

CHAPTER 2—SCHOOL EDUCATION

PART 2.1—COMPULSORY EDUCATION

Division 1—Attendance at School

2.1.1 Attendance at school

It is the duty of the parent of a child of school age—

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

2.1.2 Offence for parent to fail to comply with duty

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

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

2.1.3 What is a reasonable excuse?

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

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

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

2.1.4 Parent to notify school of absence

- (1) The principal of a registered school at which a child of 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 record in writing the reason (if any) given by the parent.

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2.1.5 Exemption from attendance at school

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

2.1.6 Obligations of parents

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

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

Division 2—Enforcement of Attendance

2.1.7 Appointment of school attendance officers

The Minister may in writing appoint a person as a school attendance officer for the purposes of this Act.

2.1.8 Identity card

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

2.1.9 Production of identity card

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

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

Penalty: 10 penalty units.

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

2.1.11 Offence to hinder or obstruct school attendance officer

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

Penalty: 60 penalty units.

2.1.12 Power to bring proceedings

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

2.1.13 Certificate to be evidence as to attendance of child

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

2.1.14 Onus of proof

In any proceeding in relation to an offence under section 2.1.2—

- (a) the burden of proving the grounds of an excuse lies on the defendant;
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- (b) a statement on oath by a witness of his or her belief as to the age or parentage of the child is admissible and is evidence of that age or parentage.
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PART 2.2—GOVERNMENT SCHOOLS

Division 1—Establishment of Government Schools

2.2.1 Establishment of Government schools and educational services

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

2.2.2 Discontinuation of Government schools—limitation of judicial review

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

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- (b) before any person acting judicially (within the meaning of the **Evidence Act 1958**); or
 - (c) before the Ombudsman.
- (2) Without limiting sub-section (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 programmes 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 programmes that are being operated on those premises without the consent of the Minister.
- (2) The Crown or its servants or agents, the State, the Minister or a school council do not owe a duty of care to any relevant person on the premises of a Government school—
- (a) that has been discontinued by the Minister; and
 - (b) to which the provisions of this section are expressly applied by the Minister by a notice published in the Government Gazette.
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- (3) Sub-section (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 3 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.

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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 3 because the student's parents do not make a contribution;
 - (d) a student is not to be approached, coerced or harassed for contributions;
 - (e) any record of contributions is confidential.
 - (4) If the school council asks the parents of a student enrolled at the school to make a financial contribution, the school council must tell the parents about the principles that apply in relation to financial contributions.
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2.2.8 Overseas students to be required to pay fees

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

2.2.9 Overseas students fees Order

- (1) The Minister may make an Order for or with respect to any matter that relates to the payment of fees by overseas students applying to be enrolled or enrolled at Government schools including but not limited to—
 - (a) the amount of any fee payable under section 2.2.8;
 - (b) any period to which the fee relates;
 - (c) the date on which the fee is payable;
 - (d) the person to whom the fee is to be paid;
 - (e) the extent to which and the manner in which the fee is to be apportioned between the school and the Secretary.
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- (2) The principal of a Government school and the school council of that school must comply with any Order made under sub-section (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) Sub-section (1) does not prevent the inclusion of general religious education in the curriculum of a Government school.
- (3) A Government school teacher must not provide religious instruction other than the provision of general religious education in any Government school building.
- (4) In this section "**general religious education**" means education about the major forms of religious thought and expression characteristic of Australian society and other societies in the world.

2.2.11 Special religious instruction

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

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

2.2.12 Ceremony in relation to being Australian citizens

- (1) In every Government school there must be observed in accordance with this section a ceremony at which the students acknowledge their role as citizens of Australia.
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- (2) The school council at each Government school must in accordance with the guidelines issued by the Minister determine—
 - (a) the form of any ceremony under subsection (1); and
 - (b) the intervals at which the ceremony must take place.
- (3) The flag to be used at a ceremony under subsection (1) must be the Australian National Flag.

Division 3—Admission to Government Schools

2.2.13 Admission to designated neighbourhood Government school

- (1) A child of school age is entitled to be enrolled at his or her designated neighbourhood Government school.
- (2) Sub-section (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 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.

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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 school age who has been refused admission to or continued enrolment in a Government school under sub-section (1) must, in accordance with any Order made by the Minister under sub-section (3) be given an opportunity to continue his or her education while he or she is of 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 school age.

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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 sub-section (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 sub-section (4), a student of school age who has been expelled from a Government school must, in accordance with any Ministerial Order, be given

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an opportunity to continue his or her education while he or she is of 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 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.

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Part 2.3—Government School Councils

PART 2.3—GOVERNMENT SCHOOL COUNCILS

Division 1—Definitions

2.3.1 Definitions

In this Part—

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

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

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

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

Division 2—Constitution of School Councils

2.3.2 Minister may constitute school council by Order

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

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- (2) The Minister, by Order, may—
- (a) constitute a council, by a name that is specified in the Order, as a body corporate to exercise and discharge any powers, duties or functions conferred or imposed upon the council by or under this Act in relation to the school or group of schools (as the case may be);
 - (b) make provision for or with respect to the membership of the council and may make provision for the election of members, that he or she thinks fit;
 - (c) confer or impose upon the council or any member of the council any powers, duties or functions in addition to those conferred or imposed upon the council or any member of the council by or under this Act; and
 - (d) make any other provision in relation to the constitution, powers, duties and functions of the council that is in his or her opinion necessary or expedient, including limiting or regulating the exercise by the council of any of those powers, duties or functions.
- (3) A notice stating that an Order has been made under sub-section (1) must be published as soon as practicable in the Government Gazette.
- (4) On and from the date that an Order under sub-section (1) was made or any later date specified in that Order, the council constituted by the Order becomes a body corporate by the name specified in the Order and is, subject to the Order, immediately capable of—
- (a) exercising all the functions of a body corporate; and
 - (b) suing and being sued; and
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- (c) holding land; and
 - (d) having perpetual succession; and
 - (e) having a common seal.
- (5) Any Order made under sub-section (1) may provide for anything relating to the appointment or the election of members to be done or complied with in accordance with regulations made under this Act.
- (6) The Minister may by any subsequent Order—
- (a) dissolve the council; or
 - (b) change the name of the council; or
 - (c) make further provision with respect to any matter or thing that is authorised to be done under paragraphs (b), (c) and (d) of sub-section (2); or
 - (d) amend or vary any provision of a previous Order with respect to any of the matters or things referred to in paragraphs (a) to (c).
- (7) An Order dissolving a council may give any directions concerning the disposal of any assets of the council that the Minister thinks fit.
- (8) A notice stating that an Order has been made under sub-section (6) and specifying the general purpose of the Order must be published as soon as practicable in the Government Gazette.
- (9) Sub-section (8) does not apply to an Order unless the purpose of the Order is—
- (a) to merge 2 or more councils; or
 - (b) to dissolve a council; or
 - (c) to confer or impose new powers, duties or functions on a council or to any of its members.
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- (10) A change of name of a council under this section does not affect the identity of the council or any rights or obligations of the council or render defective any legal proceedings by or against the council, and any legal proceedings that might have been continued or commenced by or against the council by its former name may be continued or commenced by or against it by its new name.
- (11) A copy of any Order made under this section must be kept at the premises of any school to which it relates and must be made available for inspection by any person at any reasonable time during school hours.
- (12) Nothing done or omitted to be done by a school council subjects the Crown, the State, a Minister of the State or the Secretary to any liability in respect of the thing done or omitted to be done except as provided in sub-section (13) and section 2.3.31.
- (13) Sub-section (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) Sub-section (14) does not prevent the council reimbursing a member for any reasonable expenses incurred in the performance of his or her duties as a member.

