

WITNESSES - THE FORMAL HEARING

The Victorian Institute of Teaching (the Institute) may hold a formal hearing to determine whether a registered teacher:

- has engaged in misconduct or serious misconduct
- has been seriously incompetent
- is not fit to teach.
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The hearing procedure is similar to that of a court but the rules of evidence do not apply.

The evidence of witnesses plays an important role in the inquiry process of the Institute. A witness may be required to give evidence at a formal hearing. You may receive a summons requesting that you attend a formal hearing. The summons will set out the date, time and place of the formal hearing and may request that you bring certain documents to the hearing. If you receive a summons you must attend the hearing.

NOTICE OF THE HEARING

The registered teacher and the complainant will be sent a notice of the formal hearing which provides the following particulars:

- the nature of the hearing and any allegations made against the registered teacher
- the date, time and place of the hearing
- that there is a right to make submissions and to be represented
- that the hearing is open to the public
- a list of the findings that the panel can make.

The teacher will be sent copies of all relevant documents.

THE PANEL

The Institute appoints a panel to conduct the formal hearing. The panel consists of at least three people, of whom one must be the Chairperson of the panel and a member or former member of the Institute Council and one a registered teacher.

THE CONDUCT OF THE HEARING

The procedure at the hearing, which takes place in a hearing room, is in the discretion of the panel and must be conducted with as little formality and technicality as possible. Although the panel is not bound by the rules of evidence and may inform itself as it thinks fit, it is bound by the rules of natural justice (for further details see the brochure entitled “Rules of Natural Justice”).

The teacher has the right to be represented at the hearing and may be represented by a legal practitioner, a union official or any other person. Counsel Assisting, instructed by a legal officer of the Institute, will appear for the purposes of assisting the panel, to question any witnesses and to make submissions on the evidence and the law relevant to the matter.

The complainant and other witnesses may attend to give evidence. Evidence is given on oath. If necessary, the panel can issue a summons requiring a witness to attend the hearing to give evidence or to provide relevant documents. Witnesses will wait outside the hearing room until asked to give evidence. Witnesses will give their evidence and may be questioned by the teacher or the teacher's representative, Counsel Assisting the Institute and the panel.

The hearing is open to the public, unless the panel decides to close the hearing because the evidence being given is of an intimate, personal or financial nature. An open hearing means that the public, including the press, can attend but the identity of any complainant must not to be published or broadcast.

If the hearing is closed, the panel may decide that the identity of witnesses should not be published or broadcast. The panel may also decide to suppress the teacher's name until the final decision is made.

The powers of the panel

The panel may summons witnesses, require witnesses to produce documents and require the complainant, the teacher and other witnesses to give sworn evidence.

The procedure at the hearing

- The hearing will be conducted in a hearing room similar to a court room.
- The panel members will introduce themselves.
- Counsel Assisting and the teacher or their representative may present initial submissions to the panel.
- Witnesses will wait outside the hearing room until asked to give evidence.
- Witnesses will give their evidence when called and may be questioned by Counsel Assisting, the teacher or their representative and the panel.
- At the conclusion of the evidence, Counsel Assisting and the teacher or their representative may summarise the evidence and make submissions on the law.
- The complainant may provide a submission if the panel has given permission to do so.

PREPARING FOR THE HEARING

If you need an interpreter, please contact the Institute before the day of the hearing.

Think about the events about which you will be giving evidence and try to remember ‘who’, ‘what’, ‘where’ and ‘when’ in relation to those events.

Remember to take any relevant documents with you to the hearing. You should also read any statements you have made. The Institute will send you a copy of the statement you made to the Institute before the hearing. You should not discuss your evidence with other witnesses.

You may have to wait for your turn to give evidence, so you may like to take something to read and something to eat or drink with you to the hearing.

THE HEARING

When you arrive at the Institute, you should go to the reception area to be escorted to a witness room.

You are not allowed to sit in the hearing room before you give your evidence. You will be asked to leave the room after you have given your evidence.

When you are called to give your evidence you will be directed to sit in the hearing room’s witness box. You will be asked to swear an oath or make an affirmation before you give your evidence.

You may be asked questions by Counsel Assisting, the members of the panel and the teacher.

When giving your evidence remember: to listen carefully to the question - if you do not understand a question, ask for it to be repeated or explained; if you are not sure about an answer to a question, just say so – do not guess the answer; speak clearly and slowly; if you need a break tell the members of the panel.

EXPENSES

The Institute’s Council may approve expenses associated with witnesses giving evidence at a hearing. Witnesses may be entitled to: accommodation allowance if they are required to stay overnight for the hearing, meal allowance, travelling allowance and an allowance for loss of earnings. You should contact the Institute for further information about expenses.

THE PANEL'S DECISION

After considering all the evidence and submissions made at the hearing, the panel may make findings about whether or not:

- (a) the teacher is guilty of misconduct or serious misconduct
- (b) the teacher is seriously incompetent in his or her teaching practice; or
- (c) the teacher is not fit to teach.

The panel may make a finding that the teacher has not engaged in any of the matters listed above.

If the panel finds that the teacher has engaged in misconduct, serious misconduct, is seriously incompetent or is not fit to teach, the panel may make one or more of the following determinations:

- caution the teacher
- reprimand the teacher
- refer the matter to a medical panel hearing, if the panel is of the opinion that the teacher's ability to teach is seriously affected by a physical or mental impairment (for further details see the brochure entitled "Medical Panel Hearings")
- impose conditions, limitations or restrictions on the registration of the teacher including a condition that the teacher undergo counselling or undertake and complete specified further education or training within a specified period
- suspend the teacher's registration for a period with or without conditions
- cancel the teacher's registration
- disqualify the teacher from applying for registration within a specified period if the teacher's registration is cancelled by the panel.

Although the panel may make a decision on the day of the hearing it will often reserve its decision. This is to allow sufficient time for the panel to consider all the evidence and to prepare its reasons.

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.

Notice of the decision

The Institute will give notice of its decision:

- In the Government Gazette
- To teacher registration authorities in all other States or Territories of the Commonwealth and New Zealand
- To the teacher's employer
- Department of Justice
- Department of Transport
- Upon request to a teacher registration authority outside Australia or New Zealand.

The Register of Teachers will be amended to show that the teacher's registration has conditions, limitations or restrictions, has been suspended for a period with or without conditions, or has been cancelled.

Publication of the decision

A sanitised copy of the panel decision will be published on the Institute's website. Sanitising a decision means that particulars that should not be published, such as the names of the complainant and the witnesses, have been replaced with a pseudonym.

Review by the Victorian Civil and Administrative Tribunal

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 brochures available on:

- complaints
- an employer taking action against a teacher
- the investigation
- the formal hearing process
- appeals to the Victorian Civil and Administrative Tribunal
- witnesses
- sexual offences
- indictable offences
- the rules of natural justice

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