23/2021
s. 76 (as
amended by
No. 32/2022
s. 62).

S. 5.8.16
inserted by
No. 23/2021
s. 76 (as
amended by
No. 32/2022
s. 62).

- (2) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.
- (3) The infringement penalty for an offence referred to in subsection (1) is the prescribed penalty.
- (4) For the purposes of subsection (1), an infringement notice—
 - (a) must be in the form required by the **Infringements Act 2006**; and
 - (b) may contain any additional information approved by the Authority.

Pt 5.8 Div. 6
(Heading and
ss 5.8.17–
5.8.22)
inserted by
No. 23/2021
s. 76 (as
amended by
No. 32/2022
s. 62).

Division 6—Notices to comply

S. 5.8.17
inserted by
No. 23/2021
s. 76 (as
amended by
No. 32/2022
s. 62).

5.8.17 Application of Division

This Division applies to a relevant entity for which the Authority is an integrated sector regulator that—

- (a) is registered under Division 1 of Part 4.3; or
- (b) is registered under Division 1A of Part 4.3;
or
- (c) is registered under Division 3 of Part 4.3; or
- (d) is registered under Division 4 of Part 4.3; or
- (e) is approved under Part 4.5; or
- (f) is approved under Part 4.5A.

5.8.18 Notice to comply

- (1) The Authority may give a relevant entity to which this Division applies a notice to comply if the Authority believes on reasonable grounds that the relevant entity is not complying with a requirement that relates to—
 - (a) the registration of the relevant entity under Division 1, 1A, 3 or 4 of Part 4.3; or
 - (b) the approval of the relevant entity under Part 4.5 or 4.5A.
- (2) A notice to comply—
 - (a) must be in the prescribed form (if any); and
 - (b) must specify the following—
 - (i) the reason for the issue of the notice to comply;
 - (ii) the Child Safe Standards or requirement that the Authority believes the relevant entity is not complying with and the grounds for that belief;
 - (iii) the action that the relevant entity is required to take to address any issues that have been identified in the notice to comply;
 - (iv) that the relevant entity must take the action specified in the notice to comply—
 - (A) within 14 days after the day on which the notice is given; or
 - (B) before any earlier day specified in the notice;
 - (v) any enforcement action that may be taken against the relevant entity for failing to comply with the notice;

S. 5.8.18
inserted by
No. 23/2021
s. 76 (as
amended by
No. 32/2022
s. 62).

- (vi) the maximum criminal and civil penalty for failing to comply with the notice;
 - (vii) the process for seeking a review of the decision to issue the notice;
 - (viii) the prescribed matters (if any); and
 - (c) must be accompanied by any recommendations or advice available to assist the relevant entity to address the issues identified in the notice.
- (3) The Authority may specify a day for the purposes of subsection (2)(b)(iv)(B) only in exceptional circumstances.
- (4) The Authority may vary or revoke a notice to comply by written notice to the relevant entity.
- (5) In this section—
- exceptional circumstances* include circumstances in which urgent action is required—
- (a) because of significant non-compliance by the relevant entity with the Child Safe Standards or a requirement that relates to the registration or approval of the relevant entity under this Act; or
 - (b) to safeguard a child from harm.

S. 5.8.19
inserted by
No. 23/2021
s. 76 (as
amended by
No. 32/2022
s. 62).

5.8.19 Application to court

- (1) If a relevant entity fails to comply with a notice to comply, the Authority may apply to the County Court or the Magistrates' Court for—
- (a) a declaration that the relevant entity has failed to comply with the notice; and
 - (b) an order requiring the relevant entity to pay a pecuniary penalty; and
 - (c) an injunction under section 5.8.21.

- (2) The Court may make the declaration sought if the Court is satisfied that—
 - (a) the relevant entity is an entity that is required to comply with the Child Safe Standards or a registration requirement under this Act; and
 - (b) the relevant entity has failed to comply with the notice; and
 - (c) the failure to comply was unreasonable.

5.8.20 Civil penalty

- (1) If a Court makes a declaration under section 5.8.19(2) that a relevant entity has failed to comply with a notice to comply, the Court may order the relevant entity to pay to the Authority a pecuniary penalty not exceeding 120 penalty units, in the case of a body corporate, or 60 penalty units in any other case.
- (2) In determining the amount of the pecuniary penalty under subsection (1), the Court must take into account the following considerations—
 - (a) in the case of a relevant entity that is not an individual, the size of the relevant entity;
 - (b) the impact of the amount of the penalty on the relevant entity;
 - (c) whether the non-compliance by the relevant entity with the notice to comply was wilful or serious.
- (3) An order made under this section is taken, for the purposes of enforcement, to be an order made by the Court in a civil proceeding.
- (4) A pecuniary penalty paid to the Authority in accordance with an order made under this section must be paid by the Authority into the Consolidated Fund.

S. 5.8.20
inserted by
No. 23/2021
s. 76 (as
amended by
No. 32/2022
s. 62).

S. 5.8.21
inserted by
No. 23/2021
s. 76 (as
amended by
No. 32/2022
s. 62).

5.8.21 Injunctions

- (1) On an application by the Authority, a Court may grant an injunction, in the terms the Court considers appropriate, if the Court is satisfied that a relevant entity for which the Authority is an integrated sector regulator—
 - (a) has failed to comply with a notice to comply issued under section 5.8.18; or
 - (b) is required to comply with the Child Safe Standards, or a requirement that relates to the registration or approval of the relevant entity under this Act, and has failed, or is likely to fail, to do so.
- (2) Without limiting subsection (1), the Court may grant an injunction under that subsection—
 - (a) to restrain a person, body or relevant entity from engaging in specified conduct that the Court reasonably considers is likely to harm a child; or
 - (b) to restrain a person, body or relevant entity from providing specified services to children before the failure to comply is rectified; or
 - (c) to restrain a person, body or relevant entity from employing or engaging children before the failure to comply is rectified; or
 - (d) to require a person, body or relevant entity to do a specified act or thing that the Court considers reasonably necessary to prevent, minimise or remedy the failure to comply; or
 - (e) to require a person, body or relevant entity to institute training programmes for persons employed or engaged by the person, body or relevant entity.

- (3) The power of the Court to grant an injunction under subsection (1) may be exercised whether or not—
- (a) the relevant entity is likely to fail to comply with the Child Safe Standards, requirement or notice (as appropriate) in the future; or
 - (b) if the Authority has applied for an order or declaration under section 5.8.19, the Court has made an order or declaration under that section.

5.8.22 Offence to fail to comply with notice to comply

- (1) A relevant entity must not, without reasonable excuse, fail to comply with a notice to comply issued under section 5.8.18.

Penalty: In the case of a body corporate,
120 penalty units;

In any other case, 60 penalty units.

- (2) It is a reasonable excuse for a relevant entity to refuse or fail to comply with a notice to comply issued under 5.8.18 if the relevant entity—
- (a) took all actions that were reasonable for the relevant entity to take in the circumstances; and
 - (b) believed on reasonable grounds that the relevant entity was unable to comply with the notice.
- (3) It is a reasonable excuse for a natural person to refuse or fail to comply with a notice to comply issued under section 5.8.18 if taking the action specified in the notice would tend to incriminate the person.

S. 5.8.22
inserted by
No. 23/2021
s. 76 (as
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s. 62).

Pt 5.8 Div. 7
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s. 76 (as
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No. 32/2022
s. 62).

Division 7—Pending criminal or civil proceedings

S. 5.8.23
inserted by
No. 23/2021
s. 76 (as
amended by
No. 32/2022
s. 62).

5.8.23 Pending criminal or civil proceedings

- (1) If the Authority applies for a declaration, order or injunction under section 5.8.11 or 5.8.19 against a person or body for failing to comply with a notice to produce or notice to comply, the Authority must not commence criminal proceedings for a charge against section 5.8.15 or 5.8.22 that is constituted by the failure or alleged failure of that person or body to comply with that notice.
- (2) Subsection (1) applies whether or not the Court makes a declaration or order or grants an injunction in response to an application under section 5.8.11 or 5.8.19.
- (3) If a relevant entity has been convicted or found guilty of an offence against section 5.8.15 or 5.8.22, or a charge against the relevant entity for an offence against section 5.8.15 or 5.8.22 is pending, that is constituted by the failure or alleged failure of that relevant entity to comply with a notice to produce or notice to comply—
 - (a) the Authority may not apply under section 5.8.11(1)(b) or 5.8.19(1)(b) for an order for the relevant entity to pay a pecuniary penalty for failure to comply with that notice; and
 - (b) the Court may not order the relevant entity to pay a pecuniary penalty for failure to comply with that notice.

Division 8—Official warnings

Pt 5.8 Div. 8
(Heading and
s. 5.8.24)
inserted by
No. 23/2021
s. 76 (as
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No. 32/2022
s. 62).

5.8.24 Official warnings

S. 5.8.24
inserted by
No. 23/2021
s. 76 (as
amended by
No. 32/2022
s. 62).

- (1) The Authority may issue an official warning to—
 - (a) a relevant entity for which it is an integrated sector regulator; or
 - (b) any other person or body to which it has issued a notice to produce or notice to comply.
- (2) An official warning must state—
 - (a) that the Authority suspects one or more of the following—
 - (i) the person, body or relevant entity is failing, or has failed, to comply with a notice to produce issued under section 5.8.10 or a notice to comply issued under section 5.8.18;
 - (ii) the person, body or relevant entity is failing, or has failed, to comply with the Child Safe Standards;
 - (iii) the person, body or relevant entity is failing, or has failed, to comply with a requirement that relates to the registration or approval of the person or body under this Act;
 - (iv) the person, body or relevant entity is committing, or has committed, an offence against section 5.8.15 or 5.8.22; and

- (b) the details of the suspected failure or offence specified under paragraph (a); and
- (c) the grounds for the Authority's suspicion; and
- (d) that non-compliance or offending may be the subject of enforcement action by the Authority under this Act; and
- (e) any other matter the Authority considers appropriate.

Pt 5.8 Div. 9
(Heading and
ss 5.8.25–
5.8.29)
inserted by
No. 23/2021
s. 76 (as
amended by
No. 32/2022
s. 62).

Division 9—Enforceable undertakings

S. 5.8.25
inserted by
No. 23/2021
s. 76 (as
amended by
No. 32/2022
s. 62).

5.8.25 Application of Division

This Division applies to—

- (a) a person, body or school registered under Division 3 of Part 4.3; or
- (b) a school, University or institution approved under Part 4.5; or
- (c) a person, organisation or school approved under Part 4.5A.

Note

For undertakings given by registered schools, see section 4.3.3A. For undertakings given by providers of school boarding services, see section 4.3.8J. For undertakings given by RTOs, see section 5.8.3V.

S. 5.8.26
inserted by
No. 23/2021
s. 76 (as
amended by
No. 32/2022
s. 62).

5.8.26 Enforceable undertakings

- (1) The Authority may accept a written undertaking from a relevant entity for which it is an integrated sector regulator in connection with—

- (a) a failure to comply with a notice to comply issued under section 5.8.18; or
 - (b) a failure to comply with a requirement that relates to the registration of the relevant entity under Division 3 of Part 4.3; or
 - (c) a failure to comply with a requirement that relates to the approval of the relevant entity under Part 4.5 or 4.5A; or
 - (d) a reasonable suspicion of the Authority that there is, or has been, a failure to comply with a notice to comply issued under section 5.8.18; or
 - (e) a reasonable suspicion of the Authority that there is, or has been, a failure to comply with a requirement that relates to the registration of the relevant entity under Division 3 of Part 4.3; or
 - (f) a reasonable suspicion of the Authority that there is, or has been, a failure to comply with a requirement that relates to the approval of the relevant entity under Part 4.5 or 4.5A.
- (2) For the avoidance of doubt, a relevant entity may give an undertaking under this section to establish a trust fund into which students' fees (within the meaning of section 4.3.1A(4)) are paid and the circumstances in which funds may be withdrawn from that trust fund.
- (3) For the avoidance of doubt, an undertaking given under this Division may not be inconsistent with this Act or the regulations.
- (4) A relevant entity may withdraw or vary an undertaking at any time, if the relevant entity has first obtained the consent of the Authority.

S. 5.8.27
inserted by
No. 23/2021
s. 76 (as
amended by
No. 32/2022
s. 62).

5.8.27 Copy of undertaking

The Authority must give a copy of an undertaking given under section 5.8.26 to the relevant entity that gave the undertaking.

S. 5.8.28
inserted by
No. 23/2021
s. 76 (as
amended by
No. 32/2022
s. 62).

5.8.28 Register of undertakings

The Authority must—

- (a) maintain a register of undertakings it accepts under section 5.8.26; and
- (b) register each undertaking given under section 5.8.26 in the register of undertakings.

S. 5.8.29
inserted by
No. 23/2021
s. 76 (as
amended by
No. 32/2022
s. 62).

5.8.29 Authority may apply for Court order if undertaking breached

- (1) If the Authority considers that a relevant entity has breached any of the terms of an undertaking accepted by the Authority under section 5.8.26, the Authority may apply to the Magistrates' Court for an order under subsection (2).
- (2) If the Magistrates' Court is satisfied that the relevant entity has breached a condition of the undertaking, the Magistrates' Court may make all or any of the following orders—
 - (a) an order directing the relevant entity to comply with the condition of the undertaking;
 - (b) an order directing the relevant entity to pay to the State an amount up to the amount of any financial benefit that the relevant entity has obtained directly or indirectly and that is reasonably attributable to the breach;

- (c) any order that the Magistrates' Court considers appropriate directing the relevant entity to compensate any other person who has suffered loss, injury or damage as a result of the breach;
 - (d) any other order that the Magistrates' Court considers appropriate.
- (3) If a body corporate is found to have breached an undertaking accepted by the Authority under section 5.8.26—
- (a) each officer of the body corporate is deemed to have so breached the undertaking if the officer knowingly authorised or permitted the breach; and
 - (b) the Magistrates' Court may, against the officer, make all or any of the orders set out in subsection (2) that the Magistrates' Court thinks appropriate.

Division 10—Adverse publicity orders

Pt 5.8 Div. 10
(Heading and
s. 5.8.30)
inserted by
No. 23/2021
s. 76 (as
amended by
No. 32/2022
s. 62).

5.8.30 Court may make adverse publicity order

- (1) This section applies if—
- (a) a relevant entity for which the Authority is an integrated sector regulator is convicted or found guilty of an offence against section 5.8.15 or 5.8.22; or
 - (b) a Court has made a declaration under section 5.8.11 or 5.8.19 that the relevant entity has failed to comply with a notice to produce or a notice to comply.

S. 5.8.30
inserted by
No. 23/2021
s. 76 (as
amended by
No. 32/2022
s. 62).

- (2) The Court may order the relevant entity to take all or any of the following actions—
 - (a) to publicise, in the way specified in the order—
 - (i) details of the basis for the conviction or the making of the finding of guilt or the declaration (as appropriate); or
 - (ii) any penalty imposed or other order made on the conviction or the making of the finding of guilt or declaration; or
 - (iii) any other information the Court considers appropriate;
 - (b) to notify, in the way specified in the order, any person or class of persons of the information set out in paragraph (a).
- (3) The Court may make an order under subsection (2) in addition to or instead of—
 - (a) imposing a penalty on the relevant entity; or
 - (b) making any other order that the Court may make in relation to the offence or declaration.
- (4) The Court may make an order under subsection (2) on its own initiative or on the application of the Authority.

Division 11—Publication of non-compliance

Pt 5.8 Div. 11
(Heading and
s. 5.8.31)
inserted by
No. 23/2021
s. 76 (as
amended by
No. 32/2022
s. 62).