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2.3.3 Minister entitled to act if no school council

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

Division 3—Objectives, Functions and Powers of School Councils

2.3.4 Objectives of a school council

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

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

2.3.5 Functions of a school council

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

- (a) to establish the broad direction and vision of the school within the school's community;
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- (b) to arrange for the supply of goods, services, facilities, materials, equipment and other things or matters that are required for the conduct of the school including the provision of preschool programs;
 - (c) to raise funds for school related purposes;
 - (d) to regulate and facilitate the after hours use of the school premises and grounds;
 - (e) to exercise a general oversight of the school buildings and grounds and ensure that they are kept in good order and condition;
 - (f) to provide for the cleaning and sanitary services that are necessary for the school;
 - (g) to ensure that all money coming into the hands of the council is expended for proper purposes relating to the school;
 - (h) to provide meals and refreshments for the staff and students of the school and make charges for those meals or refreshments;
 - (i) to inform itself and take into account any views of the school community for the purpose of making decisions in regard to the school and the students at the school;
 - (j) to generally stimulate interest in the school in the wider community;
 - (k) to perform any other function or duty or to exercise any power conferred or imposed on the council—
 - (i) by or under this Act or the regulations;
or
 - (ii) by a Ministerial Order or direction issued by the Minister under this Act.
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Part 2.3—Government School Councils

2.3.6 Powers of a school council

- (1) For the purpose of meeting its objectives or performing its functions or duties a school council may—
 - (a) enter into contracts, agreements or arrangements;
 - (b) establish trusts and act as trustee of them;
 - (c) subject to section 2.2.4 and in accordance with any Ministerial Order, charge fees to parents for goods, services or other things provided by the school to a child of the parent;
 - (d) do any other thing that is necessary or convenient to be done for, or in connection with, meeting its objectives or performing its functions or duties.
 - (2) In addition to the powers under sub-section (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 full-time teaching staff;
 - (b) purchase or acquire by 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;
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- (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.

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) any teaching staff on a part-time or sessional basis; or
 - (ii) teacher aides; or
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- (iii) any other staff—
for the purpose of performing its functions and duties;
- (b) employ any person to enable the council to do anything it is authorised to do by section 2.3.11 or Division 6.
- (2) A school council which employs a person under sub-section (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) Part 2.4 applies 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.

2.3.9 Eligibility of person to be employed as a teacher

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

2.3.10 Dismissal, suspension and termination of employment

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

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- (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 sub-section (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
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- (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 sub-section; 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 out any such contract into effect.
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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 its powers under this section.

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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 sub-section (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 sub-section (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 sub-sections (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 sub-section (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.
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- (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 pupils 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
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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 such a 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.
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- (2) A school plan prepared under sub-section (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.

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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) a financial statement 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.

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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 School councils in relation to Financial Management Act 1994

- (1) A school council is not to be taken to be a public body within the meaning of section 3, and for the purpose, of 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 any school council in their annual report prepared under section 2.3.27; and
 - (b) any other information in respect of school councils required by the Minister responsible for administering the **Financial Management Act 1994**.

Division 8—General

2.3.31 Limitation on commencement of legal proceedings

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

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

2.3.32 Indemnity for school council members

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

- (a) in the exercise of a power or the performance of a function of a member; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function of a member.
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Part 2.4—Government Teaching Service

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;

"member of the Principal Class" means a member of the teaching service who holds an on-going 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;

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

"relevant criteria" means the criteria specified by Ministerial Order;

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

"temporary employee" means a person engaged in—

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

Division 2—Employment in teaching service

2.4.2 Application of Federal awards and agreements

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

2.4.3 Employment of teachers, principals and other staff

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

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- (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 sub-section (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) 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;

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- (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.

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 Chapter unless public notice of the vacancy in the position or proposed position has been published at least once.
 - (2) Sub-section (1) does not apply—
 - (a) to employment as an ongoing 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
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- (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 sub-section (1), the school council or committee (as the case may be) must proceed in the manner determined by Ministerial Order.

2.4.7 Eligibility for employment

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

2.4.8 Employment to be on probation

- (1) A person may be employed in a position in the teaching service on probation in accordance with a Ministerial Order.
- (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) Employment in a fixed term position may be renewed for successive terms not exceeding 5 years.
 - (3) An employee employed for a fixed term becomes at the end of the term, an ongoing employee without a position in the teaching service, unless the employment is renewed under sub-section (2) or the person is employed in another position.
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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) Sub-section (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 re-classification is certified by the Minister to be a result of a general re-classification 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 members 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
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- (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 members 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.

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- (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;

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- (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.
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- (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 sub-section (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.

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- (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 sub-section (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 sub-section (3) are published.
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- (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 sub-section (4).
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- (3) If a member becomes an on-going employee under sub-section (2)—
- (a) the Secretary may direct the employee to carry out any of the duties of an on-going position in the Principal Class or may transfer the employee to any other on-going 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.
- (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 an on-going 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 sub-section (3) applies to that member.
- (6) If a direction is given under sub-section (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 sub-section (4).
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- (7) A person is not entitled to any compensation for termination of a contract of employment under sub-section (1).
- (8) A person who becomes an on-going employee under sub-section (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.
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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 sub-section (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 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.

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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 sub-section (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 or (in the case of death) is deemed to have been entitled, to be granted by the Secretary—
 - (a) if the period of service is not less than 4 years but less than 10 years, then in respect of the period of service;

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- (b) if the period of service is more than 10 years, then (in addition to any entitlement under sub-section (1)) in respect of any part of the period of service which does not give rise to any entitlement under sub-section (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.
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- (9) A person may be deemed to be an employee in the teaching service under sub-section (8) despite that by virtue of any enactment (whether passed before or after this sub-section 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;
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- (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 sub-section (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.
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- (2) If an employee is assigned in accordance with sub-section (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.

