

Teacher Accreditation Act 2004 No 65

[2004-65]



New South Wales

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The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Previously named**
Institute of Teachers Act 2004
- **Does not include amendments by**
[Teacher Accreditation Amendment Act 2014 No 68](#) (not commenced — to commence on 5.1.2015)

Authorisation

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Teacher Accreditation Act 2004 No 65



New South Wales

An Act to make provision for professional teaching standards and the accreditation of school teachers in relation to those standards; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Teacher Accreditation Act 2004*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act:

accreditation means accreditation under Part 4, and includes provisional accreditation or conditional accreditation under that Part.

accredited means accredited for the time being under Part 4, and includes provisionally accredited or conditionally accredited under that Part.

Board means the Board of Studies, Teaching and Educational Standards constituted under the *Board of Studies, Teaching and Educational Standards Act 2013*.

Council means the Quality Teaching Council established under section 12.

curriculum means the curriculum for primary or secondary schools determined by the Board of Studies in accordance with the *Education Act 1990*.

degree means a degree, diploma or similar award conferred by a tertiary institution approved by the Minister.

Director-General means the Director-General of the Department of Education and Communities.

employ includes engage or appoint.

exercise a function includes perform a duty.

function includes a power, authority or duty.

government school and **non-government school** have the same meanings as in the [Education Act 1990](#).

President means the President of the Board appointed under the [Board of Studies, Teaching and Educational Standards Act 2013](#).

professional development includes formal and informal learning activities designed to maintain and enhance the knowledge and skills of teachers.

professional teaching standards means the professional teaching standards approved by the Minister from time to time under section 19.

roll of teachers means the roll maintained by the Board under Part 3.

school means a government school or a non-government school.

serious misconduct means conduct of a type prescribed by the regulations as serious misconduct for the purposes of this definition.

teach—see section 3A.

teacher—see section 3A.

teacher accreditation authority—see section 4.

(2) Notes included in this Act do not form part of this Act.

3A Meaning of “teach” and “teacher”

(1) In this Act, **teach** means to undertake duties in a school that include (but are not limited to):

- (a) the direct delivery of courses of study that are designed to implement the curriculum and the responsibility for assessing student participation, performance and progress in those courses, or
- (b) the direct delivery of any other course or program for primary, secondary or preschool children (being a course or program prescribed by the regulations, or of a class prescribed by the regulations, for the purposes of this definition) and the responsibility for assessing the participation, performance and progress of children in that course or program.

(2) A reference in this section to undertaking duties in a school is a reference to undertaking duties on the premises of a school in the course of providing services conducted by the school.

- (3) In this Act, **teacher** means a person who is, or is to be, employed to undertake any duties referred to in subsection (1) (whether or not the person undertakes any other duties).

4 Meaning of “teacher accreditation authority”

- (1) In this Act, **teacher accreditation authority** means:
- (a) in relation to a government school:
 - (i) the Director-General, or
 - (ii) such other person or body as may be approved for the time being by the Director-General under subsection (2), or
 - (b) in relation to a non-government school:
 - (i) the Minister, or
 - (ii) such person or body as may be approved for the time being by the Minister under subsection (4).
- (2) The Director-General may approve a person or body to be the teacher accreditation authority in relation to a government school or a particular class of government schools for the purposes of this Act.
- (3) The approval of any such person or body by the Director-General:
- (a) authorises the person or body to accredit, in accordance with Part 4, persons at such levels of accreditation as may be determined by the Director-General, and
 - (b) is subject to the requirement that the person or body complies with:
 - (i) the accreditation procedures and guidelines set out in the professional teaching standards, and
 - (ii) the conditions imposed by or under this Act, and
 - (iii) such other conditions as the Director-General thinks fit to impose, and
 - (c) may be suspended or revoked at any time by the Director-General for such reasons as the Director-General thinks fit.
- (4) The Minister may approve a person or body to be the teacher accreditation authority in relation to a non-government school for the purposes of this Act. In the case of a non-government school that is a member of a system of non-government schools approved by the Minister under Part 7 of the *Education Act 1990*, the person or body approved by the Minister under this subsection may be the approved authority for that system.

- (5) The approval of any such person or body by the Minister:
- (a) authorises the person or body to accredit, in accordance with Part 4, persons at such levels of accreditation as may be determined by the Minister, and
 - (b) is subject to the requirement that the person or body complies with:
 - (i) the accreditation procedures and guidelines set out in the professional teaching standards, and
 - (ii) the conditions imposed by or under this Act, and
 - (iii) such other conditions as the Minister thinks fit to impose, and
 - (c) may be suspended or revoked at any time by the Minister if the Minister is of the opinion that the person or body has failed to comply with any such requirement.
- (6) The suspension or revocation of the approval of a person or body as a teacher accreditation authority does not affect the accreditation by that authority of a person under Part 4.