5.8.31 Authority may publish details of non-compliance

S. 5.8.31
inserted by
No. 23/2021
s. 76 (as
amended by
No. 32/2022
s. 62).

- (1) Subject to any order of the County Court or the Magistrates' Court, the Authority may, if the Authority considers it in the public interest,

publish information specified in subsection (2) on a website maintained by the Authority if—

- (a) a relevant entity for which the Authority is an integrated sector regulator is convicted or found guilty of an offence against section 5.8.15 or 5.8.22; or
 - (b) a Court has made a declaration under section 5.8.11 or 5.8.19 that the relevant entity has failed to comply with a notice to produce or notice to comply.
- (2) For the purposes of subsection (1), the following information is specified—
- (a) the name of the relevant entity, including any business or trading name of the relevant entity or any other name by which the relevant entity is commonly known;
 - (b) the date of the conviction, finding of guilt or declaration;
 - (c) in the case of a conviction or finding of guilt, the offence to which the conviction or finding of guilt relates;
 - (d) in the case of a declaration, details of the notice to produce or notice to comply that is the subject of the declaration;
 - (e) whether the court imposed any other penalty in respect of the conduct that was the subject of the conviction, finding of guilt or declaration;
 - (f) the date on which the Authority most recently updated the information on the website published under this section;
 - (g) any other prescribed matter.

Division 12—Review by VCAT

Pt 5.8 Div. 12
(Heading and
s. 5.8.32)
inserted by
No. 23/2021
s. 76 (as
amended by
No. 32/2022
s. 62).

S. 5.8.32
inserted by
No. 23/2021
s. 76 (as
amended by
No. 32/2022
s. 62).

5.8.32 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) to issue a notice to comply under section 5.8.18;
 - (b) to publish information under section 5.8.31.
- (2) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made; or
 - (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.

Part 5.8A—Harmful items

Pt 5.8A
(Heading and
ss 5.8A.1–
5.8A.7)
inserted by
No. 11/2011
s. 3.

5.8A.1 Definitions

S. 5.8A.1
inserted by
No. 11/2011
s. 3.

In this Part—

authorised teacher means a teacher who is
authorised under section 5.8A.6;

harmful item means—

- (a) any prohibited item;
- (b) any item which has been brought onto
or kept on any Government school
premises in contravention of a
declaration of the principal of the
school under section 5.8A.2;
- (c) if—
 - (i) a person is conducting a search
under section 5.8A.3, any item
which that person reasonably
suspects is being used or is likely
to be used in a threatening, violent
or harmful manner;
 - (ii) a person is seizing an item under
section 5.8A.4, any item which
that person reasonably suspects is
being used or is likely to be used
in a threatening, violent or
harmful manner;

possession has the same meaning as in the
Control of Weapons Act 1990;

prohibited item means any of the following—

- (a) a firearm, within the meaning of the **Firearms Act 1996**;
- (b) a controlled weapon, within the meaning of the **Control of Weapons Act 1990**;
- (c) a prohibited weapon, within the meaning of the **Control of Weapons Act 1990**;

teacher has the same meaning as in section 2.4.1.

S. 5.8A.2
inserted by
No. 11/2011
s. 3.

5.8A.2 Declaration of certain harmful items

- (1) The principal of a Government school may make a declaration as to the following—
 - (a) items that must not be brought onto the school premises at any time;
 - (b) items that may be brought onto the school premises only at the times listed in the declaration or only for the purposes listed in the declaration.
- (2) Items in respect of which a declaration may be made under subsection (1) are those which the principal reasonably believes are likely to be used in a threatening, violent or harmful manner.
- (3) A declaration under this section must be in writing and must be published to the students, parents of students, staff of the school and other members of the school community, by a letter, notice or document circulating generally to those persons.

Note

Possession of a prohibited item in public places (which includes Government schools) is regulated under the **Control of Weapons Act 1990** and the **Firearms Act 1996**.

5.8A.3 Power to search for harmful items

S. 5.8A.3
inserted by
No. 11/2011
s. 3.

- (1) The principal or any assistant principal of a Government school or any authorised teacher of a Government school may search any of the following for any harmful item—
 - (a) any part of the school premises;
 - (b) any part of premises that is being occupied by students of the school while engaged in a teacher supervised student activity;
 - (c) any vehicle while the vehicle is being used for the purposes of a teacher supervised student activity;
 - (d) any bag or other article used by a student for storage that has been brought by the student onto the school premises or that is being used by the student while the student is engaged in a teacher supervised student activity.
- (2) A person must not conduct a search under this section unless that person reasonably suspects that the search will uncover harmful items.
- (3) The person conducting a search under this section may—
 - (a) require any room, cupboard, locker or other space that is being used for storage on the premises being searched that is locked to be unlocked;
 - (b) require a student to open any bag or other article being used by the student for storage;
 - (c) ask a student to turn out the student's pockets;
 - (d) ask a student to disclose whether or not the student is concealing a harmful item.

- (4) Any power under this section must be exercised in accordance with any Regulations.

S. 5.8A.4
inserted by
No. 11/2011
s. 3.

5.8A.4 Powers to seize harmful items

- (1) The principal, or assistant principal of a Government school or any authorised teacher of a Government school may seize any harmful item—
- (a) found on the school premises;
 - (b) found on premises that is being occupied by students of the school while engaged in a teacher supervised student activity;
 - (c) found on any vehicle while the vehicle is being used for the purposes of a teacher supervised student activity;
 - (d) found in the possession of a student of the school on the school premises or while the student is engaged in a teacher supervised student activity.
- (2) A person may seize an item under this section whether or not the item is found during the course of a search under section 5.8A.3.
- (3) A person must not seize an item under this section if the person in whose possession the item is found has an exemption or lawful excuse under the **Control of Weapons Act 1990** or the **Firearms Act 1996** in respect of that item.
- (4) Any power under this section must be exercised in accordance with any Regulations.

5.8A.5 Action to be taken after search or seizure

S. 5.8A.5
inserted by
No. 11/2011
s. 3.

- (1) If a prohibited item that is a firearm or a prohibited weapon is seized under this Part, and the item is not surrendered to a police officer under section 7B of the **Control of Weapons Act 1990** or section 54AB of the **Firearms Act 1996**, the principal may retain the item, in accordance with any Regulations, until the principal is reasonably satisfied that there is no imminent threat to the safety, security or wellbeing of any person or property.
- (2) If an item that is not a firearm or a prohibited weapon is seized under this Part, the principal, in accordance with any Regulations—
 - (a) may advise a police officer of the seizure of the item;
 - (b) if so requested by the police officer, must surrender the item to a police officer;
 - (c) if the item is not to be surrendered to a police officer, may retain the item until the principal is satisfied that there is no imminent threat to the safety, security or wellbeing of any person or property.
- (3) On being satisfied that there is no imminent threat to the safety, security or wellbeing of any person or property, the principal, in accordance with any Regulations, may return any item retained under subsection (1) or (2)(c)—
 - (a) to the parent or guardian of the student, if the item is owned by the student; or

S. 5.8A.5(1)
amended by
No. 37/2014
s. 10(Sch.
item 49.5).

S. 5.8A.5(2)(a)
amended by
No. 37/2014
s. 10(Sch.
item 49.5).

S. 5.8A.5(2)(b)
amended by
No. 37/2014
s. 10(Sch.
item 49.5).

S. 5.8A.5(2)(c)
amended by
No. 37/2014
s. 10(Sch.
item 49.5).

- (b) to the owner of the item, or to the parent or guardian of the owner of the item, if the item is owned by a person under 18 years of age.

S. 5.8A.6
inserted by
No. 11/2011
s. 3.

5.8A.6 Teacher may be authorised to search for or seize harmful items

A principal or assistant principal of a Government school may authorise a teacher to carry out a search or seizure under this Part where—

- (a) a teacher supervised student activity is taking place (whether on the school premises or elsewhere); and
- (b) the principal or assistant principal is not or will not be present to carry out a search or seizure.

S. 5.8A.7
inserted by
No. 11/2011
s. 3.

5.8A.7 Powers are additional

The provisions of this Part are in addition to and not in derogation of any other powers that a principal, assistant principal or teacher of a Government school has.

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**.

Pt 5.10
(Heading)
amended by
No. 31/2018
s. 63.

Part 5.10—Delegated legislation and other subordinate instruments

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.
- (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, early childhood services or school boarding premises or to a specified school, early childhood service or school boarding premises or a specified class of school, early childhood service or school boarding premises;
 - (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

**S. 5.10.2(4)
(a)(ii)
substituted by
Nos 19/2014
s. 84, 33/2020
s. 12.**

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).

S. 5.10.2(5)
inserted by
No. 71/2010
s. 49(3).

S. 5.10.2A
inserted by
No. 23/2021
s. 81.

(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.

(5) The regulations may be disallowed in whole or in part by resolution of either House of Parliament in accordance with the requirements of section 23 of the **Subordinate Legislation Act 1994**.

5.10.2A Transitional regulations

(1) The Governor in Council may make regulations containing any savings or transitional provisions required as a consequence of the amendments made by the **Child Wellbeing and Safety (Child Safe Standards Compliance and Enforcement) Amendment Act 2021**.

- (2) A regulation mentioned in subsection (1) may be retrospective in operation to the commencement of the **Child Wellbeing and Safety (Child Safe Standards Compliance and Enforcement) Amendment Act 2021**.

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.

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- (4) The Minister must ensure that an Order is published as soon as practicable after it is made.

Note to s. 5.10.4(4) inserted by No. 31/2018 s. 64(1).

Note

Orders made under this section are published on the Department's website.

S. 5.10.4(4A) inserted by No. 31/2018 s. 64(2).

- (4A) Subsection (4) does not apply to an Order that identifies, or that would enable the identification of, a child who is the subject of the Order.
- (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
 - (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

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- (ii) to all persons, schools, early childhood services, bodies or institutions or to specified persons, schools, early childhood services, bodies or institutions or a specified class of person, school, early childhood service, 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;

**S. 5.10.4
(6)(a)(ii)
amended by
No. 19/2014
s. 85.**

- (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) Parts 3A and 5A of the **Subordinate Legislation Act 1994** apply to an Order made under this section as if the Order were a legislative instrument within the meaning of that Act laid before each House of the Parliament under section 16B of that Act.

S. 5.10.6(3)
substituted by
No. 14/2013
s. 19.

Education and Training Reform Act 2006
No. 24 of 2006
Part 5.10—Delegated legislation and other subordinate instruments

* * * * *

**Ch. 5A
(Headings
and ss
5A.1.1–5A.6.1)
inserted by
No. 11/2020
s. 52,
amended by
No. 27/2020
ss 24–30,
repealed by
No. 24/2006
s. 5A.6.1 (as
amended by
No. 27/2020
s. 30).**

Chapter 6—Repeals, amendments, savings and transitionals

Part 6.1—Repeals, amendments, savings and transitionals

Ch. 6 Pt 6.1
(Heading)
inserted by
No. 32/2021
s. 8.

Ss 6.1.1, 6.1.2
repealed by
No. 19/2008
s. 13.

* * * * *

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(l).
- (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 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);

- (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.

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.

- (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**.

6.1.12 Transitional provisions—Education and Training Reform Amendment Act 2010

S. 6.1.12
inserted by
No. 27/2010
s. 60.

- (1) Each Merit Protection Board constituted before the commencement day is abolished and its members go out of office.
- (2) Despite subsection (1), if before the commencement day a Merit Protection Board had begun to hear a review or an appeal, that Board may continue to hear the review or appeal as if this Act had not been amended by the **Education and Training Reform Amendment Act 2010**.
- (3) In this section *commencement day* means the day that section 6 of the **Education and Training Reform Amendment Act 2010** comes into operation.

6.1.13 Transitional provisions—Education and Training Reform Amendment Act 2010

S. 6.1.13
inserted by
No. 27/2010
s. 60.

- (1) All members of the Council of the Victorian Institute of Teaching go out of office on 28 November 2011.
- (2) The Council of the Victorian Institute of Teaching continues in operation despite the changes to its constitution effected under section 13 of the **Education and Training Reform Amendment Act 2010**.

6.1.14 Transitional provisions—Education and Training Reform Amendment Act 2010

S. 6.1.14
inserted by
No. 27/2010
s. 60.

- (1) Despite the amendments made to section 2.6.11 by section 18 of the **Education and Training Reform Amendment Act 2010**, the period of registration of a person registered as a

non-practising teacher immediately before the commencement of that section 18 remains in force until the expiry of that period.

- (2) Despite the amendments made to section 2.6.14 by section 20 of the **Education and Training Reform Amendment Act 2010**, the period of registration of a person granted permission to teach immediately before the commencement of that section 20 remains in force until the expiry of that period.
- (3) Despite the amendments made to section 2.6.17 by section 23 of the **Education and Training Reform Amendment Act 2010**, the period of registration of a teacher (within the meaning of section 2.6.17 as in force before the amendments made to it by that section 23) who was registered immediately before the commencement of that section 23, is taken to continue in force until the first occurrence of 30 September after the day that the registration would have expired under section 2.6.17 as in force before the amendments made to it by that section 23.

S. 6.1.15
inserted by
No. 27/2010
s. 61.

6.1.15 Transitional provision—Education and Training Reform Amendment Act 2010

- (1) This section applies to a school that is deemed under clause 1.5 of Schedule 8 to be registered as a school under this Act.
- (2) A school is deemed to be registered under Division 3 of Part 4.3 with respect to the following accredited senior secondary courses if immediately before 1 July 2007 the school—
 - (a) in the case of the VCE or VCAL, had been accepted by the Victorian Assessment and Curriculum Authority to offer the VCE or VCAL (as the case may be);

(b) in the case of the International Baccalaureate Diploma, had been approved by the International Baccalaureate Organisation to offer the International Baccalaureate Diploma.

6.1.16 Transitional provision—Education and Training Reform Further Amendment Act 2010

S. 6.1.16
inserted by
No. 28/2010
s. 18.

The registration fee payable in respect of the period that the registration of a teacher is taken to continue in force under section 6.1.14(3) is the fee fixed by the Minister in accordance with section 2.6.77(3).

6.1.17 Transitional provisions—Education and Training Reform Amendment Act 2010

S. 6.1.17
inserted by
No. 28/2010
s. 19.

- (1) The land vested in the Minister under the **Mildura College Lands Act 1916** immediately before the repeal of that Act, being all the parcels of land shown as the Mildura schools land on the plans numbered LEGL./09–397 and LEGL./09–398 and lodged in the Central Plan Office, vests in the Minister administering Part 5.7A of the **Education and Training Reform Act 2006**.
- (2) The Minister administering Part 5.7A of the **Education and Training Reform Act 2006** is deemed to be the registered proprietor of all land that is vested in that 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 Part 5.7A of 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 and any other documents that the Registrar of Titles considers necessary, must make any

amendments in the Register that are necessary because of the operation of this section.

- (5) This section does not apply in respect of the land described in Volume 10049 Folio 739 of the Register held in the name of Owners Corporation Plan No. PS 308692B.

S. 6.1.18
inserted by
No. 28/2010
s. 19.

6.1.18 Transitional provisions—Education and Training Reform Further Amendment Act 2010

- (1) A lease of land, or an easement over or in respect of land, granted to or in favour of any person under the **Mildura College Lands Act 1916** that existed before the repeal of that Act is taken to be granted under Division 2 of Part 5.7A.
- (2) Section 5.7A.10 does not apply in respect of a lease of land referred to in subsection (1) for the duration of the lease if the lease provides for a 10 year review of the rent on that lease.
- (3) Any application made to VCAT under section 2(ec) of the **Mildura College Lands Act 1916** before the repeal of that Act that has not begun to be heard by VCAT is taken to be an application made to VCAT under section 5.7A.12.
- (4) If VCAT has begun to hear but has not given the final determination on a matter for review in respect of an application under section 2(ec) of the **Mildura College Lands Act 1916** before the repeal of that Act, the matter may continue to be heard and determined as if the application were made under section 5.7A.12.
- (5) An agreement entered into between the Minister and a trustee company under section 2(f) of the **Mildura College Lands Act 1916** before the repeal of that Act is taken to be an agreement entered into between the Minister and that trustee company under Division 3 of Part 5.7A.