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- (3) Permission given to an employee under this section may be withdrawn by notice in writing given to the employee by the Secretary.
- (4) Nothing in this section prevents an employee from—
 - (a) holding shares, or an interest in shares, in a company (within the meaning of the Corporations Act); or
 - (b) becoming a member of an incorporated association within the meaning of the **Associations Incorporation Act 1981**.

2.4.31 Saving of rights of persons holding Government office

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

- (1) The Secretary may, on application under sub-section (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 sub-section (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 sub-section (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.

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2.4.36 No claim for compensation

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

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

in accordance with this Act or a Ministerial Order.

Division 5—Transfers Between Teaching Service and Public Service

2.4.37 Transfer etc. from teaching service to public service

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

2.4.38 Transfer etc. from public service to teaching service

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

2.4.39 Rights in the public service preserved

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

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- (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 to an on-going position

- (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.

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- (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 Division 6 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 sub-section (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.
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2.4.42 Term of employment

- (1) An employee may be employed, transferred or promoted under this Part to an on-going 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 sub-section (2) or the employee is employed in another position.

2.4.43 Employment of members of the Principal Class

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

Division 7—Appeals

2.4.44 Merit Protection Boards

- (1) There are established one or more Boards to be known as Merit Protection Boards.
- (2) The functions of the Boards are—
 - (a) to advise the Minister about principles of merit and equity to be applied in the teaching service;
 - (b) to hear reviews and appeals in relation to decisions made under this Act (except Division 10) or any other Act;
 - (c) to advise the Minister or the Secretary about any matter referred to them by the Minister or the Secretary relating to merit and equity in the teaching service;

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- (d) to hear reviews and appeals in relation to any decision prescribed by the regulations or Ministerial Order to be a decision in respect of which there is a right of review by or appeal to a Merit Protection Board;
- (e) to hear reviews and appeals in relation to any decision of the Secretary if the Secretary has delegated his or her function or power to hear reviews and appeals to a Merit Protection Board.

2.4.45 Membership of Boards

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

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

2.4.47 Acting appointments

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

2.4.48 Allocation of work amongst the Boards

The senior chairperson is to determine—

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

2.4.49 Oath of office

A member of a Merit Protection Board must take an oath in or to the effect of the oath in Schedule 4 before serving as a member of the Board.

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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.
 - (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.
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- (4) If, after an order under sub-section (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—
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- (a) in the case where notice of the vacancy was given, he or she did not apply to be transferred or promoted to the vacant position; or
- (b) he or she did not lodge a notice of application for review in the prescribed manner or within the time specified in subsection (3)—

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

2.4.53 Review of Secretary's decision not to appoint

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

2.4.54 Review of appointment of principal

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

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- (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 decided by the Minister under 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 sub-section (3)(a) has been complied with, the Secretary makes the same decision as to whom to employ to the vacant position, a Merit Protection Board must further review the provisional transfer or promotion and may—
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- (a) if it is satisfied that the same or similar grounds for review continue to apply in respect of the provisional transfer or promotion, make an order requiring the vacant office to be advertised again; or
- (b) make an order that the provisional transfer or promotion may be confirmed.

2.4.55 Relevant criteria

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

Division 8—Termination due to incapacity

2.4.56 Termination due to physical or mental incapacity

- (1) If the Secretary is satisfied, on an inquiry under this section, that an employee is incapable of performing his or her duties on account of physical or mental incapacity, the Secretary may terminate the employment of the employee.
 - (2) For the purposes of section 2.4.25, an employee whose employment is terminated under subsection (1) is deemed to have retired on account of ill-health.
 - (3) The Secretary must establish procedures for the investigation and determination of an inquiry under this section.
 - (4) The Secretary may—
 - (a) nominate a person; or
 - (b) constitute a Board of Review—to investigate and report to the Secretary in connection with an inquiry under this section.
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- (5) If it is alleged that an employee is incapable of performing his or her duties by reason of physical or mental incapacity, the Secretary or a person nominated under sub-section (4)(a) or a Board of Review constituted under sub-section (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 sub-section (6) must be received by the Secretary not later than 14 days after the date on which the officer or employee is given notice in writing of the right to make a submission or any longer period permitted by the Secretary.
 - (8) The Secretary must consider any submission made in accordance with this section before determining the issue to which the submission, or that part of the submission, relates.
 - (9) The Secretary may make a determination under this section without holding an oral hearing.
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- (10) The Secretary may hold an oral hearing or take the evidence orally, or permit cross-examination, of all or any witnesses if the Secretary considers it appropriate to do so, having regard to—
- (a) the seriousness of the allegation against the employee;
 - (b) any reasons submitted by the employee in support of a request for an oral hearing;
 - (c) whether the Secretary considers that an oral hearing would assist in evaluating the information submitted on the inquiry;
 - (d) any other matter that the Secretary considers relevant.
- (11) The Secretary must, by notice in writing, advise the employee of—
- (a) the determination of the Secretary on the inquiry; and
 - (b) if the Secretary takes action under subsection (1), the right to appeal to a Merit Protection Board.

2.4.57 Appeal to Merit Protection Board

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

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

Division 9—Dismissal and Suspension

2.4.58 Dismissal of disqualified and unregistered teachers

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

2.4.59 Suspension and dismissal of unregistered teachers

- (1) This section only applies to employees in the teaching service who are required to be registered as a teacher under Part 2.6.
 - (2) If an employee in the teaching service is refused registration under Part 2.6 or has had his or her registration suspended or cancelled under that Part, the Secretary may suspend the employee
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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 sub-section (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 sub-section, at the end of that period of 12 months.
 - (6) For the purposes of sub-section (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 sub-section (5).
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Division 10—Misconduct and Inefficiency

2.4.60 Grounds for action

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

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- (2) In considering the fitness of an employee to discharge his or her duties, consideration may be given to any relevant matters including his or her character and any conduct in which he or she has engaged (whether before or after becoming an employee).

2.4.61 Action against employee

- (1) If the Secretary is satisfied on an inquiry under this Part that there are one or more grounds under this Division for taking action against an employee, the Secretary may take one or more of the following actions against the employee—
- (a) a reprimand;
 - (b) a fine not exceeding 50 penalty units;
 - (c) a reduction in classification;
 - (d) termination of employment.
- (2) The Secretary, by notice in writing, must advise the employee of—
- (a) the determination of the Secretary on the inquiry; and
 - (b) if the Secretary takes action under subsection (1), the right to appeal to a Disciplinary Appeals Board.

2.4.62 Procedures for investigation and determination of allegations

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

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2.4.63 Quashing etc. of conviction or finding of guilt

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

- (a) the action taken by the Secretary must be set aside; and
- (b) the employee must be re-instated in the teaching service at the same classification as the employee held before the Secretary took action; and
- (c) the employee must be treated as having had continuous service in the teaching service; and
- (d) any period during which the employee was not performing the duties of his or her position due to having been dismissed must be treated as leave without pay.

