

## **EMPLOYERS – IF YOU TAKE ACTION AGAINST A REGISTERED TEACHER**

### **Action against a registered teacher**

The *Education and Training Reform Act 2006* gives the Victorian Institute of Teaching (the Institute) the power to investigate matters referred to it by employers of registered teachers. The employer of a registered teacher must notify the Institute if the employer has taken **any action** against a registered teacher in response to allegations of serious misconduct, serious incompetence or fitness to teach, or because a registered teacher's ability to practice as a teacher is seriously detrimentally affected or likely to be seriously detrimentally affected because of an impairment.

Taking action may include circumstances where a teacher resigns after being advised by the employer that it is inquiring into allegations as set out in the paragraph above.

The employer of a registered teacher must also notify the Institute if the employer is aware that a teacher has been charged with or committed for trial for a sexual offence or convicted or found guilty of an indictable offence.

The Institute should be advised of the action taken against a teacher once the process initiated by the employer is finalised.

It is important that employers inform the Institute if a teacher takes action against them in another forum, such as the Industrial Relations Commission, or if the teacher is charged with an offence.

### **INQUIRING INTO A NOTIFICATION**

The Institute may decide not to inquire into a notification if the matters complained of do not meet the threshold of serious misconduct, serious incompetence or lack of suitability to teach.

### **Investigation into allegations from an employer**

Before deciding what action to take, the Institute must ensure that all available information relevant to the allegation has been collected from the employer. The Institute may request that the employer provide further information to enable it to conduct its investigation. Copies of these documents may be provided to the teacher.

If the Institute decides to commence an inquiry, the first step will usually be an investigation. The Institute may decide, however, to conduct an informal hearing or a formal hearing without conducting an investigation if either of these is considered more appropriate.

## **Notice of the investigation**

The Institute will give notice in writing that it intends to conduct an investigation and give details of the investigator.

The registered teacher must be notified within 14 days after the Institute's decision to conduct an investigation has been made. The investigation must be conducted expeditiously and reports made to the registered teacher and the complainant, where applicable, at intervals of not more than three months.

## **Purpose of an investigation**

The Institute conducts an investigation to gather relevant information about allegations against a teacher. The purpose of an investigation is to inquire into the allegations and ascertain if there is probative evidence in support. The investigation will involve interviewing all relevant witnesses. The registered teacher who is the subject of inquiry will be given the opportunity to participate in an interview.

## **Who conducts an investigation?**

An investigation may be carried out by any of the following persons who will be delegated with the Institute's authority to conduct an investigation:

- an employee of the Institute;
- an investigator retained by the Institute;
- a member of the Institute Council or a number of members not exceeding 3; or
- the employer or a nominee of the employer of the teacher.

The Institute will provide guidelines to the person(s) delegated with the power to conduct the investigation.

## **Conduct of the investigation**

The Institute conducts an investigation to gather relevant information about allegations against a teacher. The purpose of an investigation is to inquire into the allegations and ascertain if there is probative evidence in support. The investigation will involve interviewing all relevant witnesses.

The registered teacher who is the subject of inquiry will be given the opportunity to participate in an interview. The investigator will contact the teacher to arrange a time and place for an interview. The teacher will be given sufficient time to consult a union, lawyer or friend, to gather evidence and prepare submissions. If the teacher agrees to attend an interview the

teacher will be asked questions about the allegations and provided with an opportunity to present evidence and submissions.

### **How long will the investigation take?**

The investigation should be completed within six to eight weeks. The time frame for the investigation may be extended in certain circumstances, such as if the investigation is complex or it is difficult to obtain the evidence. If the investigation cannot be completed within six to eight weeks, the Institute will notify you that the investigation has been delayed and of the revised date of completion for the investigation.

### **Outcome of the investigation**

Following the investigation the investigator is required to provide the Institute with a Report and recommendation(s). On completing an investigation, an investigator may make one or more of the following recommendations:

- No further action is required.
- The matter or part of the matter be settled by agreement between the Institute and registered teacher.
- The registered teacher agree to the cancellation of his/her registration.
- An informal hearing be held.
- A formal hearing be held.
- A medical panel hearing be held – if the registered teacher has not agreed to a health assessment.
- Further investigation be conducted by another person, organisation or agency.

The Institute will then determine whether or not it will act on the investigator's recommendation(s) as outlined above. Once the Institute has made its decision you will be notified in writing as soon as possible.

### **The informal hearing**

On 1 January 2011, the Institute was given amended powers to conduct informal hearings.

An informal hearing panel must consist of three persons or more of whom one must be a member or former member of the Council and another must be a registered teacher. The teacher who is the subject of the hearing is entitled to be present at the hearing, to be accompanied by another person and to make submissions but is not entitled to be legally represented. The proceedings are not open to the public.

An informal hearing panel may make findings about misconduct (serious misconduct will be referred to a formal hearing panel and health issues to a medical panel).

If it makes a finding of misconduct, an informal hearing panel has power to caution, reprimand or impose conditions on a teacher, including counselling or further education.

The teacher will be advised of the nature of the date, time and place of the informal hearing.

### **The formal hearing**

On 1 January 2011, the Institute was given amended powers to conduct formal hearings.

A formal hearing panel must consist of three persons or more of whom one must be a member or former member of the Council and another must be a registered teacher. The teacher who is the subject of the hearing is entitled to be present at the hearing, to be legally represented and to make submissions. The proceedings are open to the public unless the panel determines that they should be closed. A formal hearing may be closed if the evidence being given by a witness to the panel is of an intimate, personal or financial nature. The identity of a complainant cannot be published or broadcast and if the hearing is closed, the panel may decide that the identity of witnesses should not be published or broadcast. Notice of the formal hearing is published in the law notices.

The Institute publishes a de-identified version of all decisions and reasons of formal hearing panels on the Institute's website at <[www.vit.vic.edu.au](http://www.vit.vic.edu.au)> under Conduct.

A formal hearing panel may make findings about misconduct, serious misconduct, serious incompetence and fitness to teach (health issues will be referred to a medical panel).

If it makes any of these findings, a formal hearing panel has power to:

- caution;
- reprimand;
- impose conditions including counselling or further education;
- suspend registration for the period and subject to the conditions, if any, specified in the determination;
- cancel registration; and
- disqualify the teacher from applying for registration within a specified period if the teacher's registration is cancelled.

Formal hearing procedures are similar to those of a court but the rules of evidence do not apply. The Institute may engage a barrister to assist the panel. A teacher may be self-represented or have legal or union representation.

## **The decisions and the reasons**

The decisions and the reasons made following the informal and formal hearings will be sent to the teacher and the complainant within 28 days of the decisions being made. The employer will be advised of the outcome of the informal and formal hearings.

If a registered teacher disagrees with the decision of the panel, they have the right to request a review by the Victorian Civil and Administrative Tribunal.

## **FURTHER INFORMATION**

For further information see the *Education and Training Reform Act 2006* and Institute website at [www.vit.vic.edu.au](http://www.vit.vic.edu.au).

The Institute also has other information and brochures available on:

- complaints
- the investigation
- the informal hearing process
- the formal hearing process
- the medical panel hearing process
- appeals to the Victorian Civil and Administrative Tribunal
- witnesses
- sexual offences
- indictable offences
- the rules of natural justice

## **CONTACTS**

Victorian Institute of Teaching  
PO Box 531  
Collins Street West, Victoria 8007  
Telephone 1300 888 067  
Facsimile 03 8601 5803

Level 24 Marland House  
570 Bourke Street  
Melbourne Victoria 3000  
[www.vit.vic.edu.au](http://www.vit.vic.edu.au)