- (6) Any fund established under section 2(fa)(i) of the **Mildura College Lands Act 1916** before the repeal of that Act is taken to be a fund established under Division 3 of Part 5.7A and the money standing to the credit of that fund before that repeal must be dealt with in accordance with Division 3 of Part 5.7A.
- (7) The special fund established under section 3 of the **Mildura College Lands Act 1916** before the repeal of that Act is taken to be the special fund established under Division 4 of Part 5.7A.
- (8) Any proceeds derived from the sale of land or the granting of an easement over or in respect of land under the **Mildura College Lands Act 1916** or any other disposition in fee simple of any part of the land before the repeal of that Act must be dealt with in accordance with Division 4 of Part 5.7A as if the land were sold or the easement granted under Division 2 of Part 5.7A and the income derived from those proceeds must be applied in accordance with Division 3 of Part 5.7A.
- (9) For the purposes of Part 5.7A, until an Order is made under section 5.7A.6, a beneficiary school is taken to be any school listed as a beneficiary in Schedule 2 to the **Mildura College Lands Act 1916** before the repeal of that Act.
- (10) Any reference in the recited indentures referred to in the preamble to the **Mildura College Lands Act 1916** to an agricultural school or college is taken to be a reference to the beneficiary schools within the meaning of Part 5.7A.

6.1.19 Transitional and savings provisions—Education and Training Reform Amendment (Skills) Act 2010

- (1) The Authority is taken to be the same body despite the changes relating to its membership made by section 6 of the amending Act.

S. 6.1.19
inserted by
No. 71/2010
s. 70.

- (2) The Commission is taken to be the same body despite the changes relating to its membership made by section 53 of the amending Act.
- (3) Any guidelines issued under section 4.3.11(3) in force immediately before the commencement of section 17 of the amending Act are taken to be guidelines issued under section 4.3.18A to the extent that the guidelines issued under section 4.3.11(3) could have been issued under section 4.3.18A.

S. 6.1.19(4)(5)
repealed by
No. 73/2012
s. 32.

* * * * *

- (6) Section 3.1.26A inserted by section 60 of the amending Act does not apply to a person or body that was using the term "TAFE" or "technical and further education" in its name, or in a description of its activities, operations or services in connection with its operations in and from Victoria immediately before the commencement of section 60 of the amending Act until 1 January 2012.
- (7) In this section *amending Act* means the **Education and Training Reform Amendment (Skills) Act 2010**.

S. 6.1.20
inserted by
No. 76/2011
s. 11.

6.1.20 Transitional—Education and Training Reform Amendment (Skills) Act 2010

A person, body or school that was registered under section 4.3.10 with respect to an accredited course or registered qualification relating to the provision of vocational education and training or further education immediately before the commencement of section 8 of the **Education and Training Reform Amendment (Skills) Act 2010** is taken to be registered under section 4.3.16 as a

training organisation with respect to that course or qualification.

6.1.21 Validation of practical placement agreements by certain training organisations

S. 6.1.21
inserted by
No. 76/2011
s. 11.

- (1) This section applies to an agreement—
- (a) that, before the commencement day, was entered into or purported to have been entered into under Division 2 of Part 5.4 for the placement of a student of a training organisation that at that time was treated as being registered on the National Register under section 4.3.14; and
 - (b) that would have been validly entered into if section 10 of the 2011 Act had been in operation at the time at which the agreement was entered into or purported to have been entered into.
- (2) The agreement has, and is taken always to have had, the same force and effect as it would have had if section 10 of the 2011 Act had been in operation at the time at which the agreement was entered into or purported to have been entered into.
- (3) In this section—

2011 Act means the **Education and Training Reform Amendment (Skills) Act 2011**;

commencement day means the day on which section 10 of the 2011 Act comes into operation.

6.1.22 Validation of actions of boards of TAFE institutes and adult education institutions outside of Victoria

S. 6.1.22
inserted by
No. 76/2011
s. 12.

- (1) Any thing done or purported to have been done under this Act outside of Victoria by the board of a TAFE institute before the commencement of sections 3 and 4 of the 2011 Act that would have

been validly done if sections 3 and 4 had been in operation at the time at which the thing was done or purported to have been done has, and is taken always to have had, the same force and effect as it would have had if sections 3 and 4 had been in operation at the time at which the thing was done or purported to have been done.

- (2) Any thing done or purported to have been done under this Act outside of Victoria by the governing board of an adult education institution before the commencement of sections 5 and 6 of the 2011 Act that would have been validly done if sections 5 and 6 had been in operation at the time at which the thing was done or purported to have been done has, and is taken always to have had, the same force and effect as it would have had if sections 5 and 6 had been in operation at the time at which the thing was done or purported to have been done.
- (3) In this section *2011 Act* means the **Education and Training Reform Amendment (Skills) Act 2011**.

S. 6.1.23
inserted by
No. 76/2011
s. 12.

**6.1.23 Validation of work experience arrangements—
student in accredited senior secondary course**

- (1) This section applies to a work experience arrangement—
- (a) that was entered into or purported to have been entered into before the commencement day under Division 1 of Part 5.4 for the placement of a student who before the commencement day was in an accredited senior secondary course (within the meaning of section 4.1.1)—
- (i) at a TAFE institute or a university with a TAFE division; or

- (ii) provided by a person or body registered under section 4.3.10 with respect to that course; and
- (b) that would have been validly entered into if section 8 of the 2011 Act had been in operation at the time at which the arrangement was entered into or purported to have been entered into.

Note

Before the commencement day the term *university with a TAFE division* meant the University of Ballarat, Royal Melbourne Institute of Technology, Swinburne University of Technology or Victoria University.

Note to
s. 6.1.23(1)
inserted by
No. 76/2013
s. 14.

- (2) The work experience arrangement has, and is taken always to have had, the same force and effect as it would have had if section 8 of the 2011 Act had been in operation at the time at which the arrangement was entered into or purported to have been entered into.
- (3) In this section—

2011 Act means the **Education and Training Reform Amendment (Skills) Act 2011**;

commencement day means the day on which section 8 of the 2011 Act comes into operation.

6.1.24 Validation of structured workplace learning arrangements

S. 6.1.24
inserted by
No. 76/2011
s. 12.

- (1) This section applies to a structured workplace learning arrangement—
 - (a) that was entered into or purported to have been entered into before the commencement day under Division 1 of Part 5.4 for the placement of a student who before the commencement day was in an accredited senior secondary course (within the meaning

of section 4.1.1) provided by a person or body registered under section 4.3.10 with respect to that course; and

(b) that would have been validly entered into if section 8 of the 2011 Act had been in operation at the time at which the arrangement was entered into or purported to have been entered into.

(2) The structured workplace learning arrangement has, and is taken always to have had, the same force and effect as it would have had if section 8 of the 2011 Act had been in operation at the time at which the arrangement was entered into or purported to have been entered into.

(3) In this section—

2011 Act means the **Education and Training Reform Amendment (Skills) Act 2011**;

commencement day means the day on which section 8 of the 2011 Act comes into operation.

S. 6.1.25
inserted by
No. 76/2011
s. 12.

6.1.25 Validation of practical placement agreements involving students not above compulsory school age

(1) This section applies to an agreement—

(a) that was entered into or purported to have been entered into before the commencement day under Division 2 of Part 5.4 for the placement of a student who at the time of the placement was not above the compulsory school age; and

(b) that would have been validly entered into if section 9 of the 2011 Act had been in operation at the time at which the agreement was entered into or purported to have been entered into.

(2) The agreement has, and is taken always to have had, the same force and effect as it would have had if section 9 had been in operation at the time at which the agreement was entered into or purported to have been entered into.

(3) In this section—

2011 Act means the **Education and Training Reform Amendment (Skills) Act 2011**;

commencement day means the day on which section 9 of the 2011 Act comes into operation.

6.1.27 Transitional and savings provisions—the Education Legislation Amendment (VET Sector, Universities and Other Matters) Act 2012

S. 6.1.27
inserted by
No. 39/2012
s. 52.

(1) On and from the commencement day, a determination made by the Commission under section 5.5.2 that was in force immediately before that day is taken to be a determination made by the Authority under section 5.5.2.

(2) On and from the commencement day, a determination made by the Commission and referred to in section 5.5.3 that was in force immediately before that day is taken to be a determination made by the Authority and referred to in section 5.5.3.

(3) On and from the commencement day, an approval given by the Commission under section 5.5.7 that was in force immediately before that day is taken to be an approval given by the Authority under section 5.5.7 and is subject to any condition to which the approval was subject before the commencement day.

- (4) On and from the commencement day, an approval given by the Commission under section 5.5.10 that was in force immediately before that day is taken to be an approval given by the Authority under section 5.5.10.
- (5) On and from the commencement day, an approval or consent given by the Commission under section 5.5.11 that was in force immediately before that day is taken to be an approval or consent given by the Authority under section 5.5.11.
- (6) On and from the commencement day, if a training contract has been executed in accordance with section 5.5.12 before that day, the following applies—
 - (a) the Commission must transfer the training contract to the Authority if it was lodged with the Commission before the commencement day;
 - (b) if the training contract has not been lodged with the Commission before the commencement day, the employer must—
 - (i) lodge the training contract with the Authority or any person or body nominated by the Commission before the commencement day or, if there is no such nomination, with any person or body nominated by the Authority; and
 - (ii) give a copy of the training contract to the apprentice within 14 days after the date the employment of the apprentice commences or any further time allowed by the Commission before the commencement day or, if there was no such further time allowed, within any further time allowed by the Authority.

- (7) On and from the commencement day, a declaration made by the Commission under section 5.5.12(3) that was in force immediately before that day is taken to be a declaration made by the Authority under section 5.5.12(3).
- (8) On and from the commencement day, if a training contract has commenced before that day, the following applies—
 - (a) the Commission must transfer to the Authority any training plan relating to that training contract that was lodged with the Commission under section 5.5.13 before the commencement day;
 - (b) if a training plan relating to the training contract has not been lodged with the Commission before the commencement day, the employer must lodge the training contract with the Authority or an approved training agent or any person or body nominated by the Commission before the commencement day or, if there is no such nomination, with any person or body nominated by the Authority.
- (9) On and from the commencement day, a determination made by the Commission under section 5.5.14 that was in force immediately before that day is taken to be a determination made by the Authority under section 5.5.14.
- (10) If the Commission began to consider whether it should make an order under section 5.5.15(2) before the commencement day and did not make the order before that day, the Commission may make the order under section 5.5.15(2) as if that section had not been amended by the amending Act.

- (11) On and from the commencement day, an order made by the Commission under section 5.5.15(2) that was in force immediately before that day or an order made by the Commission under section 5.5.15(2) on or after that day in accordance with subsection (10), is taken to be an order made by the Authority under section 5.5.15(2).
- (12) If an application under section 5.5.16(2) is received by the Commission before the commencement day and not finally determined by the Commission before that day, the Commission may make an order relating to that application under section 5.5.16 as if that section had not been amended by Part 2 of the amending Act.
- (13) On and from the commencement day, an order made by the Commission under section 5.5.16(2) that was in force immediately before that day or an order made by the Commission under section 5.5.16(2) on or after that day in accordance with subsection (12), is taken to be an order made by the Authority under section 5.5.16(2).
- (14) If a matter has been referred to the Commission under section 5.5.17 before the commencement day and not finally determined by the Commission before that day, the Commission may determine the matter and make an order under section 5.5.17 as if that section had not been amended by Part 2 of the amending Act.
- (15) On and from the commencement day, a determination or order made by the Commission under section 5.5.17 that was in force immediately before that day or a determination or order made by the Commission under section 5.5.17 on or after that day in accordance with subsection (14),

is taken to be a determination or order made by the Authority under section 5.5.17.

- (16) If an application for review under section 5.5.22 is received by the Commission before the commencement day and not finally determined by the Commission before that day, the Commission may determine the application under section 5.5.22 as if that section had not been amended by Part 2 of the amending Act.
- (17) If an application for review of a decision of an approved training agent acting as a delegate of the Commission is received by the Authority under section 5.5.22 on or after the commencement day, the Authority may determine the application under section 5.5.22 as if the approved training agent had been acting as a delegate of the Authority when he or she had made the decision.
- (18) On or after the commencement day, the Commission must transfer to the Authority the register of apprentices maintained under section 5.5.23.
- (19) On and from the commencement day, a declaration made by the Commission under clause 2 of Schedule 4 that was in force immediately before that day is taken to be a declaration made by the Authority under clause 2 of Schedule 4.
- (20) In this section—

amending Act means the **Education Legislation Amendment (VET Sector, Universities and Other Matters) Act 2012**;

commencement day means the day on which Part 2 of the amending Act comes into operation.

S. 6.1.28
inserted by
No. 39/2012
s. 52,
repealed by
No. 73/2012
s. 32.

S. 6.1.29
inserted by
No. 39/2012
s. 52.

* * * * *

6.1.29 Transitional and savings provisions—the Education Legislation Amendment (VET Sector, Universities and Other Matters) Act 2012

- (1) On the commencement day—
- (a) the Adult, Community and Further Education Board continued in operation under section 3.3.2 is the successor in law of each Regional Council; and
 - (b) all rights, assets, liabilities and obligations of each Regional Council immediately before that commencement become the rights, assets, liabilities and obligations of the Adult, Community and Further Education Board continued in operation under section 3.3.2; and
 - (c) the Adult, Community and Further Education Board continued in operation under section 3.3.2 is substituted for each Regional Council as a party in any proceeding, contract, agreement or arrangement commenced or made by, against or in relation to that Regional Council; and
 - (d) the Adult, Community and Further Education Board continued in operation under section 3.3.2 may continue and complete any other continuing matter or thing commenced by, against or in relation to a Regional Council.

- (2) Each Regional Council ceases to be a body corporate on the commencement day but continues in operation as an unincorporated body by the same name on and from that day, subject to this Act.
- (3) Despite sections 41 and 42 of the amending Act, each member of a Regional Council remains in office for the period of his or her appointment to that office, subject to this Act.
- (4) In this section—

amending Act means the **Education Legislation Amendment (VET Sector, Universities and Other Matters) Act 2012**;

commencement day means the day on which section 42 of the amending Act comes into operation;

Regional Council has the same meaning as in section 3.3.1.

6.1.30 Transitional and savings provisions—the Education Legislation Amendment (VET Sector, Universities and Other Matters) Act 2012

S. 6.1.30
inserted by
No. 39/2012
s. 52.

Despite the changes to the Authority's membership made by section 44 of the **Education Legislation Amendment (VET Sector, Universities and Other Matters) Act 2012** the Authority is taken to be the same body and continues in operation subject to this Act.

6.1.31 Transitional and savings provisions—the Education Legislation Amendment (Governance) Act 2012

S. 6.1.31
inserted by
No. 73/2012
s. 33.

- (1) All accounts or records required to be kept by the Commission under section 3.1.4(5) as in force immediately before the commencement day become accounts and records of the Secretary.

- (2) On the commencement day the Victorian Skills Commission is abolished and its members go out of office.
- (3) On and from the commencement day—
- (a) all rights, assets, liabilities and obligations of the Victorian Skills Commission, immediately before its abolition, become rights, assets, liabilities and obligations of the State; and
 - (b) any fund referred to in clause 13 of Schedule 2 established in the name of the Victorian Skills Commission before that commencement day is abolished and any moneys or amounts standing to the credit of the fund are transferred to the State; and
 - (c) the State is substituted for the Victorian Skills Commission as a party in any proceeding, contract, agreement or arrangement commenced or made by, against or in relation to the Victorian Skills Commission; and
 - (d) a reference to the Victorian Skills Commission in an Act (except the amending Act), a subordinate instrument or any other document, is taken to be a reference to the State except in relation to matters that occurred before the commencement day; and
 - (e) the Secretary must determine any matter or do anything that has been partly but not finally determined or done by the Victorian Skills Commission before its abolition; and
 - (f) a determination made by the Commission under section 5.4.15 that was in force immediately before the commencement day is taken to be a determination made by the Minister under section 5.4.15; and

- (g) a suspension by the Commission under section 5.4.17 that was in force immediately before the commencement day is taken to be a suspension by the Minister under section 5.4.17.
- (4) The Secretary must submit the annual report of the Victorian Skills Commission in accordance with section 45 of the **Financial Management Act 1994** in relation to any period that has not been reported on immediately before the commencement day.
- (5) In this section—
amending Act means the **Education Legislation Amendment (Governance) Act 2012**;
commencement day means the day on which Part 2 of the amending Act comes into operation.