5 Mutual recognition laws

This Act does not limit or otherwise affect the operation of:

- (a) the *Mutual Recognition Act 1992* of the Commonwealth, or
- (b) the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth.

Part 2 Board's functions and Quality Teaching Council

Division 1 Board's functions

6 (Repealed)

7 Functions of Board under this Act

- (1) (Repealed)
- (2) The functions of the Board under this Act include the following:
 - (a) to provide advice to the Minister on the development, content and application of the professional teaching standards,
 - (b) to provide advice to the Minister on any of the Minister's other functions under this Act (including the function of approving persons or bodies as teacher accreditation authorities in relation to non-government schools or the suspension or revocation of any such approval),
 - (c) to advise and assist teacher accreditation authorities in accrediting persons under

this Act,

(d) to monitor the accreditation process across all schools,

(e) to ensure that the professional teaching standards are applied fairly and consistently.

(3) Without limiting subsection (2), the functions of the Board under this Act include providing advice to the Minister on:

(a) the approval by the Minister of initial and continuing teacher education courses or programs that are relevant for the purposes of accreditation under this Act, and

(b) the approval by the Minister of persons or bodies who may provide professional development in accordance with the requirements of the professional teaching standards.

(4) (Repealed)

(5) The functions of the Board under this Act do not extend to industrial matters concerning teachers (such as the salaries of teachers or their conditions of employment).

(6) (Repealed)

8 (Repealed)

Divisions 2, 3

9-11 (Repealed)

Division 4 Quality Teaching Council

12 Establishment and function of Quality Teaching Council

(1) The Quality Teaching Council is established by this Act.

(2) The function of the Council is to provide advice to the Board in relation to the exercise of the Board's functions under this Act.

13 Membership of Council

(1) The Council is to consist of the following members:

(a) 10 persons (the ***elected members***) who are teachers and who are elected, in accordance with the regulations, by those persons whose names are enrolled on the electoral list referred to in section 17,

(b) 10 persons appointed by the Minister (the ***appointed members***),

(c) the President.

(2) The appointed members are as follows:

(a) a nominee of the NSW Teachers Federation,

(b) a nominee of the NSW/ACT Independent Education Union,

(c) a nominee of the Board of Studies,

(d) a nominee of the Director-General,

(e) a nominee of the Catholic Education Commission, NSW,

(f) a nominee of the Association of Independent Schools of NSW,

(g) a person who, in the opinion of the Minister, represents the interests of parents of school-age children,

(h) a nominee of the NSW Teacher Education Council,

(i) 2 persons who, in the opinion of the Minister, represent the interests of teachers, with at least one such person being a member of the Professional Teachers' Council NSW.

(3) After the sixth anniversary of the first election of the elected members of the Council, each person who is an elected member must be a teacher who is accredited under Part 4.

(4) A person may hold office as a member of the Council for terms totalling not more than 6 years.

(4A) If a term of office of an elected member of the Council is extended in accordance with the regulations so that the term exceeds 3 years, the part of the term that exceeds 3 years is to be disregarded for the purposes of subsection (4).

(5) Schedule 2 has effect with respect to the members and procedure of the Council.

Division 5

14-15 (Repealed)

Part 3 Roll of teachers

16 Board to maintain roll of teachers

(1) The Board is required to maintain, in printed or electronic form (or both), a roll of teachers for the purposes of this Act.

(2) The roll of teachers is to consist of 2 parts, namely:

- (a) the electoral list, and
- (b) the accreditation list.

17 Electoral list

- (1) A person is eligible to be enrolled on the electoral list if the person:
 - (a) is employed as a teacher in New South Wales, or
 - (b) was employed as a teacher in New South Wales at any time during the period of 3 years immediately before the date on which the next election of the elected members of the Council is due to be held, or
 - (c) is qualified (but not employed) as a teacher and is employed:
 - (i) in the Department of Education and Communities or as a member of staff of the Board, or
 - (ii) by any other person or body prescribed by the regulations.
- (2) Any such person is eligible to be included on the electoral list regardless of whether the person is accredited.
- (3) If a person is enrolled on the electoral list, the list is to include the contact details (if any) provided by the person or otherwise made available to the Board.