2.4.64 Suspension from duty

(1) If—

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

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

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- (2) A suspension under sub-section (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.
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- (8) The Secretary must not pay any allowances under sub-section (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.

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- (2) A submission under sub-section (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.
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2.4.68 Appeal

- (1) An employee may appeal to a Disciplinary Appeals Board against a determination of the Secretary to take action against the employee under this Division.
- (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 Re-instatement or payment instead

- (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 order that the employee—
 - (a) be re-instated in the teaching service; or
 - (b) be paid an amount not exceeding the greater of—
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- (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) An employee who is re-instated in the teaching service must be treated as having had continuous service in the teaching service.
 - (3) 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.

2.4.70 Address for service

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

Division 11—Disciplinary Appeals Boards

2.4.71 Senior chairperson

In this Division—

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

2.4.72 Establishment of Disciplinary Appeals Boards

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

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

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.
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- (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 5 or except in accordance with Part 7 of that Act) does not apply 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

A member of a Disciplinary Appeals Board must take an oath or make an affirmation in or to the effect of the oath in Schedule 4 before first serving as a member of a Board.

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

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(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

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(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 sub-section (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 sub-section (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.

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Part 2.5—Victorian Curriculum and Assessment Authority

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

Division 1—Preliminary

2.5.1 Definitions

In this Part—

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

"chairperson" means chairperson of the Authority;

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

"course" means—

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

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

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"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;

"recognised qualification" means a qualification that is registered on the State Register of Accredited Courses and Recognised Qualifications under Chapter 4;

"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.

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- (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 an awarding body for the purposes of 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 recognised qualifications;
 - (b) develop, evaluate and approve—
 - (i) courses normally undertaken in, or designed to be undertaken in the school years 11 and 12 which are accredited by the Victorian Registration and Qualifications Authority under Chapter 4 or which could be accredited under that Chapter and assessment procedures for those courses; and
 - (ii) courses for students at other school years;

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- (c) oversee the delivery of, and conduct assessments for, the VCE, VCAL and any other qualification available to a student in a school except a qualification in vocational education and training or further education that is a recognised 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;
 - (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 recognised qualification or not) and an assessment or assessment method for the course or any other course (whether leading to a recognised qualification or not);
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- (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 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;

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- (p) make available to the general public information collected by the Authority on results of schooling as measured by assessments of student performance and other statistical information relating to its 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 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 recognised qualification by the issue of a written statement or otherwise.

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 recognised 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
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that accredited course or part of that accredited course by the student or the award or issue of a recognised qualification to the student.

- (2) The Authority may issue a new statement or document in respect of a student referred to in sub-section (1) recognising the completion of an accredited course or part of an accredited course by a student or the award or issue of a recognised 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;
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- (g) do any other thing that is necessary or convenient to be done for or in connection with, or as incidental to, the performance of its functions including any function delegated to it.
- (2) The Authority may require schools and other persons, bodies or agencies providing accredited courses—
 - (a) to submit to the Authority school-based assessments of students in those courses;
 - (b) to provide to all students undertaking accredited courses—
 - (i) the Authority's rules for the conduct of assessments; and
 - (ii) any other information specified by the Authority.
- (3) The Authority may license or permit a registered school or other body to provide an accredited course owned by the Authority or in which the Authority has a proprietary interest.
- (4) This section does not limit any other power given to the Authority by any other provision of this Act or any other Act.

2.5.6 Membership of Authority

- (1) The Authority consists of not less than 8 and not more than 15 members of whom—
 - (a) one must be the Secretary to the Department or the person nominated from time to time by the Secretary;
 - (b) one must be the Chairperson of the Victorian Registration and Qualifications Authority or the person nominated from time to time by the Chairperson;
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- (c) 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 sub-section (1)(c).
- (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) With the approval of the Minister as to establishment and membership, the Authority may, to facilitate its functioning, establish any other committee and appoint members and other persons approved by the Minister to it.

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- (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, approved by the Minister.
- (5) A committee may exercise any power delegated to the members of the committee by the Authority.
- (6) The Minister may approve the appointment of any person who is not a member of the Authority to be a member of a committee, other than the executive committee, established under this section.
- (7) A person appointed to a committee after approval by the Minister under sub-section (6), other than a person referred to in sub-section (8), is entitled to be paid—
 - (a) any remuneration that is fixed from time to time by the Governor in Council; and
 - (b) allowances for travelling and personal expenses at the rates and on the conditions applicable to employees of the public service.
- (8) Sub-section (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 10

Schedule 10 has effect subject to any contrary intention in this Part.

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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
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- assessments (including 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 (including 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 (including an 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
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- (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 sub-section (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 sub-section (1), the Authority may nominate a person on its behalf to interview any student enrolled in an accredited course.
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- (3) A person nominated to interview a student must give notice of the interview to the student not less than 24 hours before the interview.
- (4) Notice of an interview—
 - (a) need not be in writing; and
 - (b) may nominate a time and place for the interview; and
 - (c) must give particulars of the matter under investigation.
- (5) In addition to any other matter discussed at the interview, the student must be informed of possible further action by the Authority and possible consequences to the student.
- (6) The person who conducts an interview must submit a written report of the interview to the chief executive officer of the Authority as soon as practicable after the interview.

2.5.13 Decision to proceed to hearing

- (1) The chief executive officer of the Authority may, after considering a report submitted in accordance with section 2.5.12(6), make a request to the Authority that a review committee conduct a hearing.
- (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.

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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

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- (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 sub-section (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
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- (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.
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- (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 sub-section (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 Authority 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.
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- (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 sub-section (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

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- (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.

2.5.22 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 sub-section (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 sub-section (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.

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- (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 an employee of the Authority.
 - (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.
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- (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.

2.5.24 Notification of alteration of record of student assessment

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

- (a) must give written notice to the student concerned; and
- (b) may give written notice to any other person to whom a copy of the student's record has previously been provided—

that the record of assessment has been so amended or cancelled, as the case requires.

PART 2.6—VICTORIAN INSTITUTE OF TEACHING

Division 1—Preliminary

2.6.1 Definitions

In this Part—

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

"Council" means the Council of the Victorian Institute of Teaching continued under this Part;

"teacher"—

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

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

Division 2—Victorian Institute of Teaching

2.6.2 Continuation of existing Institute

- (1) The Victorian Institute of Teaching established under the **Victorian Institute of Teaching Act 2001** continues in operation under and subject to this Act.
- (2) The Institute—
 - (a) is a body corporate with perpetual succession;
 - (b) has an official seal;
 - (c) may sue and be sued in its corporate name;
 - (d) may acquire, hold and dispose of real and personal property;
 - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (3) The official seal must be kept as directed by the Institute and must only be used as authorised by the Institute.
- (4) All courts must take judicial notice of the imprint of the official seal on a document and, until the contrary is proved, must presume that the document was properly sealed.