6.1.32 Transitional and savings provisions—the Education Legislation Amendment (Governance) Act 2012

S. 6.1.32
inserted by
No. 73/2012
s. 33.

- (1) On and from the commencement day a TAFE institute in existence before that day continues in operation and is taken—
- (a) to be constituted as a body corporate under Division 2 of Part 3.1; and
 - (b) to have the objectives, functions and powers of a TAFE institute as if it were constituted under Division 2 of Part 3.1.
- (2) On and from the commencement day the board of a TAFE institute that was incorporated immediately before the commencement day ceases to be an incorporated body.

- (3) On and from the commencement day—
- (a) all rights, assets, liabilities and obligations of the board of a TAFE institute as an incorporated body that existed before the commencement day become rights, assets, liabilities and obligations of the TAFE institute; and
 - (b) any fund referred to in clause 13 of Schedule 2 established in the name of the board of a TAFE institute as an incorporated body before the commencement day is taken to be a fund established in the name of the TAFE institute; and
 - (c) the TAFE institute is substituted for the board of that TAFE institute as a party in any proceeding, contract, agreement or arrangement commenced or made by, against or in relation to the board as an incorporated body; and
 - (d) the TAFE institute may continue and complete any other continuing matter or thing commenced by, against or in relation to the board of that institute; and
 - (e) a person employed by the board of a TAFE institute as an incorporated body that existed before the commencement day is taken—
 - (i) to have been employed by the institute on the same terms and conditions as those that applied to the person immediately before the commencement day as an employee of the board; and
 - (iii) to have accrued an entitlement to benefits, in connection with the employment with the institute, that is equivalent to the entitlement that the person had accrued as an employee of

the board immediately before the commencement day; and

- (f) the service of a person taken under paragraph (e) to be employed by the institute is taken for all purposes as having been continuous with the service of the person, immediately before the commencement day, as an employee of the board; and
 - (g) in an Act, a subordinate instrument or any other document, a reference to the board of a TAFE institute as an incorporated body is taken to be a reference to the TAFE institute except in relation to matters that occurred before the commencement day.
- (4) Despite the commencement of Part 4 of the amending Act—
- (a) an Order in Council made or taken to be made under section 3.1.12 relating to the board of a TAFE institute, which was in force immediately before the commencement day, continues in operation, subject to this Act, until it is remade under section 3.1.11 in accordance with subsection (5); and
 - (b) the board of a TAFE institute that was incorporated immediately before the commencement day is taken to be the same body, subject to this Act, after the commencement day as it was immediately before the commencement day; and
 - (c) a person who immediately before the commencement day held office as a director of the board of a TAFE institute referred to in paragraph (b), including the chief executive officer of the institute and any elected member, continues to hold office as a director of that board, subject to this Act and

the relevant Order in Council continued under paragraph (a), until the Order in Council is remade in accordance with subsection (5).

- (5) The Minister must ensure that within 12 months after the commencement day, or within any further period or periods fixed by the Minister in respect of a particular TAFE institute or board of a TAFE institute and published by notice in the Government Gazette, every Order in Council continued in operation under subsection (4)(a) is reviewed and remade.

- (6) In this section—

amending Act means the **Education Legislation Amendment (Governance) Act 2012**;

commencement day means the day on which Part 4 of the amending Act comes into operation.

S. 6.1.33
inserted by
No. 73/2012
s. 33.

6.1.33 Transitional and savings provisions—the Education Legislation Amendment (Governance) Act 2012

- (1) On and from the commencement day an adult education institution in existence before that day continues in operation and is taken—
- (a) to be constituted as a body corporate under Division 5 of Part 3.3; and
 - (b) to have the objectives, functions and powers of an adult education institution conferred on it as if it were constituted under Division 5 of Part 3.3.
- (2) On and from the commencement day the governing board of an adult education institution that was incorporated immediately before the commencement day ceases to be an incorporated body.

- (3) On and from the commencement day—
- (a) all rights, assets, liabilities and obligations of the governing board of an adult education institution as an incorporated body that existed before the commencement day become rights, assets, liabilities and obligations of the adult education institution; and
 - (b) any fund referred to in clause 13 of Schedule 2 established in the name of the governing board of an adult education institution as an incorporated body before the commencement day is taken to be a fund established in the name of the adult education institution; and
 - (c) the adult education institution is substituted for the governing board of that institution as a party in any proceeding, contract, agreement or arrangement commenced or made by, against or in relation to the governing board as an incorporated body; and
 - (d) the adult education institution may continue and complete any other continuing matter or thing commenced by, against or in relation to the governing board of that institution; and
 - (e) a person employed by the governing board of an adult education institution as an incorporated body that existed before the commencement day is taken—
 - (i) to have been employed by the institution on the same terms and conditions as those that applied to the person immediately before the commencement day as an employee of the governing board; and

- (ii) to have accrued an entitlement to benefits, in connection with the employment with the institution, that is equivalent to the entitlement that the person had accrued as an employee of the governing board immediately before the commencement day; and
 - (f) the service of a person taken under paragraph (e) to be employed by the institution is taken for all purposes as having been continuous with the service of the person, immediately before the commencement day, as an employee of the governing board; and
 - (g) in an Act, a subordinate instrument or any other document, a reference to the governing board of an adult education institution as an incorporated body is taken to be a reference to the adult education institution except in relation to matters that occurred before the commencement day.
- (4) Despite the commencement of Part 4 of the amending Act—
- (a) an Order in Council made or taken to be made under section 3.3.29 relating to the governing board of an adult education institution, which was in force immediately before the commencement day, continues in operation, subject to this Act, until it is remade in accordance with subsection (5); and
 - (b) the governing board of an adult education institution that was incorporated immediately before the commencement day is taken to be the same body, subject to this Act, after the commencement day as it was immediately before the commencement day; and

- (c) a person who immediately before the commencement day held office as a member of the governing board of an adult education institution referred to in paragraph (b), including the chief executive officer of the institution and any elected member, continues to hold office as a member of that governing board, subject to this Act and the relevant Order in Council continued under paragraph (a), until the Order in Council is remade in accordance with subsection (5).
- (5) The Minister must ensure that within 12 months after the commencement day, or within any further period or periods fixed by the Minister in respect of a particular governing board of an adult education institution and published by notice in the Government Gazette, every Order in Council continued in operation under subsection (4)(a) is reviewed and remade.

- (6) In this section—

amending Act means the **Education Legislation Amendment (Governance) Act 2012**;

commencement day means the day on which Part 4 of the amending Act comes into operation.

6.1.34 Transitional and savings provisions—the Education and Training Reform Amendment (Dual Sector Universities) Act 2013

S. 6.1.34
inserted by
No. 76/2013
s. 15.

- (1) Despite the amendments made to section 5.2.9A by section 11 of the amending Act, a delegation made under section 5.2.9A(1) to the members of the council of a university or a delegation made under section 5.2.9A(2) to a person employed on the staff of a university before the commencement of section 11 of the amending Act—

Education and Training Reform Act 2006
No. 24 of 2006

Part 6.1—Repeals, amendments, savings and transitionals

- (a) continues to have the same force and effect;
and
 - (b) is taken to have been made under
section 5.2.9A as amended by section 11 of
the amending Act.
- (2) Section 3.1.25(3) continues to apply to an
employee referred to in that section as if
sections 1.1.3(1) and 3.1.25 had not been amended
by the amending Act.

Note

An employee referred to in section 3.1.25(3) has continuing
employment entitlements under the **Vocational Education
and Training (College Employment) Act 1993**.

- (3) The amendments made to sections 1.1.3(1)
and 3.1.25 and clause 1 of Schedule 3 by
sections 3, 6 and 16 of the amending Act do not
affect any entitlement of a person that existed
under section 3.1.25 and clause 1 of Schedule 3
immediately before the commencement of
sections 3, 6 and 16 of the amending Act.
- (4) A person—
- (a) who immediately before the commencement
of section 16(4) of the amending Act was
employed in a university with a TAFE
division, including as an executive officer,
by the council of that university; and

Note

Before the commencement of section 16(4) of the
amending Act the term **university with a TAFE
division** meant the University of Ballarat, Royal
Melbourne Institute of Technology, Swinburne
University of Technology or Victoria University.

- (b) to whom the terms and conditions of a superannuation fund or arrangement established by the **State Superannuation Act 1988** continue to apply under section 21 of the **Vocational Education and Training (College Employment) Act 1993** or clause 1 of Schedule 3—

is taken to be a *contract officer* as defined in section 3(1) of the **Superannuation (Public Sector) Act 1992** for the purposes of section 12 of that Act—

- (c) if the person was employed as an executive officer, while the person continues to be employed as an executive officer by the council of a dual sector university;
- (d) if the person was not employed as an executive officer but after the commencement of section 16(4) of the amending Act the person is subsequently employed as an executive officer by the council of a dual sector university, while the person is so employed.
- (5) For the purposes of subsections (2) and (4), the **Vocational Education and Training (College Employment) Act 1993** is to be read as if a reference in section 20 or 21 of that 1993 Act to the Technical and Further Education Division of Royal Melbourne Institute of Technology, of Swinburne University of Technology or of Victoria University of Technology were a reference to a dual sector university.
- (6) In this section, *amending Act* means the **Education and Training Reform Amendment (Dual Sector Universities) Act 2013**.

S. 6.1.35
inserted by
No. 19/2014
s. 14.

6.1.35 Transitional and savings provision—the Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Act 2014

A reference to a national criminal history check in section 2.6.22A(1)(a) includes a reference to a criminal record check within the meaning of Part 2.6 as in force before it was amended by Part 2 of the **Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Act 2014**.

S. 6.1.36
inserted by
No. 19/2014
s. 32.

6.1.36 Transitional and savings provision—the Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Act 2014

The Council of the Victorian Institute of Teaching is taken to be the same body on and after the commencement of Part 4 of the **Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Act 2014** as it was before the changes made to its constitution effected under Part 4 of that Act.

S. 6.1.37
inserted by
No. 19/2014
s. 88.

6.1.37 Transitional and savings provision—Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Act 2014—registration of early childhood teachers

(1) In this section—

current early childhood teacher means a person who was employed or engaged as an early childhood teacher on or before the commencement of section 47 of the **Education and Training Reform Amendment (Registration of Early**

**Childhood Teachers and Victorian
Institute of Teaching) Act 2014;**

relevant day means the day that is 6 months after the day on which section 47 of the **Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Act 2014** commences.

- (2) A person or body does not commit an offence under section 2.6.56A or 2.6.56B before the relevant day for employment or engagement of a current early childhood teacher who is not registered.
- (3) On and after the relevant day, a person or body does not commit an offence under section 2.6.56A or 2.6.56B for employment or engagement of a current early childhood teacher who is not registered if—
 - (a) the current early childhood teacher applied for registration under Division 3A of Part 2.6 on or before the relevant day; and
 - (b) the application has not been determined.
- (4) Despite the commencement of section 2.3.9(3)(a), a current early childhood teacher who is not registered may be employed by a school council—
 - (a) before the relevant day; and
 - (b) on and after the relevant day if—
 - (i) the current early childhood teacher applied for registration under Division 3A of Part 2.6 on or before the relevant day; and
 - (ii) the application has not been determined.

- (5) A registered teacher or a current early childhood teacher who applies for registration under Division 3A of Part 2.6 on or before the relevant day is taken to meet the requirements for professional practice under section 2.6.12A.

S. 6.1.38
inserted by
No. 19/2014
s. 88.

6.1.38 Transitional and savings provision—Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Act 2014—VIT Council

The Council of the Victorian Institute of Teaching is taken to be the same body on and after the commencement of section 44 of the **Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Act 2014** as it was before the changes made to its constitution effected by section 44 of that Act.

S. 6.1.39
inserted by
No. 37/2015
s. 24.

6.1.39 Transitional provisions—Education and Training Reform Amendment (Miscellaneous) Act 2015

- (1) Despite the changes made to the membership of a Regional Council by section 11 of the amending Act, the Regional Council is taken to be the same body.
- (2) Despite the repeal of section 5.2.12 by section 22 of the amending Act, an Order made by the Minister under section 5.2.12 as in force immediately before its repeal is taken to be an Order made under section 5.10.4.
- (3) On and from the commencement of section 22 of the amending Act, any reference to an Order made under section 5.2.12 in any Act (except the amending Act), subordinate instrument, agreement or other document, as far as it relates to any period after that commencement, is taken to be a reference to an Order made under section 5.10.4.

(4) In this section—

amending Act means the **Education and Training Reform Amendment (Miscellaneous) Act 2015**.

6.1.40 Transitional provisions—Education Legislation Amendment (TAFE and University Governance Reform) Act 2015

S. 6.1.40
inserted by
No. 69/2015
s. 8.

(1) Despite the commencement of Part 2 of the amending Act—

- (a) an Order in Council made under section 3.1.11 relating to the board of a TAFE institute, which was in force immediately before the commencement day, continues in operation, subject to this Act, until it is remade under section 3.1.11 in accordance with subsection (2); and
- (b) the board of a TAFE institute is taken to be the same body on and after the commencement day despite the changes to its constitution made by Part 2 of the amending Act and no decision, matter or thing is to be affected by the changes to the constitution of that board made by Part 2 of the amending Act; and
- (c) a person who on the day immediately before the commencement day held office as a director of the board of a TAFE institute referred to in paragraph (b) continues to hold office as a director of that board on the same terms and conditions as those on which the person held office immediately before the commencement day, subject to this Act and the relevant Order in Council continued under paragraph (a), until the commencement of the Order in Council that

- is remade in accordance with subsection (2);
and
- (d) sections 3.1.16 and 3.1.18 apply to a board of a TAFE institute referred to in paragraph (b) and a director referred to in paragraph (c) as if those sections had not been amended by Part 2 of the amending Act.
- (2) The Minister must ensure that within 6 months after the commencement day, or within any further period or periods fixed by the Minister in respect of the board of a TAFE institute, every Order in Council relating to the board of a TAFE institute continued in operation under subsection (1)(a) is reviewed and remade under section 3.1.11.
- (3) The Minister must cause a notice to be published in the Government Gazette of any further period fixed by the Minister under subsection (2).
- (4) On and after the commencement of an Order in Council relating to the board of a TAFE institute that is remade under section 3.1.11 in accordance with subsection (2)—
- (a) the board of that TAFE institute existing immediately before the commencement day is abolished and its directors go out of office; and
- (b) if the person who held office as the chairperson of the board of a TAFE institute abolished under paragraph (a) is appointed by the Minister as a director of the incoming board of that TAFE institute, that person is taken to be the interim chairperson of the incoming board of that TAFE institute; and

- (c) if the person who held office as the chairperson of the board of a TAFE institute abolished under paragraph (a) is not appointed by the Minister as a director of the incoming board of that TAFE institute, the Minister must appoint a director of the incoming board of that TAFE institute as the interim chairperson of the incoming board.
- (5) The term of office of an interim chairperson who is taken to be appointed under subsection (4)(b) or who is appointed by the Minister under subsection (4)(c) ends on the earlier of the following—
- (a) 2 months after the term of office begins; or
 - (b) when a chairperson of the incoming board is elected and appointed in accordance with section 3.1.16A.
- (6) In this section—

amending Act means the **Education Legislation Amendment (TAFE and University Governance Reform) Act 2015**;

commencement day means the day on which Part 2 of the amending Act comes into operation.

6.1.41 Transitional and savings provisions—Education and Training Reform Amendment (Victorian Institute of Teaching) Act 2016

S. 6.1.41
inserted by
No. 9/2016
s. 17.

- (1) On and from the commencement day the Council is taken to be the same body as it was before that commencement despite the changes made to its constitution by Part 3 of the amending Act and no decision, matter or thing is affected by those changes.

(2) On the commencement day the members of the Council appointed under section 2.6.6(3)(a) in office immediately before that day go out of office.

(3) In this section—

amending Act means the **Education and Training Reform Amendment (Victorian Institute of Teaching) Act 2016**;

commencement day means the day on which Part 3 of the amending Act comes into operation.