18 Accreditation list

- (1) The accreditation list is to contain the following particulars in relation to each person who is accredited:
 - (a) the name and date of birth of the person,
 - (b) the level at which the person is accredited,
 - (c) the teacher accreditation authority that accredited the person and the date on which the person was accredited,
 - (d) such other particulars as are required by or under this Act or the regulations to be included on the accreditation list.
- (2) The accreditation list is also to contain the details of any decision by a teacher accreditation authority:
 - (a) to refuse an application to accredit any person, or
 - (b) to revoke the accreditation of any person, or
 - (c) to suspend the accreditation of any person.

(3) The Board is authorised:

- (a) to request and receive any such information from a teacher accreditation authority, and
- (b) to provide any information contained in the accreditation list to any of the following:
 - (i) any teacher accreditation authority,
 - (ii) the person or body responsible for registering or accrediting teachers under the law of another jurisdiction,
 - (iii) any other person or body prescribed by the regulations.

Note—

Section 22 requires a teacher accreditation authority to notify the Institute if the authority makes any accreditation decision under Part 4 in relation to a person.

See also section 42 which authorises the Institute to enter into information sharing arrangements with relevant agencies.

Part 4 Accreditation of teachers

Division 1 Professional teaching standards

19 Minister may approve professional teaching standards

- (1) The Minister may, from time to time and having regard to the advice of the Board, approve of professional teaching standards in relation to each of the following levels of accreditation:
 - (a) provisional accreditation under Division 3,
 - (b) conditional accreditation under Division 3 or 4,
 - (c) accreditation at professional competence level under Division 3, 4 or 5,
 - (d) accreditation at professional accomplishment level under Division 5,
 - (e) accreditation at professional leadership level under Division 5.
- (2) The Board is to ensure that the professional teaching standards are made available to teacher accreditation authorities and to all teachers.

20 Matters to be dealt with by professional teaching standards

The professional teaching standards may deal with, and make provision for or with respect to, the following matters:

- (a) the skills, qualifications, experience and knowledge required for teaching at each level

of accreditation,

- (b) the conditions and criteria for continuing accreditation, including requirements in relation to professional development,
- (c) the procedures and guidelines to be followed by teacher accreditation authorities in relation to the accreditation of persons under this Part (including the revocation or suspension of accreditation),
- (d) the approval by the Minister of initial and continuing teacher education courses or programs that are relevant to the accreditation of persons under this Part,
- (e) the approval by the Minister of those persons or bodies who may provide professional development,
- (f) ethical conduct of teachers,
- (g) any other matter relating to teaching standards.

Division 2 Accreditation scheme—general provisions

21 School-based accreditation scheme

- (1) The teacher accreditation authority for a school may, in accordance with this Part:
 - (a) accredit any person who is employed to teach in the school (including any person who has applied for a position as a teacher in the school), and
 - (b) revoke the accreditation (including the accreditation by another teacher accreditation authority) of any person:
 - (i) who is employed to teach in the school, or
 - (ii) who was previously employed to teach in the school (but who is no longer employed to teach in that or any other school).
- (2) If a person is accredited under this Part, the person's accreditation has effect in relation to any school, but is subject to revocation by a teacher accreditation authority.
- (3) The accreditation of a person under this Part is not restricted to accreditation in relation to a specific area of study or expertise. Accordingly, a person's accreditation does not, in itself, limit the areas of study in which the person teaches.

22 Accreditation decisions to be provided to Board

- (1) Any decision by a teacher accreditation authority under this Part in relation to a person must be notified in writing to the Board within 21 days after the making of the decision.

- (2) In the case of a teacher accreditation authority that is approved by the Director-General or the Minister under section 4, it is a condition of the approval that the authority complies with subsection (1).

23 Procedural matters

- (1) An application by a person for accreditation under this Part is to be in the form, and contain the particulars, approved by the Board.
- (2) If a teacher accreditation authority accredits a person under this Part, the authority is to issue a certificate of accreditation to the person in the form approved by the Board.
- (3) The accreditation of a person under this Part is subject to the conditions imposed by or under this Act or the regulations.