2.6.3 Functions of Institute

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

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

2.6.4 Powers of Institute

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

2.6.5 Ministerial advice

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

2.6.6 Membership of the Council

- (1) The Institute is to be governed by the Council of the Victorian Institute of Teaching established under the **Victorian Institute of Teaching Act 2001** and continued in operation under and subject to this Act.
- (2) The Council is to consist of not more than 20 members of whom—
- (a) 9 are to be appointed by the Governor in Council in accordance with sub-section (3)(a), (b), (c), (d), (e) and (f); and
 - (b) 10 are to be elected under sub-section (4)(a) and (b); and
 - (c) one is to be the Secretary or the nominee of the Secretary.
- (3) Of the appointed members—
- (a) one is to be appointed as the Chairperson on the nomination of the Minister;
 - (b) 3 are to be teachers nominated by the Minister following the Minister's consideration of names submitted to the Minister by organisations representing the professional interests of teachers;

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- (c) one is to be a principal nominated by the Minister following the Minister's consideration of names submitted to the Minister by organisations representing the professional interests of principals in Victorian schools;
 - (d) one is to be the parent of a student in a school nominated by the Minister following the Minister's consideration of names submitted to the Minister from organisations representing parents of students in those schools;
 - (e) 2 are to be persons nominated by the Minister following the Minister's consideration of names submitted to the Minister from persons or bodies employing teachers in non-Government schools or bodies or organisations representing those employers;
 - (f) one is to be a person with experience or expertise in preparing people to be teachers nominated by the Minister following the Minister's consideration of names submitted to the Minister from tertiary institutions that prepare people to be teachers.
- (4) Of the elected members—
- (a) 8 are to be persons who are registered under section 11 of whom—
 - (i) 2 are to be elected by and from registered teachers who are currently teaching in a primary school that is a Government school or are currently teaching at least one subject in such a primary school or the primary part of such a school;
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- (ii) one is to be elected by and from registered teachers who are currently teaching in a primary school that is a non-Government school operating under the auspices of the Catholic Education Commission or is currently teaching at least one subject in such a primary school or the primary part of such a school;
 - (iii) 2 are to be elected by and from registered teachers who are currently teaching in a secondary school that is a Government school or are currently teaching at least one subject in such a secondary school or the secondary part of such a school;
 - (iv) one is to be elected by and from registered teachers who are currently teaching in a secondary school that is a non-Government school operating under the auspices of the Catholic Education Commission or is currently teaching at least one subject in such a secondary school or the secondary part of such a school;
 - (v) one is to be elected by and from registered teachers who are currently teaching in a non-Government school (other than a school referred to in subparagraph (ii) or (iv)) or is currently teaching at least one subject in such a school;
 - (vi) one is to be elected by and from registered teachers who are currently teaching in a Government school for students with disabilities or impairments;
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- (b) 2 are to be elected by registered teachers of whom—
 - (i) one is to be a principal in a Government school; and
 - (ii) one is to be a principal in a non-Government school.
 - (5) The Minister, in nominating persons to be appointed as members of the Council, must ensure that there will be at least one each of the following persons elected or appointed to the Council—
 - (a) a teacher teaching in a non-Government school other than a school auspiced by the Catholic Education Commission;
 - (b) a teacher teaching in a non-Government school that is auspiced by the Catholic Education Commission;
 - (c) a Principal of a non-Government school other than a school auspiced by the Catholic Education Commission;
 - (d) a Principal of a non-Government school that is auspiced by the Catholic Education Commission;
 - (e) a representative of persons or bodies employing teachers in non-Government schools other than schools auspiced by the Catholic Education Commission;
 - (f) a representative of persons or bodies employing teachers in non-Government schools that are auspiced by the Catholic Education Commission.
 - (6) The Council—
 - (a) is responsible for the management of the affairs of the Institute; and
 - (b) may exercise the powers of the Institute.
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Division 3—Registration of Teachers

2.6.7 Application for registration

- (1) An application for registration as a teacher may be made to the Institute.
- (2) An application must be—
 - (a) made in the form approved by the Institute; and
 - (b) accompanied by—
 - (i) evidence that the person is qualified for registration in accordance with section 2.6.8; and
 - (ii) details of any information required by section 2.6.57; and
 - (iii) the fee fixed by the Minister.
- (3) The Institute may require an applicant to provide further information or material in respect of the application.
- (4) The Institute may require an applicant for registration to—
 - (a) undergo a criminal record check or provide information about criminal records;
 - (b) submit to any tests or provide any references or reports to determine the suitability or fitness of the person to teach;
 - (c) submit to any medical or psychiatric examination that the Institute considers appropriate and, if required by the Institute, to provide any results or reports of the examination.

2.6.8 Qualification for registration as a teacher

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

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

2.6.9 Registration

- (1) The Institute may register an applicant as a teacher if—
 - (a) the applicant is qualified for registration under section 2.6.8; and
 - (b) there are no grounds under sub-section (2) under which the Institute may refuse to grant registration to the applicant; and
 - (c) the applicant has satisfied the requirements of section 2.6.7;
 - (2) The Institute may refuse to grant registration to an applicant on any one or more of the following grounds—
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- (a) that the character of the applicant is such that it would not be in the public interest to allow the applicant to teach in a school;
- (b) that the applicant has been convicted or found guilty of a sexual offence or an indictable offence in Victoria or an equivalent offence in another jurisdiction;
- (c) that the applicant has been convicted or found guilty of an offence where the ability of the applicant to teach in a school is likely to be affected because of the conviction or finding of guilt or where it is not in the public interest to allow the applicant to teach in a school because of the conviction or finding of guilt;
- (d) that the applicant has previously held a right to teach (being the equivalent of registration as a teacher under this Act), or been employed as a teacher, in a school in another State or Territory or another country and that right or employment has been cancelled or suspended and not restored because of conduct which, if committed within Victoria, would entitle the Institute to suspend or cancel the registration;
- (e) that the applicant has been seriously incompetent in their teaching practice when employed as a teacher in a school in Victoria or in any other State or Territory or country;
- (f) that the applicant has not produced evidence which satisfies the Institute of his or her fitness to teach.

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- (3) The Institute may impose any condition, limitation or restriction it thinks appropriate on the registration of a teacher under this section including a condition that the teacher provide information about criminal records within the period specified by the Institute.