S. 6.1.42
inserted by
No. 42/2016
s. 12,
amended by
No. 31/2018
s. 65(6).

6.1.42 Transitional provision—Education and Training Reform Amendment (Miscellaneous) Act 2016

Section 2.4.61A, as inserted by section 5 of the **Education and Training Reform Amendment (Miscellaneous) Act 2016**, applies in relation to conduct occurring before or after the commencement of section 5 but does not apply in relation to conduct that is the subject of an inquiry under Division 10 of Part 2.4 that is commenced before the commencement of section 5.

S. 6.1.43
inserted by
No. 11/2020
s. 53.

6.1.43 Transitional provisions—COVID-19 Omnibus (Emergency Measures) Act 2020

(1) Despite its repeal, section 5A.4.1(3) continues to have effect in relation to a provisional registration of a teacher that was extended under section 5A.4.1(1).

(2) Despite its repeal, section 5A.4.2(3) continues to have effect in relation to a provisional registration of an early childhood teacher that was extended under section 5A.4.2(1).

**6.1.43 Transitional provisions—Education Legislation
Amendment (Victorian Institute of Teaching, TAFE
and Other Matters) Act 2018**

S. 6.1.43
inserted by
No. 31/2018
s. 36.

- (1) Section 2.6.21A as amended by section 15 of the amending Act does not apply to any failure to notify the Institute of any change to the name or address of a registered teacher that occurred immediately before the commencement of section 15 of the amending Act.
- (2) Section 2.6.26AB(1) as amended by section 16 of the amending Act does not apply to any failure to notify the Institute of any commencement of employment of a teacher at a school that occurred immediately before the commencement of section 16 of the amending Act.
- (3) Section 2.6.26AB(2) as amended by section 16 of the amending Act does not apply to any failure to notify the Institute of any cessation of employment of a teacher at a school that occurred immediately before the commencement of section 16 of the amending Act.
- (4) Section 2.6.26C(1) as amended by section 17 of the amending Act does not apply to any failure to notify the Institute of any commencement of employment of an early childhood teacher at an early childhood service that occurred immediately before the commencement of section 17 of the amending Act.
- (5) Section 2.6.26C(2) as amended by section 17 of the amending Act does not apply to any failure to notify the Institute of any cessation of employment of an early childhood teacher at an early childhood service that occurred immediately before the commencement of section 17 of the amending Act.

(6) In this section—

amending Act means the **Education Legislation Amendment (Victorian Institute of Teaching, TAFE and Other Matters) Act 2018**.

S. 6.1.44
inserted by
No. 33/2020
s. 13.

6.1.44 Transitional provisions relating to the Education and Training Reform Amendment (Regulation of Student Accommodation) Act 2020

- (1) A premises that was being conducted as a school boarding premises immediately before the commencement day is taken, on and from that day, to be a registered school boarding premises.
- (2) The provider of school boarding services at a school boarding premises referred to in subsection (1) must provide to the Authority within 3 months after the commencement day—
 - (a) an assessment as to the compliance of the premises and school boarding services with each of the prescribed minimum standards for registration of school boarding premises; and
 - (b) a statutory declaration made by the provider, which must accompany the assessment and which confirms the veracity of the information contained in the assessment.
- (3) An assessment under subsection (2)(a) must be in a form approved by the Authority.
- (4) If the provider of school boarding services at a school boarding premises referred to in subsection (1) does not provide the Authority with an assessment and statutory declaration in accordance with subsections (2) and (3), the premises ceases to be taken to be a registered school boarding premises for the purposes of this Act at the end of the period of 6 months after the commencement day unless the Authority decides

to conduct a review and evaluation under section 4.3.8G or 4.3.8H of the operation of the premises during that period.

(5) In this section—

commencement day means the day on which section 7 of the **Education and Training Reform Amendment (Regulation of Student Accommodation) Act 2020** comes into operation.

6.1.45 Transitional provisions—Education and Training Reform Amendment (Miscellaneous) Act 2021—approved teacher education courses

S. 6.1.45
inserted by
No. 10/2021
s. 37.

(1) This section applies to—

- (a) a teacher education course; and
- (b) any conditions imposed on a teacher education course.

(2) On and from the commencement of section 7 of the amending Act—

- (a) a teacher education course to which this section applies is taken to be an initial teacher education program approved by the Institute under Division 2A of Part 2.6 for the same period it was approved as a teacher education course; and
- (b) any condition to which this section applies is taken to be a condition imposed under section 2.6.6G.

(3) In this section—

amending Act means the **Education and Training Reform Amendment (Miscellaneous) Act 2021**;

teacher education course means a course—

- (a) approved by the Institute for a set period under section 2.6.3(1)(b) as in force immediately before the commencement of section 5 of the amending Act; or
- (b) approved by the Accreditation Committee for a set period under section 2.6.68(2)(a) as in force immediately before the commencement of section 9 of the amending Act.

S. 6.1.46
inserted by
No. 10/2021
s. 37.

6.1.46 Transitional provisions—Education and Training Reform Amendment (Miscellaneous) Act 2021—various teacher education course applications

- (1) This section applies to an application for approval made by a provider of a program or course of study to—
 - (a) the Institute under section 2.6.3(1)(b) as in force immediately before the commencement of section 5 of the amending Act; or
 - (b) the Accreditation Committee under section 2.6.68(2)(a) as in force immediately before the commencement of section 9 of the amending Act.
- (2) On and from the commencement of section 7 of the amending Act, an application to which this section applies for—
 - (a) approval of a program or course as a teacher education course that has not been determined, is taken to be an application made to the Institute under section 2.6.6D for approval of the program or course of study as an initial teacher education program; or

- (b) a variation of an approval of a program or course as a teacher education course that has not been determined, is taken to be an application made to the Institute under section 2.6.6D for variation of the approval of the program or course of study as an initial teacher education program; or
- (c) a renewal of an approval of a program or course as a teacher education course that has not been determined, is taken to be an application made to the Institute under section 2.6.6F for renewal of the approval of the program or course of study as an initial teacher education program.

(3) In this section—

amending Act means the **Education and Training Reform Amendment (Miscellaneous) Act 2021**;

teacher education course means a course specified in—

- (a) section 2.6.3(1)(b) as in force immediately before the commencement of section 5 of the amending Act; or
- (b) section 2.6.68(2)(a) as in force immediately before the commencement of section 9 of the amending Act.

6.1.47 Transitional provisions—Education and Training Reform Amendment (Miscellaneous) Act 2021—teacher qualifications

**S. 6.1.47
inserted by
No. 10/2021
s. 37.**

- (1) On and from the commencement of section 8 of the amending Act, a person who obtained a qualification appropriate for entry to teaching approved by the Minister or obtained a qualification determined by the Institute to be equivalent to an approved qualification as specified in section 2.6.8(a)(i) as in force

immediately before the commencement of section 8 of the amending Act is taken to have satisfactorily completed an initial teacher education program or a program or course of study leading to qualifications for entry to teaching that is determined by the Institute to be equivalent to an initial teacher education program.

(2) In this section—

amending Act means the **Education and Training Reform Amendment (Miscellaneous) Act 2021**.

S. 6.1.48
inserted by
No. 10/2021
s. 37.

6.1.48 Transitional provisions—Education and Training Reform Amendment (Miscellaneous) Act 2021—provisional registration

(1) This section applies to a teacher—

- (a) who is provisionally registered under section 2.6.10 as in force immediately before the commencement of section 10 of the amending Act and who has been provisionally registered for a period of 6 years or more (which may consist of consecutive or non-consecutive periods); and
- (b) who, on or after the commencement of section 10 of the amending Act applies for a further period of provisional registration.

(2) Despite the commencement of section 10 of the amending Act, a teacher to whom this section applies may be granted a further provisional registration for a period not exceeding 24 months if the Institute reasonably believes that the teacher will be able to satisfy the standard of professional practice required for registration within that period.

(3) In this section—

amending Act means the **Education and Training Reform Amendment (Miscellaneous) Act 2021**.

**6.1.49 Transitional provisions—Education and Training Reform Amendment (Miscellaneous) Act 2021—
inquiries and investigations**

S. 6.1.49
inserted by
No. 10/2021
s. 37.

(1) An inquiry begun under Division 10 of Part 2.6 as in force immediately before the commencement of section 24 of the amending Act is, on and from the commencement of that section, taken to be a preliminary assessment under Division 10A of Part 2.6.

(2) An investigation begun under Division 11 of Part 2.6 as in force immediately before the commencement of section 26 of the amending Act is, on and from that commencement, taken to be an investigation under Division 11 of Part 2.6 as amended.

(3) In this section—

amending Act means the **Education and Training Reform Amendment (Miscellaneous) Act 2021**.

**6.1.50 Transitional provision—Education and Training Reform Amendment (Miscellaneous) Act 2021—
standards**

S. 6.1.50
inserted by
No. 10/2021
s. 37.

(1) The *Accreditation of initial teacher education programs in Australia: Standards and Procedures*, developed by the Australian Institute for Teaching and School Leadership, as in force immediately before the commencement of section 6 of the amending Act are, on and from the commencement of that section, taken to be standards approved by the Minister under section 2.6.5(2).

(2) In this section—

amending Act means the **Education and Training Reform Amendment (Miscellaneous) Act 2021**.

S. 6.1.51
inserted by
No. 10/2021
s. 37.

6.1.51 Transitional and savings provision—Education and Training Reform Amendment (Miscellaneous) Act 2021—delegations

- (1) A delegation made under section 2.6.67 as in force immediately before the commencement of section 34 of the amending Act—
- (a) continues to have the same force and effect on and from the commencement of section 34 of the amending Act; and
 - (b) is taken, on and from the commencement of section 34 of the amending Act, to be a delegation made under section 2.6.67 as substituted by section 34 of the amending Act.
- (2) A delegation made under section 2.6.33(3) as in force immediately before the commencement of section 26 of the amending Act—
- (a) continues to have the same force and effect on and from the commencement of section 26 of the amending Act; and
 - (b) is taken, on and from the commencement of section 26 of the amending Act, to be a delegation made under section 2.6.67.
- (3) In this section—

amending Act means the **Education and Training Reform Amendment (Miscellaneous) Act 2021**.

6.1.52 Transitional and savings provision—Education and Training Reform Amendment (Senior Secondary Pathways Reforms and Other Matters) Act 2021—accreditation and registration of a course or part of a course

S. 6.1.52
inserted by
No. 45/2021
s. 11.

(1) Despite section 4.4.2(6), if, immediately before the commencement day, the Victorian Registration and Qualifications Authority decided to grant an application to accredit a course or part of a course under section 4.4.2, the Authority may, on and after the commencement day and before the relevant day, register the course or part of the course on the State Register as soon as practicable.

(2) In this section—

commencement day means the day on which Part 2 of the **Education and Training Reform Amendment (Senior Secondary Pathways Reforms and Other Matters) Act 2021** comes into operation;

relevant day means the day on which Part 3 of the **Education and Training Reform Amendment (Senior Secondary Pathways Reforms and Other Matters) Act 2021** comes into operation.

6.1.53 Transitional and savings provision—Education and Training Reform Amendment (Senior Secondary Pathways Reforms and Other Matters) Act 2021—registered school or other body licensed or permitted to provide VCAL

S. 6.1.53
inserted by
No. 45/2021
s. 18.

(1) If, immediately before the commencement day, the Victorian Curriculum and Assessment Authority licensed or permitted a registered school or other body to provide Foundation VCAL as an accredited senior secondary course under section 2.5.5(3), the registered school or

other body is, on and after the commencement day, taken to be licensed or permitted by the Victorian Curriculum and Assessment Authority to provide—

- (a) the VPC; and
- (b) Foundation VCAL.

(2) If, immediately before the commencement day, the Victorian Curriculum and Assessment Authority licensed or permitted a registered school or other body to provide Intermediate or Senior VCAL as an accredited senior secondary course under section 2.5.5(3), the registered school or other body is, on and after the commencement day, taken to be licensed or permitted by the Victorian Curriculum and Assessment Authority to provide—

- (a) the vocational major within the VCE; and
- (b) Intermediate or Senior VCAL (as the case requires).

(3) In this section—

commencement day means the day on which Part 3 of the **Education and Training Reform Amendment (Senior Secondary Pathways Reforms and Other Matters) Act 2021** comes into operation;

vocational major within the VCE means a program of study within the VCE specified on the certificate issued to recognise the completion of the VCE.

6.1.54 Transitional and savings provision—Education and Training Reform Amendment (Senior Secondary Pathways Reforms and Other Matters) Act 2021—person, body or school registered with respect to VCAL

S. 6.1.54
inserted by
No. 45/2021
s. 18.

- (1) If, immediately before the commencement day, the Victorian Registration and Qualifications Authority registered a person, body or school on the State Register with respect to Foundation VCAL as an accredited senior secondary course or a registered senior secondary qualification under section 4.3.10, the person, body or school is, on and after the commencement day, taken to be registered by the Victorian Registration and Qualifications Authority with respect to—
 - (a) the VPC; and
 - (b) Foundation VCAL.
- (2) If, immediately before the commencement day, the Victorian Registration and Qualifications Authority registered a person, body or school on the State Register with respect to Intermediate or Senior VCAL as an accredited senior secondary course or a registered senior secondary qualification under section 4.3.10, the person, body or school is, on and after the commencement day, taken to be registered by the Victorian Registration and Qualifications Authority with respect to—
 - (a) the VCE; and
 - (b) Intermediate or Senior VCAL (as the case requires).
- (3) Subject to subsection (4) and for the purposes of subsections (1) and (2), the registration of a person, body or school continues, on and after the commencement day, subject to the terms of registration under section 4.3.12 that applied

immediately before the commencement day until the registration is suspended, cancelled or expires (whichever occurs first).

- (4) If, on or after the commencement day and before 31 December 2024, the term of registration of a person or body under section 4.3.12(1) is due to expire, the Victorian Registration and Qualifications Authority may, on and after the commencement day, on the written request of the person or body (as the case requires), extend the registration for a period not exceeding 5 years unless sooner suspended or cancelled.
- (5) For the purposes of subsection (4), if a person or body makes a written request under subsection (4) on or after the commencement day and before 31 December 2024, the registration of the person or body (as the case requires) remains in force pending a decision by the Victorian Registration and Qualifications Authority to extend the registration.
- (6) Despite section 4.3.12(5)(a), if—
 - (a) immediately before the commencement day, a school referred to under subsection (1) or (2) was registered under section 4.3.10 with respect to an accredited senior secondary course; and
 - (b) on or after the commencement day, the Victorian Curriculum and Assessment Authority withdraws its acceptance under section 4.3.12(5)(a) with respect to one of the accredited senior secondary courses or accredited foundation secondary courses for which the school is taken to be registered—the school's registration with respect to an accredited senior secondary course or an accredited foundation secondary course (as the

case requires) that is not the subject of Victorian Curriculum and Assessment Authority's withdrawal of acceptance is, on and after the commencement day, taken not to be cancelled and remains in force until the registration is suspended or expires (whichever occurs first).

(7) In this section—

commencement day means the day on which Part 3 of the **Education and Training Reform Amendment (Senior Secondary Pathways Reforms and Other Matters) Act 2021** comes into operation.

6.1.55 Transitional and savings provision—Education Legislation Amendment (Adult and Community Education and Other Matters) Act 2022—membership of Adult, Community and Further Education Board

S. 6.1.55
inserted by
No. 32/2022
s. 54.

- (1) Despite the amendments made to section 3.3.10 by section 15 of the amending Act, if immediately before the commencement day, a person was appointed as a member of the Adult, Community and Further Education Board under section 3.3.10, the person's appointment as a member continues, on and after the commencement day, subject to the terms and conditions specified in the person's instrument of appointment, until their term of office expires or their office becomes vacant (whichever occurs first).
- (2) Despite the amendments made to section 3.3.10 by section 15 of the amending Act, if immediately before the commencement day, a member of the Adult, Community and Further Education Board was eligible for re-appointment and the re-appointment had not been confirmed, the person may be re-appointed as a member, on and after the commencement day, in accordance with

section 3.3.10 as in force immediately before the commencement day.

(3) In this section—

amending Act means the **Education Legislation Amendment (Adult and Community Education and Other Matters) Act 2022**;

commencement day means the day on which section 15 of the amending Act comes into operation.

