

## **REGISTERED TEACHERS - IF A COMPLAINT IS MADE AGAINST YOU**

The *Education and Training Reform Act 2006* gives the Victorian Institute of Teaching (the Institute) the power to investigate complaints against registered teachers. The complaint must relate to a registered teacher's misconduct, serious misconduct, serious incompetence or lack of suitability to teach (suitability includes fitness to teach, which relates to character, reputation and conduct **and** whether the teacher is physically and mentally able to teach).

Anybody can make a complaint about a registered teacher – a complaint may be made by a student, a parent, a member of the public, a staff member or your employer. Many complaints about a teacher will be able to be resolved by the school. The Institute encourages those making complaints against teachers (known as complainants), to speak to the teacher or the principal of the school about the complaint before approaching the Institute. In government schools it may also be appropriate for the complainant to contact the Regional Director of the relevant regional office of the Department of Education and Early Childhood Development and, in Catholic schools, to contact the relevant Diocesan Director of Catholic Education.

If the complaint cannot be resolved at the school level a complaint about a registered teacher may be lodged with the Institute.

## **HOW TO MAKE A COMPLAINT**

If a complaint is made against a teacher, sufficient information must be provided by the complainant to show **evidence** of the teacher's misconduct, serious misconduct, serious incompetence or lack of suitability to teach. To assist a complainant the Institute has developed a *Complaint Form*. A complaint form can be obtained from the Institute. Copies of the complaint form and any documents the complainant provides to the Institute may be provided to the teacher if the matter proceeds to a hearing.

## **INQUIRING INTO A COMPLAINT**

The Institute may decide not to inquire into a complaint if a complainant does not provide evidence to support the complaint or the matters complained of do not meet the threshold of misconduct, serious misconduct, serious incompetence or lack of suitability to teach.

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.

The Institute must in writing notify the teacher, the employer of the teacher and the complainant of its determination to inquire or not to inquire into the complaint.

## **THE INVESTIGATION**

### **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 (including the complainant where applicable). The registered teacher who is the subject of inquiry will be given the opportunity to participate in an interview with the Institute's investigator.

### **Notice of the investigation**

The Institute will give notice in writing that it intends to conduct an investigation and provide details of the investigator. The investigation must be conducted expeditiously and the Institute will endeavour to complete the investigation within six to eight weeks. If the investigation requires additional time, reports must be made to the registered teacher and the complainant at intervals of not more than three months.

### **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 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 completion of the investigation, the investigator will provide the Institute with a report. The investigator may make one or more of the following recommendations:

- No further action is required.
- The matter or part of the matter should be settled by agreement between the Institute and registered teacher and, if applicable, the complainant.
- 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
- Further investigation to be conducted by another person, organisation or agency.

The Institute will then determine whether or not it will act on the investigator's recommendations 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.

Both the teacher and the complainant will be advised of the nature of the complaint and 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 decision and the reasons**

Within 28 days of the panel making its decision, it will send a copy of the decision and reasons to the complainant and the teacher.

A registered teacher who disagrees with the decision of the panel has three months to request a review by the Victorian Civil and Administrative Tribunal. If you require information about this process please contact the VCAT on 03 9628 9755.

## **FURTHER INFORMATION**

The Institute also has other information and brochures available on:

- an employer taking action against a teacher
- 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**

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