2.6.10 Provisional registration

- (1) An applicant who is qualified in accordance with section 2.6.8 except that the applicant has not achieved to the satisfaction of the Institute the standard of professional practice required for registration under section 2.6.8 is eligible to be provisionally registered.
 - (2) Provisional registration is subject to the condition that the registered person will before the end of the first year after the registration or within any further period not exceeding one year authorised by the Institute achieve the standard of professional practice required for registration under section 2.6.8.
 - (3) The provisional registration of a teacher continues in force for the period not exceeding one year that is specified by the Institute or for a further period not exceeding one year that is specified by the Institute or until the registered teacher achieves the standard of professional practice required for registration under section 2.6.8, whichever occurs first.
 - (4) The Institute may impose any condition, limitation or restriction it thinks appropriate on the provisional registration of a teacher including a condition that the teacher provide information about criminal records within the period specified by the Institute.
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- (5) The Institute may, upon application by the registered teacher, amend, vary or revoke any condition, limitation or restriction imposed under sub-section (4).

2.6.11 Non-practising registration

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

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

Division 4—Permission to teach

2.6.13 Application for permission to teach

- (1) An application for permission to teach may be made to the Institute.
- (2) An application must be—
 - (a) in the form approved by the Institute and contain particulars of the person or body who intends to employ or engage the applicant; and
 - (b) accompanied by the fee fixed by the Minister.
- (3) The Institute may require an applicant to provide further information or material in respect of the application.

2.6.14 Permission to teach

- (1) The Institute may grant an applicant permission to teach if—
 - (a) the applicant has the appropriate skills and experience to teach and satisfies the requirements of section 2.6.8(b); and
 - (b) there are no grounds under section 2.6.9(2) that apply to the applicant; and
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- (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—
- (a) the period for which the permission remains in force;
 - (b) any subject that the person is permitted to teach;
 - (c) the school where the person is permitted to be employed or engaged at and teach;
 - (d) that the teacher provide information about criminal records within the period specified by the Institute.

Division 5—General Provisions

2.6.15 Entitlement of applicant to make submissions

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

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

2.6.16 Notification of outcome of application

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

2.6.17 Duration and renewal of registration

- (1) The registration of a teacher, other than provisional registration under section 2.6.10, non-practising registration under section 2.6.11 or interim registration under section 2.6.12, continues in force until the fifth anniversary of the date of the grant of registration.

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- (2) The renewal of registration of a teacher, other than provisional registration under section 2.6.10, non-practising registration under section 2.6.11 or interim registration under section 2.6.12, continues in force until the fifth anniversary of the date of the grant or renewal of registration.
- (3) The Institute may, before any registration expires, extend the registration for a period not exceeding 12 months if the Institute is satisfied that there are special circumstances making it necessary to do so.

2.6.18 Application for renewal of and refusal to renew registration

- (1) An application for renewal of registration—
 - (a) must be made to the Institute before the existing registration expires; and
 - (b) must be accompanied by—
 - (i) evidence satisfactory to the Institute that the applicant has maintained an appropriate level of professional practice in the preceding 5 years referred to in sub-section (4)(a);
 - (ii) details of any information required by section 2.6.57;
 - (iii) the fee fixed by the Minister.
 - (2) If a person does not apply for renewal of registration before the end of the existing registration period, the Institute may renew that person's registration if the application is made within 3 months after the end of the registration period and if the applicant pays an additional fee fixed by the Institute which must not be more than 50% of the fee for renewal of registration.
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- (3) If a person's registration has expired without being renewed that person is deemed to be registered for 3 months after that expiry or, if an application for renewal has been made in accordance with subsection (2), for 3 months after that application is made, whichever is the later and if, at the end of that period of 3 months, the Institute has not renewed his or her registration, the Institute must remove that person's name from the register.
- (4) The Institute may refuse to renew the registration of an applicant—
 - (a) if the Institute is satisfied that the applicant has not maintained an appropriate level of professional practice in the preceding 5 years having regard to the standards of professional practice approved by the Minister; or
 - (b) on any other ground on which the Institute might refuse to grant registration.

2.6.19 Effect of suspension of registration

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

2.6.20 Registration obtained by fraud

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

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- (3) The provisions applying to the conduct of a formal hearing under Division 12 apply to a hearing under this section as if the hearing under this section were a formal hearing.
- (4) If, at the end of the hearing, the Institute determines that the registration of the teacher has been obtained by fraud or misrepresentation or that the qualifications upon which the teacher has relied for registration have been withdrawn, the Institute may cancel the registration of the teacher or take any other action that may be taken under Division 12.

2.6.21 Annual fees

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

Division 6—Criminal Record Checks

2.6.22 Criminal record checks

- (1) The chief executive officer of the Institute may, at any time, request the Chief Commissioner of Police to give to the chief executive officer information concerning the criminal record, if any, of a registered teacher and, for that purpose, may disclose to the Chief Commissioner the
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information concerning the registered teacher that is necessary to conduct the criminal record check.

- (2) The chief executive officer may make a request under sub-section (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 sub-section (1), enquire into and report to the chief executive officer on the criminal record, if any, of the registered teacher named in the request.

2.6.23 Employer to disclose whether criminal record check conducted

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

Division 7—The Register

2.6.24 The Register

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

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

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- (e) the date of registration;
- (f) the registration number.

2.6.25 Publication of Register

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

2.6.26 Use of certificate as evidence

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

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

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

Division 8—Discipline—Suspension without inquiry

2.6.27 Institute may suspend registration or permission to teach

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

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

2.6.28 Effect of suspension of registration or permission to teach

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

Division 9—Discipline—Cancellation of Registration

2.6.29 Cancellation of registration or permission to teach without inquiry

- (1) A person who is registered as a teacher under this Part ceases to be so registered if the person is, in Victoria or elsewhere, convicted or found guilty of a sexual offence.
- (2) A person who has obtained the permission of the Institute to teach in a school ceases to have that permission if the person, in Victoria or elsewhere, is convicted or found guilty of a sexual offence.
- (3) A person who, in Victoria or elsewhere, is convicted or found guilty of a sexual offence is disqualified from teaching in a school.
- (4) For the purposes of sub-sections (1), (2) and (3), a conviction or finding of guilt takes effect on the date of the conviction or finding of guilt and the lodging of an appeal against the conviction or finding does not affect the operation of those sub-sections.

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- (5) If a finding or conviction in relation to a person referred to in sub-section (1), (2) or (3) is quashed on appeal the relevant sub-section ceases, from the date the finding or conviction was quashed, to apply to the person with respect to that particular finding or conviction.
- (6) Nothing in this section limits the powers of the Institute under this Part.
- (7) This section applies to any conviction or finding of guilt of a sexual offence whether occurring before, on or after the commencement of this Chapter.