S. 6.1.56
inserted by
No. 32/2022
s. 54.

6.1.56 Transitional and savings provision—Education Legislation Amendment (Adult and Community Education and Other Matters) Act 2022—membership of Regional Councils

- (1) Despite the amendments made to section 3.3.21 by section 21 of the amending Act, if immediately before the commencement day, a person was appointed as a member of a Regional Council under section 3.3.21, the person's appointment as a member continues, on and after the commencement day, subject to the terms and conditions specified in the person's instrument of appointment until the earlier of the following occurs—
- (a) the member's term of office expires;
 - (b) the member's office becomes vacant;
 - (c) the member resigns;
 - (d) the member is removed or suspended.
- (2) Despite the amendments made to section 3.3.21 by section 21 of the amending Act, if immediately before the commencement day, a person was eligible for re-appointment as a member of a Regional Council under section 3.3.22(1) and the re-appointment had not been confirmed, the person may be re-appointed as a member, on and after the commencement day, in accordance with

section 3.3.21 as in force immediately before the commencement day.

(3) In this section—

amending Act means the **Education Legislation Amendment (Adult and Community Education and Other Matters) Act 2022**;

commencement day means the day on which section 21 of the amending Act comes into operation.

6.1.57 Transitional and savings provision—Education Legislation Amendment (Adult and Community Education and Other Matters) Act 2022—Adult Multicultural Education Services

S. 6.1.57
inserted by
No. 32/2022
s. 54.

(1) Despite the amendments made to section 3.3.26 by section 23 of the amending Act, Adult Multicultural Education Services as established and in existence under that section as in force immediately before its amendment continues on and from the commencement day as AMES Australia under section 3.3.26 as if it had been established under that section.

(2) In this section—

amending Act means the **Education Legislation Amendment (Adult and Community Education and Other Matters) Act 2022**;

commencement day means the day on which section 23 of the amending Act comes into operation.

6.1.58 Transitional and savings provision—Education Legislation Amendment (Adult and Community Education and Other Matters) Act 2022—membership of governing board of AMES

S. 6.1.58
inserted by
No. 32/2022
s. 54.

(1) Despite the amendments made to section 3.3.33 by section 33 of the amending Act, if immediately before the commencement day, a person was

appointed as a member of the governing board of AMES under section 3.3.33, the person's appointment continues, on and after the commencement day, as a member of the Board of AMES Australia subject to the terms and conditions specified in the person's instrument of appointment until the earlier of the following occurs—

- (a) the member's term of office expires;
 - (b) the member's office becomes vacant;
 - (c) the member resigns;
 - (d) the member is removed or suspended.
- (2) Despite the amendments made to section 3.3.33 by section 33 of the amending Act, if immediately before the commencement day, a member of the governing board of AMES was eligible for re-appointment and the re-appointment had not been confirmed, the person may be re-appointed, on and after the commencement day, as a member of the Board of AMES Australia in accordance with section 3.3.33 as in force immediately before the commencement day.
- (3) In this section—

amending Act means the **Education Legislation Amendment (Adult and Community Education and Other Matters) Act 2022**;

commencement day means the day on which section 33 of the amending Act comes into operation.

6.1.59 Transitional and savings provision—Education Legislation Amendment (Adult and Community Education and Other Matters) Act 2022—application for registration as a training organisation

S. 6.1.59
inserted by
No. 32/2022
s. 54.

(1) If, immediately before the commencement day, an application made under section 4.3.16 was on foot and had not been granted, section 4.3.16 as amended by section 57 of the amending Act applies, on and after the commencement day, to the application.

(2) In this section—

amending Act means the **Education Legislation Amendment (Adult and Community Education and Other Matters) Act 2022**;

commencement day means the day on which section 57 of the amending Act comes into operation.

6.1.60 Transitional and savings provision—Education Legislation Amendment (Adult and Community Education and Other Matters) Act 2022—authorisations for access, use or disclosure of Victorian student number or related information

S. 6.1.60
inserted by
No. 32/2022
s. 54.

(1) Despite the amendments made to section 5.3A.9 by section 49 of the amending Act, an authorisation given by the Secretary under section 5.3A.9(1) as in force immediately before the commencement day, continues to apply, on and after the commencement day, until it is revoked.

(2) In this section—

amending Act means the **Education Legislation Amendment (Adult and Community Education and Other Matters) Act 2022**;

commencement day means the day on which section 49 of the amending Act comes into operation.

S. 6.1.61
inserted by
No. 32/2022
s. 54.

6.1.61 Transitional and savings provision—Education Legislation Amendment (Adult and Community Education and Other Matters) Act 2022—application of guidelines issued by Secretary on authorisations for access, use or disclosure of Victorian student number or related information

(1) If, immediately before the commencement day, an authorisation given by the Secretary under section 5.3A.9(1) was in force, any guidelines issued by the Secretary under section 5.3A.10A as inserted by section 52 of the amending Act apply to that authorisation, on and after the date on which the guidelines take effect.

(2) In this section—

amending Act means the **Education Legislation Amendment (Adult and Community Education and Other Matters) Act 2022**;

commencement day means the day on which section 52 of the amending Act comes into operation.

Part 6.2—Education and Training Reform Amendment (Victorian Academy of Teaching and Leadership) Act 2021—Transfer of property, rights and liabilities

Ch. 6 Pt 6.2
(Heading and
ss 6.2.1–6.2.9)
inserted by
No. 32/2021
s. 9.

6.2.1 Definitions

In this Part—

Academy means the Victorian Academy of
Teaching and Leadership;

allocation statement means an allocation
statement made under section 6.2.3;

appointed day means a day fixed under section
6.2.2 as the appointed day for the purposes
of an allocation statement;

liabilities means all liabilities, duties and
obligations, whether actual, contingent or
prospective;

property means any legal or equitable estate or
interest (whether present or future and
whether vested or contingent) in personal
property of any description, including
intellectual property;

rights means all rights, powers, privileges and
immunities, whether actual, contingent or
prospective.

S. 6.2.1
inserted by
No. 32/2021
s. 9.

6.2.2 Appointed day

The Minister, by notice in the Government
Gazette, may fix a day as the appointed day for
the purposes of an allocation statement.

S. 6.2.2
inserted by
No. 32/2021
s. 9.

6.2.3 Secretary to prepare allocation statement

- (1) The Secretary must prepare a statement of the
property, rights and liabilities of the State that are
to be assigned from the State to the Academy.

S. 6.2.3
inserted by
No. 32/2021
s. 9.

- (2) A proposed allocation statement under this section must be provided to the Minister for agreement.
- (3) The Minister may agree to the proposed allocation statement if the Minister is satisfied that the property, rights and liabilities to be assigned relate to—
 - (a) the provision and development of professional learning for teachers and school leaders; or
 - (b) the conduct of research relating to professional learning for teachers and school leaders.
- (4) If the Minister agrees to the proposed statement—
 - (a) the Minister must sign the statement; and
 - (b) the statement is an allocation statement for the purposes of this Part.

S. 6.2.4
inserted by
No. 32/2021
s. 9.

6.2.4 Property transferred to Academy

On the appointed day—

- (a) all property and rights of the State that are allocated under an allocation statement to the Academy vest in the Academy; and
- (b) all liabilities of the State that are allocated under an allocation statement to the Academy become liabilities of the Academy.

S. 6.2.5
inserted by
No. 32/2021
s. 9.

6.2.5 Transfer subject to encumbrances

If under this Part property, rights and liabilities of the State referred to in section 6.2.3(1) vest in or become property, rights and liabilities of the Academy—

- (a) the property and rights vest in the Academy subject to the encumbrances (if any) to which they were subject immediately before so vesting; and

- (b) the rights to which the State was entitled in respect of those liabilities immediately before they became liabilities of the Academy, vest in the Academy.

6.2.6 Substitution of party to agreement

If, under an allocation statement, the rights and liabilities of the State under an agreement are allocated to the Academy—

- (a) the Academy becomes, on the appointed day, a party to the agreement in place of the State; and
- (b) on and after the appointed day, the agreement has effect as if the Academy had always been a party to the agreement.

S. 6.2.6
inserted by
No. 32/2021
s. 9.

6.2.7 Proceedings

If, immediately before the appointed day, proceedings (including arbitration proceedings) relating to property, rights and liabilities of the State referred to in section 6.2.3(1) allocated to the Academy under the allocation statement, to which the State was a party, were pending or existing in any court or tribunal then, on and after the appointed day, the Academy is substituted for the State as a party to the proceedings and has the same rights in the proceedings as the State had.

S. 6.2.7
inserted by
No. 32/2021
s. 9.

6.2.8 Taxes

No duty or other tax is chargeable under any Act in respect of anything done under this Part or in respect of any act or transaction connected with or necessary to be done because of this Part, including a transaction entered into or an instrument made, executed, lodged or given, for the purpose of, or connected with the transfer of property, rights, liabilities or obligations of the State.

S. 6.2.8
inserted by
No. 32/2021
s. 9.

S. 6.2.9
inserted by
No. 32/2021
s. 9.

6.2.9 Validity of things done under this Part

Nothing effected by, or done or suffered under,
this Part—

- (a) is to be regarded as placing any person in breach of contract or confidence or as otherwise making any person guilty of a civil wrong; or
- (b) is to be regarded as placing any person in breach of, or as constituting a default under, any Act (other than the **Charter of Human Rights and Responsibilities Act 2006**) or other law or any provision in any agreement, arrangement or understanding including, but not limited to, any provision prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information; or
- (c) is to be regarded as fulfilling any condition which allows a person to exercise a right or remedy in respect of, or to terminate, any agreement or obligation; or
- (d) is to be regarded as giving rise to any remedy for a party to a contract or as causing or permitting the termination of any contract because of a change in the beneficial or legal ownership of any property, right or liability; or
- (e) is to be regarded as causing any contract to be void or otherwise unenforceable; or
- (f) is to be regarded as frustrating any contract; or
- (g) releases any surety or other obligor wholly or in part from any obligation.

Schedules

Schedule 1—Learning areas subject to free instruction

Sch. 1
substituted by
No. 27/2010
s. 62.

Sections 1.2.2(2)(b), 2.2.4(1), 2.2.7(3)

English

Mathematics

Sciences (including physics, chemistry and biology)

Humanities and social sciences (including history,
geography, economics, business, civics and
citizenship)

The arts

Languages

Health and physical education

Information and communication technology and
design and technology

Sch. 2
amended by
No. 76/2013
s. 18(2)(a).

Schedule 2—General provisions for authorities

Sections 2.5.8, 2.6.61, 3.1.17,
3.3.11, 3.3.39 and 4.2.5

1 Definitions

In this Schedule—

Sch. 2 cl. 1
def. of
authority
amended by
Nos 73/2012
s. 8(6),
32/2021
s. 7(1),
32/2022
s. 55(1).

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 Board of AMES Australia;
- (f) the Victorian Academy of Teaching and Leadership;
- (g) the board of a TAFE institute;

member means a member of an authority.

2 Terms and conditions of appointment of members

Sch. 2 cl. 2(2)
repealed by
No. 19/2014
s. 33, new
Sch. 2 cl. 2(2)
inserted by
No. 69/2015
s. 9.

- (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 up to 3 years and is eligible to stand for re-election except as provided in any Order establishing the authority.

- (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).

Sch. 2 cl. 3(3)
amended by
Nos 58/2007
s. 46(1)(b),
39/2012
s. 51(1),
73/2012
s. 24(1).

(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, 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 to be paid the remuneration, fees and allowances that are fixed from time to time by the Minister.

Sch. 2 cl. 3(4)
amended by
No. 58/2007
s. 46(1)(c),
substituted by
No. 39/2012
s. 51(2),
amended by
Nos 73/2012
s. 24(2),
32/2022
s. 55(2).

(4) Despite subclauses (1) and (2), a member of the Board of AMES Australia, 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 to be paid the remuneration, fees and allowances that are fixed from time to time by the Minister.

Sch. 2 cl. 3(5)
amended by
No. 58/2007
s. 46(1)(d),
repealed by
No. 73/2012
s. 24(3).

* * * * *

4 Acting appointments

Sch. 2 cl. 4(1)
amended by
No. 28/2010
s. 20(1).

(1) The Minister may appoint a person to act in the place of a member, including a chairperson, who is absent or who is, for any other reason, unable to perform the duties of the office.

Sch. 2 cl. 4(2)
amended by
Nos 28/2010
s. 20(2),
73/2012
s. 8(7),
32/2022 s. 59.

(2) If there is a vacancy in the office of a member (including a chairperson) of the Victorian Curriculum and Assessment Authority, the Adult, Community and Further Education Board, the Victorian Registration and Qualifications

Authority or the Victorian Academy of Teaching and Leadership, 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.

Note

The Minister may appoint a person under section 2.6.64 to act in the place of a member of the Council of the Victorian Institute of Teaching.

**Note to Sch. 2
cl. 4
inserted by
No. 42/2016
s. 13.**

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.

Sch. 2 cl. 5(6)
repealed by
No. 31/2018
s. 65(7).

* * * * *

- (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 Board of AMES Australia, the Institute or the board of a TAFE institute.

Sch. 2 cl. 9(2)
amended by
No. 32/2022
s. 55(2).

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

- (1) 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.
- (2) Subclause (1) does not apply to the Board of AMES Australia or to the board of a TAFE institute.
- (3) The Board of AMES Australia may, by instrument, delegate to the members of a committee established by the Board, a member of the Board, the chief executive officer of AMES Australia or to any other person employed in the Department or by AMES Australia in the administration or execution of this Act any power of the Board, other than this power of delegation.
- (4) The board of a TAFE institute may, by instrument, delegate to the members of a committee established by the board, a director of the board, the chief executive officer of the TAFE institute or to any other person employed in the Department or by the TAFE institute in the administration or execution of this Act any power of the board, other than this power of delegation.

Sch. 2 cl. 11
(Heading)
amended by
No. 28/2010
s. 21.

Sch. 2 cl. 11
amended by
Nos 58/2007
s. 46(2),
73/2012
s. 24(4) (ILA
s. 39B(3)).

Sch. 2 cl. 11(2)
inserted by
No. 73/2012
s. 24(4),
amended by
No. 32/2022
s. 55(2).

Sch. 2 cl. 11(3)
inserted by
No. 73/2012
s. 24(4),
substituted by
No. 32/2022
s. 55(3).

Sch. 2 cl. 11(4)
inserted by
No. 73/2012
s. 24(4).

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.
- (4) This clause does not apply to the Victorian Academy of Teaching and Leadership, the Board of AMES Australia or to the board of a TAFE institute.

Sch. 2 cl. 13(4)
inserted by
No. 73/2012
s. 24(5),
amended by
Nos 32/2021
s. 7(2),
32/2022
s. 55(4).

13A Funds of TAFE institutes and AMES Australia

(1) A TAFE institute must maintain any fund taken to be established in the name of the institute under section 6.1.32(3)(b).

Sch. 2 cl. 13A (Heading) amended by No. 32/2022 s. 55(5).

Sch. 2 cl. 13A inserted by No. 73/2012 s. 24(6).

(2) AMES Australia must maintain any fund taken to be established in the name of AMES Australia under section 6.1.33(3)(b).

Sch. 2 cl. 13A(2) amended by No. 32/2022 s. 55(6).

(3) There must be paid into a fund maintained by a TAFE institute or AMES Australia under this clause—

Sch. 2 cl. 13A(3) amended by No. 32/2022 s. 55(7)(a).

(a) any investment income received by the institute or AMES Australia; and

Sch. 2 cl. 13A(3)(a) amended by No. 32/2022 s. 55(7)(b).

(b) the proceeds of the sale of any investment made by the institute or AMES Australia; and

Sch. 2 cl. 13A(3)(b) amended by No. 32/2022 s. 55(7)(b).

(c) any fees or other money received by the institute or AMES Australia.

Sch. 2 cl. 13A(3)(c) amended by No. 32/2022 s. 55(7)(b).

(4) There must be paid out of the fund maintained by a TAFE institute or AMES Australia under this clause any payment that is authorised by the institute or AMES Australia 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 or AMES Australia.

Sch. 2 cl. 13A(4) amended by No. 32/2022 s. 55(7).