Division 10—Powers of Discipline Inquiry

2.6.30 Powers of inquiry

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

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- (ii) a registered teacher has contravened or failed to comply with a provision of this Chapter.
- (2) The Institute must in writing notify—
 - (a) the registered teacher; and
 - (b) the employer of the registered teacher; and
 - (c) the person who made the complaint—of its determination to inquire or not to inquire into the registered teacher's competence or fitness to teach or the conduct of the registered teacher.

2.6.31 Employer to notify Institute of action against teacher

- (1) The employer of a registered teacher must inform the Institute if the employer has taken any action against the registered teacher in response to allegations of serious incompetence of the registered teacher, serious misconduct of the registered teacher or that the registered teacher is unfit to be a teacher or any other actions that may be relevant to the registered teacher's fitness to teach.
- (2) The employer of a registered teacher must provide the Institute with any information the Institute may reasonably require to conduct an inquiry under this Part.
- (3) The employer of a registered teacher must immediately notify the Institute if the employer becomes aware that the teacher has been charged with or committed for trial for a sexual offence or convicted or found guilty of a sexual offence.

- (4) The Chief Commissioner of Police must immediately notify the Institute if the Chief Commissioner becomes aware that a registered teacher has been charged with or committed for trial for a sexual offence or convicted or found guilty of a sexual offence.

2.6.32 Inquiry into criminal conduct

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

Division 11—Discipline—Investigations

2.6.33 When matters are to be investigated

- (1) The Institute must investigate—
- (a) a complaint of serious incompetence or serious misconduct;
 - (b) a complaint involving the continued fitness to teach of a registered teacher;
 - (c) if the Institute is informed that a registered teacher has been convicted or found guilty of an indictable offence other than a sexual offence;
 - (d) if the Institute is informed by the employer of a registered teacher that the employer has taken any action against the registered teacher.
- (2) In order to determine whether or not to conduct a formal or informal hearing into a matter, the Institute may conduct an investigation into the matter or request the employer of the teacher who is the subject of the inquiry to conduct the investigation.
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- (3) The Institute may, in writing, delegate to any of the following its power to conduct an investigation, other than its power to make determinations upon an investigation—
- (a) an employee of the Institute; or
 - (b) an investigator retained by the Institute; or
 - (c) a member of the Council or a number of members not exceeding 3; or
 - (d) the employer or a nominee of the employer of the teacher who is the subject of the inquiry.

2.6.34 Outcome of investigation

- (1) Upon completing an investigation, the person or persons conducting the investigation may make one of the following recommendations—
- (a) that no further action should be taken; or
 - (b) that an informal or formal hearing should be held into the matter.
- (2) The Institute must determine whether or not to act on the recommendations of any person conducting the investigation.

2.6.35 Institute may determine to conduct a hearing

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

Division 12—Formal and Informal Disciplinary Hearings

2.6.36 Establishment and notification of an informal hearing

If the Institute has determined under section 2.6.34 or 2.6.35 that an informal hearing be held into the conduct, competence or the continued fitness to teach of a registered teacher, the Institute must—

- (a) refer the matter to the Professional Practice and Conduct Committee to hold the informal hearing; and
- (b) fix a time and place for the hearing to be held; and
- (c) by post, serve a notice on the registered teacher under section 2.6.38; and
- (d) serve notice on any complainant by post which complies with section 2.6.44(a) and (b).

2.6.37 Professional Practice and Conduct Committee to conduct informal hearing

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

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

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

2.6.38 Notice of an informal hearing

A notice of an informal hearing must—

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

2.6.39 Conduct of an informal hearing

At an informal hearing—

- (a) the Professional Practice and Conduct Committee must hear and determine whether or not the matter before it should proceed to a formal hearing; and
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- (b) the teacher who is the subject of the hearing is entitled to be present, to make submissions and to be accompanied by another person but is not entitled to be represented; and
- (c) the proceedings of the hearing must not be open to the public.

2.6.40 Findings and determinations of an informal hearing

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

2.6.41 Change of informal hearing to formal hearing during course of hearing

If, before the end of the informal hearing—

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

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

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2.6.42 Establishment and notification of formal hearing

If—

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

the Institute must—

- (c) appoint a panel to hold the hearing; and
- (d) fix a time and place for the hearing to be conducted; and
- (e) serve a notice on the teacher by post which complies with section 2.6.44; and
- (f) serve a notice on any complainant by post which complies with section 2.6.44(a) and (b).

2.6.43 Constitution of a hearing panel for a formal hearing

- (1) A panel appointed to hold a formal hearing must consist of not less than 3 persons, of whom—
 - (a) one is to be the Chairperson who is to be a member of the Council; and
 - (b) one is to be a registered teacher.

(2) If—

- (a) the Institute is unable to appoint a panel because there are not enough members available to sit on it; or
- (b) the Institute is of the opinion that a person with special expertise is required for the hearing—

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

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

2.6.44 Notice of a formal hearing

A notice of a formal hearing must—

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

2.6.45 Conduct of a formal hearing

At a formal hearing—

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

2.6.46 Findings and determinations of a formal hearing into conduct

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

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

Division 13—General Provisions relating to Discipline Inquiries

2.6.47 Inquiry may continue even if person no longer registered

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

2.6.48 Procedure at formal and informal hearings

At a formal or informal hearing—

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

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2.6.49 Determinations

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

2.6.50 Notice of cancellations and determinations of panel

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

2.6.51 Notifications

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

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- (g) if the Institute has received a request for information about the person in respect of whom the determination has been made from a teacher registration authority outside Australia or New Zealand, that authority.
- (2) Notice under sub-section (1) must be given as soon as practicable after the determination has been made.
- (3) If the registration of a teacher is cancelled by virtue of section 2.6.29 the Institute must give notice of that cancellation in accordance with paragraphs (d), (e), (f) and (g) of sub-section (1).
- (4) If a complaint has been made to the Institute, the Institute must notify the complainant—
 - (a) of whether or not a formal or informal hearing is to be conducted into the matter and, if so, of the time and place of the hearing and, in the case of a formal hearing, of the fact that the complainant's identity is not to be published or broadcast; and
 - (b) in the case of a formal or informal hearing, of whether or not the complainant has any right to make submissions at the hearing; and
 - (c) of the findings and determinations of any hearing arising from that complaint and the reasons for those findings and determinations, within 28 days after their having been made.

2.6.52 Offence to disclose information identifying complainant, witness or teacher

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

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

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

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

2.6.53 Enforcement of determination

- (1) The Institute must take all action necessary to give effect to a cancellation of registration under section 2.6.29 or a determination made on an inquiry under this Part.
- (2) Action under sub-section (1) includes, but is not limited to—
 - (a) the amendment of a certificate of registration; and
 - (b) the recording of matters in the Register.
- (3) A registered teacher who does not comply with a determination under section 2.6.46 is guilty of serious misconduct.

2.6.54 Revocation of suspension

- (1) The Institute may at the request of the person concerned or on its own initiative revoke the suspension of the person's registration.
- (2) The Institute must without delay give written notice of the revocation to the person concerned.

Division 14—Review by VCAT

2.6.55 Review by VCAT

- (1) A person may apply to the VCAT for review of—
 - (a) a determination refusing the person's application for registration or renewal of registration; or
 - (b) a determination made under Divisions 12 and 13 cancelling or suspending the person's registration; or
 - (c) a determination made under Divisions 12 and 13 imposing conditions, limitations or restrictions on a person's registration.
- (2) An application for review under this Part must be made—
 - (a) in the case of an application under subsection (1)(a), within 28 days after the day on which the Institute gives notice of the determination to the person; or
 - (b) in any other case, within 3 months after the day on which the Institute gives notice of the determination to the person.

Division 15—Offences

2.6.56 Unregistered teachers

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

Penalty: 100 penalty units.

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

Penalty: 100 penalty units.

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

2.6.57 Provision of information by teachers

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

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

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

Penalty: 50 penalty units.

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

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2.6.58 False representation

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

Penalty: 10 penalty units.

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

Penalty: 10 penalty units.

2.6.59 Return of document

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

Penalty: 5 penalty units.

- (2) The Institute must return a certificate or other document issued by the Institute as evidence of registration or permission to teach to the holder of the certificate or other document as soon as possible—

- (a) after the end of the suspension period; or
(b) if the suspension is sooner revoked, after that revocation.

2.6.60 Proceedings

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

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Division 16—The Council—Administration

2.6.61 Schedule 10

Schedule 10 has effect subject to any contrary intention in this Part.

2.6.62 Resignation and removal

- (1) A member of the Council may resign from office by delivering to the Chairperson a signed letter of resignation.
- (2) The Governor in Council may at any time remove a member appointed by the Governor in Council from office.
- (3) The Chairperson on the recommendation of the Council may remove or suspend an acting member from office.

2.6.63 Elected members

- (1) The Registrar of the Institute must maintain a roll of electors for the Institute consisting of registered teachers who are currently teaching.
 - (2) If the Council is, after making all reasonable efforts to do so, unable to obtain sufficient nominations to fill the number of vacancies to be filled by an election, the Governor in Council may appoint a member or members from the roll of electors to fill the vacancy.
 - (3) If the number of candidates for an election to the Council is equal to or less than the number of vacancies to be filled, the Council may appoint the candidate or candidates as a member or members of the Council.
 - (4) If there is no candidate at an election or if for any reason no person is elected at an election, the Governor in Council may appoint a registered teacher to be a member of the Council even though that person has not been elected.
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- (5) A person appointed under sub-section (2), (3) or (4) is deemed to be an elected member of the Council.
- (6) The Victorian Electoral Commission must conduct any election required for membership of the Council.
- (7) The Victorian Electoral Commission must ensure that an election required for membership of the Council is conducted in accordance with the regulations and may exercise the powers and perform any functions relating to the conduct of elections that are conferred on the Victorian Electoral Commission by the regulations.
- (8) A candidate for an election may submit a printed candidate statement not exceeding the number of words fixed by the Victorian Electoral Commission (which must not be less than 50 words) to be distributed by the Victorian Electoral Commission with the ballot papers for the election.

2.6.64 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.

2.6.65 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.
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- (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.

2.6.66 Delegation

The Council may, in writing, delegate to—

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

its powers under this Act, other than—

- (e) the power to refuse to grant registration or endorsement of registration or to refuse to renew registration; or

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

2.6.67 Accreditation Committee

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

2.6.68 Professional Practice and Conduct Committee

- (1) The Council must establish a committee to be called the Professional Practice and Conduct Committee.
 - (2) The Professional Practice and Conduct Committee has the following functions—
 - (a) to advise on standards of professional conduct for teachers;
 - (b) to conduct informal hearings under Division 12 and to determine whether a matter needs to be referred to a formal hearing.
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- (3) The Professional Practice and Conduct Committee is to consist of not more than 5 persons, of whom—
 - (a) one is to be the Chairperson who is to be a member of the Council; and
 - (b) 2 are to be members of the Council.
- (4) The Professional Practice and Conduct Committee has all the powers necessary to enable it to perform its functions.

2.6.69 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) such other persons that are appointed by the Institute with expertise appropriate to carry out the functions of the committee or body.

2.6.70 Terms of office

- (1) A member of a committee, hearing panel or body established under this Part holds office for such period as determined by the Council.
- (2) A member of such a committee, hearing panel or body is eligible for re-appointment.
- (3) The **Public Administration Act 2004** (other than Part 5 of that Act) does not apply to a member in respect of the office of member.

2.6.71 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.
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- (2) The Institute may at any time remove a member of such a committee, hearing panel or body from office.
- (3) If a member of the committee, hearing panel or body dies, resigns or is removed from office, the Institute may appoint an acting member to fill the vacant office.
- (4) A member appointed under sub-section (3) holds office for the rest of the term of appointment of the member whose place he or she fills.

2.6.72 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.

2.6.73 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.
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- (4) A majority of the members of the committee, hearing panel or body currently holding office constitutes a quorum.
- (5) If a member of the Professional Practice and Conduct Committee or a hearing panel is unable to attend a meeting of the Committee or panel that is conducting a hearing or part of a hearing under Division 12, the remaining members of that Committee or hearing panel may continue to conduct the hearing or that part of the hearing if a quorum of members is present.
- (6) Subject to this Act a committee, hearing panel or body established under this Part may regulate its own proceedings.

2.6.74 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.

2.6.75 Immunity

- (1) A member of the Council or a hearing panel established for a formal hearing or a person responsible for keeping the register is not personally liable for anything done or omitted to be done in good faith—
 - (a) in the exercise of a power or the discharge of a duty under this Act; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act.

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- (2) Any liability resulting from an act or omission that would but for sub-section (1), attach to a member of the Council or panel or the person responsible for keeping the register, attaches instead to the Institute.

Division 17—The Council—Finances

2.6.76 Fees

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

2.6.77 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
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- (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

2.6.78 Establishment of Colleges

- (1) The Institute may by Order published in the Government Gazette—
- (a) establish a College for promoting particular domains of practice within the teaching profession; and
 - (b) appoint a governing board of the College to govern the College.
- (2) The College and the governing board of the College have the functions and powers conferred on them that are declared by the Order under sub-section (1).
- (3) The Order under sub-section (1) must contain a charter for the College that sets out—
- (a) the name of the College;
 - (b) the domain of practice to be recognised by the College;
 - (c) the purposes and functions of the College;
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- (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 sub-section (1), the Institute must not establish a College for promoting the practice of Principals except with the written approval of the Minister.
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