14 Investment powers

Sch. 2 cl. 14
amended by
No. 76/2013
s. 18(2)(b) (ILA
s. 39B(3)).

(1) An authority has any of the investment powers that are conferred on it by the **Borrowing and Investment Powers Act 1987**.

Sch. 2 cl. 14(2)
inserted by
No. 76/2013
s. 18(2)(b),
amended by
Nos 32/2021
s. 7(3),
32/2022
s. 55(8).

(2) This clause does not apply to the Victorian Academy of Teaching and Leadership, the Board of AMES Australia or to the board of a TAFE institute.

Schedule 3—Employment of staff

Section 3.1.25

Part 1—General

1 Superannuation

- (1) A person who, immediately before being employed by a TAFE college council or a TAFE institute board or a TAFE institute 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 or employed in a dual sector university.
- (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 the person is employed by a TAFE institute or employed in a dual sector university as if there had been no change of employer.
- (3) Subclause (1), insofar as it applies to a person employed in a university with a TAFE division, only applies to a person so employed immediately before the commencement of section 6 of the **Education and Training Reform Amendment (Dual Sector Universities) Act 2013**.

Sch. 3 cl. 1(1) amended by Nos 73/2012 s. 25(1)(a)(b), 76/2013 s. 16(1), 31/2018 s. 45(1).

Sch. 3 cl. 1(2) amended by Nos 73/2012 s. 25(1)(c), 76/2013 s. 16(2), 31/2018 s. 45(2).

Sch. 3 cl. 1(3) inserted by No. 76/2013 s. 16(3).

Note

Before the commencement of this subclause, the term *university with a TAFE division* meant the University of Ballarat, Royal Melbourne Institute of Technology, Swinburne University of Technology or Victoria University.

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 a TAFE institute.

Sch. 3 cl. 4(b)
amended by
No. 73/2012
s. 25(2),
substituted by
No. 76/2013
s. 16(4).

Schedule 4—State training and employment provisions

Sections 5.5.4, 5.5.5

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 Authority 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.

Sch. 4 cl. 2
amended by
No. 39/2012
s. 24.

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 Authority, within 5 working days after the termination.

Sch. 4
cl. 5(1)(b)
amended by
No. 39/2012
s. 25.

Sch. 4 cl. 5(2)
amended by
No. 39/2012
s. 25.

- (2) An employer who decides not to continue the employment of an apprentice on the completion of the approved training scheme must notify the Authority 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.
- (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 Authority under section 5.5.2.

Sch. 4 cl. 6(2)
amended by
No. 39/2012
s. 26.

Schedule 5—Regulations

Section 5.10.1(2)

1 Government schools

Sch. 5 cl. 1.2
amended by
No. 33/2020
s. 14.

Sch. 5 cl. 1.3
amended by
No. 58/2007
s. 47.

Sch. 5 cl. 1.5
amended by
No. 58/2007
s. 47.

- 1.1 The admission to Government schools.
- 1.2 Safeguarding health and maintaining order and discipline in Government schools and Government school boarding premises.
- 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.

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.

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 and early childhood teachers

Sch. 5 cl. 5
(Heading)
substituted by
No. 19/2014
s. 86(1).

5.1 The registration and renewal of registration or permission to teach of teachers and early childhood teachers in schools and early childhood services in Victoria.

Sch. 5 cl. 5.1
amended by
No. 19/2014
s. 86(2)(3).

5.2 Certificates of registration for teachers and early childhood teachers who are registered to, or have permission to, teach in schools and early childhood services in Victoria.

Sch. 5 cl. 5.2
amended by
No. 19/2014
s. 86(2)(3).

5.3 The register of teachers and early childhood teachers who are registered to, or have permission to, teach in schools and early childhood services in Victoria.

Sch. 5 cl. 5.3
amended by
No. 19/2014
s. 86(2)(3).

5A Temporary approvals

Generally any matter in connection with applications for, and the granting of, exemptions under Division 15A of Part 2.6 and temporary approvals.

Sch. 5 cl. 5A
inserted by
No. 19/2014
s. 87.

* * * * *

Sch. 5 cl. 6
repealed by
No. 19/2014
s. 34.

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.

Sch. 5 cl. 8B
inserted by
No. 71/2010
s. 36,
amended by
No. 73/2012
s. 109(4).

8B Standard terms for contracts with RTOs

Terms to be taken to be included in contracts between RTOs and students or prospective students for the purposes of section 4.3.29A(2) include terms relating to—

- (a) termination of contracts;
- (b) resolution of disputes;
- (c) fees, including the payment and refund of fees and the levying, collection and management of fees;
- (d) cooling-off periods;
- (e) rights to compensation;

- (f) the awarding, conferral or issuing of qualifications, certificates or statements of attainment;
- (g) the provision of information to students.

8C RTO requirements

Sch. 5 cl. 8C
inserted by
No. 71/2010
s. 49(1).

8C.1 Requirements that an RTO must comply with including requirements relating to the following matters—

- (a) information to be made available to past, current or prospective students including the following matters—
 - (i) fees, including the policy for payment and refunding of fees and for the levying, collection and management of fees;
 - (ii) course timelines;
 - (iii) facilities and equipment available for use by students;
 - (iv) whether the RTO is a member of a prescribed tuition assurance scheme;
 - (v) information about the RTO's complaint handling processes and the rights of students to lodge complaints with the RTO or the Authority;
- (b) the methods by which the RTO is to make available to past, current or prospective students the information referred to in paragraph (a) including the publishing of that information;
- (c) the provision of the information referred to in paragraph (a) to the Authority for publishing by the Authority;

- (d) requirements to be met before entering into contracts with students or prospective students;
- (e) the contents of contracts, including the terms, entered into between the RTO and students or prospective students;
- (f) publications and marketing materials;
- (g) the awarding, conferral or issuing of qualifications, certificates or statements of attainment;
- (h) public liability insurance;
- (i) the keeping of records relating to current and past students including records of qualifications and statements of attainment;
- (j) complaint handling processes;
- (k) the register of complaints;
- (l) criteria that must be complied with before being granted registration by the Authority;
- (m) conduct in relation to dealing with past, current or prospective students.

8C.2 Prescribing tuition assurance schemes for RTOs.

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 20 penalty units for any contravention of the regulations.

**Sch. 5 cl. 10.3
amended by
No. 71/2010
s. 49(2).**

Schedule 6—Ministerial orders

Section 5.10.4(2)

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.

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.
- 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.

Sch. 6 cl. 8.1
substituted by
No. 70/2008
s. 40(1).

Sch. 6 cl. 8.1A
inserted by
No. 70/2008
s. 40(2).

Sch. 6 cl. 8.3
amended by
No. 76/2013
s. 19(3).

8.3 Specifying the qualifications or experience necessary for employment, promotion or transfer to any position or class or grade of position.

Sch. 6 cl. 8.4
amended by
No. 70/2008
s. 40(3).

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. 9
substituted by
No. 76/2013
s. 17.

9 TAFE teaching staff

Declaring a position or class of positions on the staff of a TAFE institute to be part of the management staff of the TAFE institute.

10 Training agents

Appointing any person or body to be an approved training agent for the purposes of this Act.

Sch. 6 cl. 11
inserted by
No. 3/2008
s. 8.

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.

12 Search and seizure

- 12.1 The manner in which search and seizure powers may be exercised under Part 5.8A.
- 12.2 Matters relating to actions to be taken after an item is seized under Part 5.8A.
- 12.3 The type of items that may be declared under Part 5.8A.

Sch. 6 cl. 12
inserted by
No. 11/2011
s. 4.

13 Licensing arrangements of school councils

The procedures relating to a school council—

- (a) granting a licence in relation to school lands or buildings; and
- (b) entering into a licensing arrangement in relation to any other land.

Sch. 6 cl. 13
inserted by
No. 37/2015
s. 25.

14 Protection scheme for fees paid to non-Government schools

- 14.1 The matters that the Authority must consider in deciding whether to impose a condition on the registration of a non-Government school for the school to put in place a protection scheme for fees paid or to be paid to that school.
- 14.2 The requirements of a protection scheme for fees paid or to be paid to a non-Government school may include but are not limited to the following—
- (a) the timing of payment of fees including restrictions on paying fees in advance;
- (b) the method of payment of fees including that fees may be paid in instalments;
- (c) the method of collection of fees;
- (d) the refund of fees;
- (e) the management of fees, including a requirement that fees be paid into a trust;

Sch. 6 cl. 14
inserted by
No. 37/2015
s. 26.

- (f) the nature and terms of a trust into which fees are to be paid;
- (g) a requirement that the school advise parents of students at the school of the reasons for putting in place the protection scheme.

14.3 In this clause *fee* has the same meaning as in section 4.3.1A.

Schedule 7—Dispute resolution and student welfare scheme

Section 4.6A.5B

Sch. 7
repealed by
No. 19/2008
s. 13,
new Sch. 7
inserted by
No. 71/2010
s. 34.

1 Scheme must apply to overseas students

The scheme must apply to overseas students of RTOs providing courses in Victoria.

2 Scheme may apply to domestic students

The scheme may apply to domestic students of RTOs.

3 Dispute resolution process

- (1) The scheme must provide for dispute resolution processes in relation to disputes between past, current or prospective students and RTOs that are members of the scheme.
- (2) In considering any dispute resolution process to be provided by the scheme, the Minister must have regard to—
 - (a) the integrity and fairness of the scheme including whether—
 - (i) the process provides a fair procedure; and
 - (ii) the persons appointed to decide disputes will be independent and able to make decisions based on the merits of a case; and
 - (iii) a decision on the dispute will bind members of the scheme; and
 - (iv) persons appointed to decide disputes will have appropriate qualifications and experience; and

- (b) the cost of referring a complaint to the dispute resolution process; and
- (c) the past history (if any) of the operation of the scheme.

4 Other matters

The Minister must consider whether the scheme also covers the following functions—

- (a) providing information and advice to students in relation to—
 - (i) their rights under this Act and the regulations and the scheme; and
 - (ii) training contracts; and
 - (iii) other training matters affecting students;
- (b) conducting inquiries in relation to systemic matters affecting the vocational education and training sector;
- (c) facilitating pastoral care services for overseas students.

5 Regulations

The Minister must also consider whether the scheme will be able to operate in accordance with the requirements for operation set out in the regulations.

Schedule 8—Transitional and saving provisions

Section 6.1.3

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.
- 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(l) is deemed to be registered as—
- (a) a non-Government school under this Act;
- and

Sch. 8 cl. 1.5.2
amended by
No. 58/2007
s. 48(1)(a).

- (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;
- (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;

Sch. 8
cl. 1.6(d)
amended by
No. 39/2012
s. 62(5)(a).

(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 Division 1 of Part 4.4, subject to any terms and conditions of the accreditation under that Division;

Sch. 8
cl. 1.6(e)
amended by
No. 39/2012
s. 62(5)(b).

(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 4.3.33, 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.

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.

Sch. 8 cl. 1.7.2
substituted by
No. 58/2007
s. 48(2).

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.

1.8 State Register

The State Register, on the commencement of section 6.1.1(l), 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
Nos 58/2007
s. 48(1)(b),
4/2017
s. 17(1)(g).

1.9 VRQA

1.9.1 On the commencement of section 6.1.1(l)—

- (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
- (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**.
- (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.

Sch. 8 cl. 1.10
amended by
No. 58/2007
s. 48(1)(c).

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.

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
 - (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.
- (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;
- (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.

Sch. 9
inserted by
No. 70/2008
s. 41.

Schedule 9—Names of registered proprietors of land acquired for education purposes

Section 6.1.9

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.

**Schedule 10—Schools excluded from
calculation of Government school
recurrent funding**

Sch. 10
inserted by
No. 1/2015
s. 5.

Section 2.7.2

- 1 Specialist schools.
- 2 English language Government schools or centres.
- 3 The following schools—
 - (a) Distance Education Centre Victoria;
 - (b) Parkville Youth Justice Centre;
 - (c) Victorian College of the Arts Secondary School;
 - (d) Victorian School of Languages.
- 4 The deaf facilities attached to the following schools—
 - (a) Brighton Primary School;
 - (b) Charles LaTrobe P-12 College;
 - (c) Eastwood Primary School;
 - (d) Forest Hill College;
 - (e) Forest Street Primary School;
 - (f) Grovedale West Primary School;
 - (g) Guthrie Street Primary School;
 - (h) Kennington Primary School;
 - (i) Mount Erin Secondary College;
 - (j) Mount View Primary School;
 - (k) Pearcedale Primary School;
 - (l) Rosanna Golf Links Primary School;
 - (m) St Albans East Primary School;

- (n) Shepparton High School;
- (o) Sunshine College;
- (p) Willmott Park Primary School.

5 In this Schedule—

English language Government school or centre
means a Government school that offers
students a full-time and intensive English
language program for a minimum of
6 months and a maximum of 12 months and
includes a part of a Government school that
offers such a program;

specialist school means—

- (a) a school established for the main purpose of
providing instruction for students with
disabilities; or
- (b) a school established for the main purpose
of providing instruction for students with
social, emotional or behavioural difficulties.

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative 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.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

Education and Training Reform Act 2006
No. 24 of 2006
Endnotes

2 Table of Amendments

This publication incorporates amendments made to the **Education and Training Reform Act 2006** by Acts and subordinate instruments.

Education and Training Reform Act 2006, No. 24/2006

| | |
|---------------------------|--|
| <i>Assent Date:</i> | 16.5.06 |
| <i>Commencement Date:</i> | S. 5A.6.1 inserted on 25.4.20 by No. 11/2020 s. 52: s. 2 (as amended by No. 27/2020 s. 30) |
| <i>Note:</i> | S. 5A.6.1 repealed Ch. 5A (ss 5A.1.1–5A.6.1) on 26.4.21 |
| <i>Current State:</i> | This information relates only to the provision/s amending the Education and Training Reform Act 2006 |

Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006

| | |
|---------------------------|--|
| <i>Assent Date:</i> | 10.10.06 |
| <i>Commencement Date:</i> | S. 26(Sch. item 30) on 11.10.06: s. 2(1) |
| <i>Current State:</i> | This information relates only to the provision/s amending the Education and Training Reform Act 2006 |

Statute Law Revision Act 2007, No. 28/2007

| | |
|---------------------------|--|
| <i>Assent Date:</i> | 26.6.07 |
| <i>Commencement Date:</i> | S. 3(Sch. item 19) on 27.6.07: s. 2(1) |
| <i>Current State:</i> | 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

| | |
|---------------------------|--|
| <i>Assent Date:</i> | 27.11.07 |
| <i>Commencement Date:</i> | 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) |
| <i>Current State:</i> | 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

| | |
|---------------------------|--|
| <i>Assent Date:</i> | 4.3.08 |
| <i>Commencement Date:</i> | Ss 5–8 on 14.7.08: s. 2(2) |
| <i>Current State:</i> | 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

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**

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**

Relationships Amendment (Caring Relationships) Act 2009, No. 4/2009

Assent Date: 10.2.09
Commencement Date: S. 37(Sch. 1 item 11) on 1.12.09: s. 2(2)
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Statute Law Amendment (Charter of Human Rights and Responsibilities) Act 2009, No. 45/2009

Assent Date: 5.8.09
Commencement Date: Ss 5, 6 on 6.8.09: s. 2
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Education and Training Reform Amendment (School Age) Act 2009, No. 62/2009

Assent Date: 17.11.09
Commencement Date: 1.1.10: s. 2
Current State: All of Act in operation

Education and Training Reform Act 2006
No. 24 of 2006
Endnotes

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 48) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009

Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt 2 item 20) on 1.1.10: 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 (Overseas Students) Act 2009, No. 85/2009

Assent Date: 15.12.09
Commencement Date: 16.12.09: s. 2
Current State: All of Act in operation

Education and Training Reform Amendment Act 2010, No. 27/2010 (as amended by No. 28/2010)

Assent Date: 8.6.10
Commencement Date: Ss 4, 10, 44(1), 58, 59, 61 on 15.7.10: Government Gazette 15.7.10 p. 1579; ss 5–9, 60 on 22.9.10: Special Gazette (No. 385) 22.9.10 p. 1; ss 11–43, 44(2)–57, 62 on 1.1.11: 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 Further Amendment Act 2010, No. 28/2010

Assent Date: 8.6.10
Commencement Date: Ss 4, 12, 15, 16, 20, 21 on 15.7.10: Government Gazette 15.7.10 p. 1579; ss 5–11, 13, 14, 17–19 on 1.1.11: s. 2(2)
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Pharmacy Regulation Act 2010, No. 39/2010 (as amended by No. 29/2011)

Assent Date: 30.6.10
Commencement Date: S. 121 on 1.7.11: 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 Act 2006
No. 24 of 2006
Endnotes

Education and Training Reform Amendment (Skills) Act 2010, No. 71/2010

(as amended by No. 73/2012 (as amended by No. 76/2013))

Assent Date: 19.10.10
Commencement Date: Ss 3–25, 35, 36, 49, 51–55(2), 57, 58, 61–70, 72(2) on 1.4.11: Special Gazette (No. 102) 29.3.11 p. 1; s. 60 on 1.7.11: Special Gazette (No. 102) 29.3.11 p. 1; ss 26–31, 37–48, 50 on 1.1.12: Special Gazette (No. 102) 29.3.11 p. 1; s. 59 on 1.8.12: Special Gazette (No. 256) 24.7.12 p. 1; s. 55(3) on 17.4.13: Special Gazette (No. 141) 16.4.13 p. 2; ss 32–34 on 1.1.14: 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 (School Safety) Act 2011, No. 11/2011

Assent Date: 10.5.11
Commencement Date: Ss 3, 4 on 1.1.12: s. 2(2)
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Transport Legislation Amendment (Public Transport Development Authority) Act 2011, No. 61/2011

Assent Date: 15.11.11
Commencement Date: S. 25 on 15.12.11: Special Gazette (No. 407) 13.12.11 p. 1; Sch. 2 item 1 on 2.4.12: Special Gazette (No. 101) 27.3.12 p. 1
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Education and Training Reform Amendment (Skills) Act 2011, No. 76/2011

Assent Date: 13.12.11
Commencement Date: Ss 10, 11 on 1.4.11: s. 2(2); ss 3–9, 12 on 14.12.11: s. 2(1)
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Associations Incorporation Reform Act 2012, No. 20/2012

Assent Date: 1.5.12
Commencement Date: S. 226(Sch. 5 item 12) on 26.11.12: Special Gazette (No. 384) 20.11.12 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

Health Professions Registration (Repeal) Act 2012, No. 27/2012

Assent Date: 29.5.12
Commencement Date: Ss 17, 18 on 1.7.12: s. 2
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Education Legislation Amendment (VET Sector, Universities and Other Matters) Act 2012, No. 39/2012

Assent Date: 27.6.12
Commencement Date: S. 62(5) on 1.7.07: s. 2(2): ss 27–49, 51, 52, 62(1)–(4) on 1.8.12: Special Gazette (No. 267) 31.7.12 p. 1; ss 3–26 on 1.10.12: Special Gazette (No. 267) 31.7.12 p. 1
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Statute Law Revision Act 2012, No. 43/2012

Assent Date: 27.6.12
Commencement Date: S. 3(Sch. item 13) on 28.6.12: s. 2(1)
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Education Legislation Amendment (Governance) Act 2012, No. 73/2012

Assent Date: 4.12.12
Commencement Date: Ss 106, 107, 109 on 5.12.12: s. 2(1); ss 3–33 on 1.1.13: s. 2(3)
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Education and Training Reform Amendment (Teacher Registration and Other Matters) Act 2013, No. 14/2013

Assent Date: 26.3.13
Commencement Date: S. 20(1) on 1.1.11: s. 2(2); ss 3–19, 20(2)–(5) on 1.5.13: Special Gazette (No. 163) 30.4.13 p. 1
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Education and Training Reform Amendment (School Attendance) Act 2013, No. 47/2013

Assent Date: 10.9.13
Commencement Date: Ss 4–13 on 1.1.14: Special Gazette (No. 419) 26.11.13 p. 1
Current State: All of Act in operation

Education and Training Reform Act 2006
No. 24 of 2006
Endnotes

Workplace Injury Rehabilitation and Compensation Act 2013, No. 67/2013

Assent Date: 12.11.13
Commencement Date: S. 649(Sch. 9 item 13) on 1.7.14: 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 Amendment (Dual Sector Universities) Act 2013, No. 76/2013

Assent Date: 17.12.13
Commencement Date: Ss 5, 18, 19 on 17.12.13: s. 2(1); ss 3, 4, 6–17 on 1.1.14: s. 2(4)
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Public Administration Amendment (Public Sector Improvement) Act 2014, No. 6/2014

Assent Date: 11.2.14
Commencement Date: S. 15 on 1.4.14: Special Gazette (No. 65) 4.3.14 p. 1
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Legal Profession Uniform Law Application Act 2014, No. 17/2014

Assent Date: 25.3.14
Commencement Date: S. 160(Sch. 2 item 34) on 1.7.15: Special Gazette (No. 151) 16.6.15 p. 1
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Act 2014, No. 19/2014 (as amended by No. 37/2015)

Assent Date: 1.4.14
Commencement Date: S. 15(2) on 1.1.11: s. 2(2); ss 4–15(1), 16–28 on 1.8.14: Special Gazette (No. 254) 29.7.14 p. 1; ss 29–34, 35(a), 42(a) on 29.11.14: Special Gazette (No. 254) 29.7.14 p. 1; ss 35(b)(c)(d), 36–41, 42(b)(c)(d), 43–78, 80–88 on 30.9.15: Special Gazette (No. 278) 22.9.15 p. 1; s. 79 on 31.12.15: s. 2(4)
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014

Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 49) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
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

Treasury Legislation and Other Acts Amendment Act 2014, No. 44/2014

Assent Date: 27.6.14
Commencement Date: S. 33(Sch. item 8) on 30.6.14: s. 2(5)
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Inquiries Act 2014, No. 67/2014

Assent Date: 23.9.14
Commencement Date: S. 147(Sch. 2 item 15) on 15.10.14: Special Gazette (No. 364) 14.10.14 p. 2
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Crimes Amendment (Sexual Offences and Other Matters) Act 2014, No. 74/2014
(as amended by No. 20/2015 s. 50(1))

Assent Date: 21.10.14
Commencement Date: S. 30 on 1.7.15: s. 2(3)
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Education and Training Reform Amendment (Funding of Non-Government Schools) Act 2015, No. 1/2015

Assent Date: 10.3.15
Commencement Date: Ss 3–5 on 1.7.15: Special Gazette (No. 133) 2.6.15 p. 1
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Education and Training Reform Amendment (Child Safe Schools) Act 2015, No. 7/2015

Assent Date: 21.4.15
Commencement Date: S. 13 on 22.4.15: s. 2(1); ss 4(1), 5(3), 6–12 on 1.7.15: Special Gazette (No. 183) 1.7.15 p. 1; ss 4(2), 5(1)(2)(4) on 9.12.15: Special Gazette (No. 389) 8.12.15 p. 1
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Education and Training Reform Amendment (Miscellaneous) Act 2015, No. 37/2015

Assent Date: 8.9.15
Commencement Date: S. 27 on 9.9.15: s. 2(1); ss 4–26 on 1.12.15: Special Gazette (No. 363) 24.11.15 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

**Crimes Amendment (Child Pornography and Other Matters) Act 2015,
No. 42/2015**

Assent Date: 22.9.15
Commencement Date: S. 25 on 1.12.15: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Education and Training Reform
Act 2006**

**Child Wellbeing and Safety Amendment (Child Safe Standards) Act 2015,
No. 63/2015**

Assent Date: 1.12.15
Commencement Date: S. 15 on 1.1.16: Special Gazette (No. 426) 22.12.15
p. 1
Current State: This information relates only to the provision/s
amending the **Education and Training Reform
Act 2006**

**Education Legislation Amendment (TAFE and University Governance Reform)
Act 2015, No. 69/2015**

Assent Date: 15.12.15
Commencement Date: Ss 4–14 on 1.1.16: Special Gazette (No. 403) 15.12.15
p. 1
Current State: This information relates only to the provision/s
amending the **Education and Training Reform
Act 2006**

**Education and Training Reform Amendment (Victorian Institute of Teaching)
Act 2016, No. 9/2016**

Assent Date: 15.3.16
Commencement Date: Ss 4–12 on 16.3.16: s. 2(1); ss 14–17 on 1.6.16:
Special Gazette (No. 153) 17.5.16 p. 1
Current State: This information relates only to the provision/s
amending the **Education and Training Reform
Act 2006**

**Education and Training Reform Amendment (Miscellaneous) Act 2016,
No. 42/2016**

Assent Date: 23.8.16
Commencement Date: S. 14 on 24.8.16: s. 2(1); ss 4–13 on 29.9.16: Special
Gazette (No. 296) 27.9.16 p. 1
Current State: This information relates only to the provision/s
amending the **Education and Training Reform
Act 2006**

Crimes Amendment (Sexual Offences) Act 2016, No. 47/2016

Assent Date: 6.9.16
Commencement Date: S. 38 on 1.7.17: 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 Act 2006
No. 24 of 2006
Endnotes

Melbourne College of Divinity Amendment Act 2016, No. 61/2016

Assent Date: 2.11.16
Commencement Date: S. 39 on 1.1.17: Special Gazette (No. 381) 13.12.16
p. 1
Current State: This information relates only to the provision/s
amending the **Education and Training Reform
Act 2006**

Children Legislation Amendment (Reportable Conduct) Act 2017, No. 4/2017

Assent Date: 28.2.17
Commencement Date: S. 17(1) on 1.3.17: s. 2(1); s. 12 on 1.7.17: Special
Gazette (No. 216) 27.6.17 p. 1
Current State: This information relates only to the provision/s
amending the **Education and Training Reform
Act 2006**

**Family Violence Protection Amendment (Information Sharing) Act 2017,
No. 23/2017**

Assent Date: 14.6.17
Commencement Date: S. 36 on 26.2.18: Special Gazette (No. 40) 6.2.18 p. 1
Current State: This information relates only to the provision/s
amending the **Education and Training Reform
Act 2006**

Parks and Crown Land Legislation Amendment Act 2017, No. 53/2017

Assent Date: 24.10.17
Commencement Date: S. 74 on 15.12.17: Special Gazette (No. 433) 12.12.17
p. 1
Current State: This information relates only to the provision/s
amending the **Education and Training Reform
Act 2006**

Oaths and Affirmations Act 2018, No. 6/2018

Assent Date: 27.2.18
Commencement Date: S. 68(Sch. 2 item 44) on 1.3.19: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Education and Training Reform
Act 2006**

Children Legislation Amendment (Information Sharing) Act 2018, No. 11/2018

Assent Date: 10.4.18
Commencement Date: Ss 28, 29 on 27.9.18: Special Gazette (No. 405) 4.9.18
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

Long Service Leave Act 2018, No. 12/2018

Assent Date: 15.5.18
Commencement Date: S. 58 on 1.11.18: s. 2(2)
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Education Legislation Amendment (Victorian Institute of Teaching, TAFE and Other Matters) Act 2018, No. 31/2018

Assent Date: 7.8.18
Commencement Date: Ss 38–40, 42, 43, 45, 50–53, 65 on 8.8.18: s. 2(1); ss 46, 54, 61–64 on 15.10.18: Special Gazette (No. 466) 10.10.18 p. 1; ss 47–49 on 15.10.18: Special Gazette (No. 466) 10.10.18 p. 1; ss 37, 41, 44 on 30.6.19: Special Gazette (No. 239) 18.6.19 p. 1; ss 4–36, 55–60 on 1.9.19: s. 2(3)
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Children's Services Amendment Act 2019, No. 37/2019

Assent Date: 6.11.19
Commencement Date: S. 18 on 17.5.20: Special Gazette (No. 232) 12.5.20 p. 1
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Local Government Act 2020, No. 9/2020

Assent Date: 24.3.20
Commencement Date: S. 390(Sch. 1 item 29) on 6.4.20: Special Gazette (No. 150) 24.3.20 p. 1
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

COVID-19 Omnibus (Emergency Measures) Act 2020, No. 11/2020

Assent Date: 24.4.20
Commencement Date: Ss 52, 53 on 25.4.20: s. 2
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Act 2020, No. 27/2020

Assent Date: 20.10.20
Commencement Date: Ss 24–30 on 21.10.20: s. 2
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

Education and Training Reform Amendment (Regulation of Student Accommodation) Act 2020, No. 33/2020

Assent Date: 4.11.20
Commencement Date: S. 18 on 5.11.20: s. 2(1); ss 4–17 on 18.6.21: Special Gazette (No. 152) 30.3.21 p. 1
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Worker Screening Act 2020, No. 34/2020

Assent Date: 4.11.20
Commencement Date: Ss 207–237 on 1.2.21: Special Gazette (No. 647) 8.12.20 p. 1
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Workplace Injury Rehabilitation and Compensation Amendment (Provisional Payments) Act 2021, No. 5/2021

Assent Date: 23.2.21
Commencement Date: Ss 39–42 on 1.7.21: Special Gazette (No. 293) 16.6.21 p. 1
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Education and Training Reform Amendment Act 2021, No. 9/2021

Assent Date: 16.3.21
Commencement Date: Ss 3–5 on 17.3.21: s. 2
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Education and Training Reform Amendment (Miscellaneous) Act 2021, No. 10/2021

Assent Date: 23.3.21
Commencement Date: Ss 4(2), 18, 34–37 on 24.3.21: s. 2(1); ss 4(1)(3)–17, 19–33 on 1.7.21: Special Gazette (No. 321) 22.6.21 p. 1
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Child Wellbeing and Safety (Child Safe Standards Compliance and Enforcement) Amendment Act 2021, No. 23/2021 (as amended by No. 32/2022)

Assent Date: 28.6.21
Commencement Date: Ss 54–76, 81 on 1.1.23: s. 2(3)
Current State: This information relates only to the provision/s amending the **Child Wellbeing and Safety Act 2005**

Education and Training Reform Act 2006
No. 24 of 2006
Endnotes

Education and Training Reform Amendment (Protection of School Communities) Act 2021, No. 24/2021

Assent Date: 28.6.21
Commencement Date: Ss 4–6 on 28.6.22: 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 (Victorian Academy of Teaching and Leadership) Act 2021, No. 32/2021

Assent Date: 14.9.21
Commencement Date: Ss 4–9 on 1.1.22: 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 (Senior Secondary Pathways Reforms and Other Matters) Act 2021, No. 45/2021

Assent Date: 3.11.21
Commencement Date: Ss 19–21 on 24.12.21: Special Gazette (No. 717) 14.12.21 p. 1; ss 3–11 on 11.2.22: Special Gazette (No. 62) 8.2.22 p. 1; ss 12–18 on 2.5.22: Special Gazette (No. 62) 8.2.22 p. 1
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Regulatory Legislation Amendment (Reform) Act 2022, No. 13/2022

Assent Date: 29.3.22
Commencement Date: Ss 15–17, 64 on 30.3.22: s. 2(3)
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Child Employment Amendment Act 2022, No. 27/2022

Assent Date: 28.6.22
Commencement Date: Ss 45, 76 on 1.7.23: s. 2(2)
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

Education Legislation Amendment (Adult and Community Education and Other Matters) Act 2022, No. 32/2022

Assent Date: 23.8.22
Commencement Date: Ss 56–59 on 24.8.22: s. 2(2); s. 54 on 21.9.22: Special Gazette (No. 489) 20.9.22 p. 1; ss 4–53, 55 on 24.5.23: s. 2(3)
Current State: This information relates only to the provision/s amending the **Education and Training Reform Act 2006**

3 Explanatory details

¹ S. 3.3.34C: The amendment proposed by section 36(a) of the **Education Legislation Amendment (Adult and Community Education and Other Matters) Act 2022**, No. 32/2022 has been only partially applied because there is only one occurrence of the words "governing board of an adult education institution" in section 3.3.34C.

Section 36(a) reads as follows:

36 Content of statement of corporate intent

In section 3.3.34C of the Principal Act—

- (a) for "governing board of an adult education institution" (where twice occurring)
substitute "Board of AMES Australia".