24 General grounds for revocation of accreditation

- (1) Without limiting any other provision of this Part, a teacher accreditation authority may revoke the accreditation of a person in accordance with this section.
- (2) The accreditation of a person who is or was employed as a teacher may be revoked on any of the following grounds:
 - (a) the authority is satisfied that the person is an unauthorised person within the meaning of section 93R of the *Teaching Service Act 1980*,
 - (b) the person is found guilty of a serious offence, being an offence prescribed by the regulations, or that is of a class of offences prescribed by the regulations, for the purposes of this paragraph,
 - (c) the person is found guilty more than once in the 5-year period immediately before the revocation of a non-serious offence, being an offence prescribed by the regulations, or that is of a class of offences prescribed by the regulations, for the purposes of this paragraph that involves an act or conduct that would reflect adversely on a teacher's professional standing or integrity or suitability or competence to teach,
 - (d) the authority is satisfied that the person, because of serious misconduct, has been dismissed from employment as a teacher (whether permanent, temporary or casual) or has been included in the list of persons maintained by the Director-General under section 7 (1) (e) of the *Teaching Service Act 1980* as a person who is not to be employed in the Teaching Service,
 - (e) the authority is satisfied that the person has failed to comply with any condition to which the person's accreditation is subject.

Note—

Sections 33, 38, 39 (5) and 40 (4) provide other grounds for the revocation of a person's accreditation.

24A Suspension of accreditation

- (1) A teacher accreditation authority may suspend the accreditation of a person:
 - (a) on any ground on which the authority may revoke the person's accreditation, or
 - (b) if disciplinary proceedings against the person are pending in relation to alleged serious misconduct, or
 - (c) if proceedings against the person for an offence are pending and, were the person to be found guilty of the offence, the authority would have grounds to revoke the accreditation.

Note—

Section 24 (2) (e) provides that one of the grounds for revocation of accreditation is a failure to comply with a condition of the accreditation. Section 25 (3) provides that payment of the annual fee is a condition of accreditation.

- (2) A teacher accreditation authority must review the authority's suspension of a person's accreditation at least every 3 months and must remove the suspension in the following circumstances:
 - (a) if the suspension was imposed because of pending disciplinary proceedings and those proceedings have been finalised with no finding that the person has engaged in serious misconduct,
 - (b) if the suspension was imposed because of pending proceedings for an offence and the person has been found not guilty of the offence or the proceedings have been withdrawn or dismissed,
 - (c) if the suspension was imposed on a ground referred to in subsection (1) (b) or (c) and a finding that the person has engaged in serious misconduct has been made against the person in the relevant disciplinary proceedings, or a finding of guilt has been made against the person in the relevant proceedings for an offence, but the authority has not taken action to revoke the person's accreditation within a reasonable period having regard to the circumstances of the case.
- (3) Subsection (2) does not apply to the suspension of a person's accreditation for failure to pay the annual fee required under section 25.
- (4) A person's accreditation is not in force during any period for which it is suspended.

24B Criteria for determining revocation or suspension of accreditation on general grounds

A teacher accreditation authority is to take account of the following matters (where appropriate) when determining whether to revoke a person's accreditation under section 24 or suspend a person's accreditation under section 24A:

- (a) the nature and seriousness of the conduct concerned,

- (b) the frequency of the conduct concerned,
- (c) the recency of the conduct concerned,
- (d) any other matter that is required to be taken into account by the procedures and guidelines in the professional teaching standards (as referred to in section 20 (c)).

24C Notice to be given of intention to suspend or revoke accreditation

- (1) A teacher accreditation authority may suspend or revoke a person's accreditation only after having served on the person written notice of its intention to suspend or revoke the accreditation setting out its reasons.
- (2) The notice must include a statement that the person concerned may make submissions to the teacher accreditation authority in relation to the proposed suspension or revocation within 14 days after the date of the notice.

25 Annual fee

- (1) A person who is accredited under this Part must, in accordance with the regulations, pay an annual fee to the Board.
- (2) The amount of the annual fee is to be prescribed by the regulations.
- (3) It is a condition of the person's accreditation under this Part that the annual fee is paid.
- (4) This section does not apply to a person who is conditionally accredited under Division 4.

26 False information and representation

- (1) A person must not, in an application for accreditation under this Part, provide any information that the person knows is false or misleading in a material particular.
- (2) A person must not make any representation to the effect that the person is accredited at any level of accreditation unless the person is for the time being accredited at that level.

Maximum penalty: 50 penalty units.

27 Administrative review by Civil and Administrative Tribunal of accreditation decisions

- (1) A person may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of the following decisions:
 - (a) the refusal or failure by a teacher accreditation authority to accredit the person under this Part,
 - (b) the revocation or suspension of the person's accreditation by a teacher

accreditation authority under this Part.

- (2) Any such decision by a teacher accreditation authority is not reviewable by any other court or tribunal (including in any proceedings in the nature of disciplinary proceedings or in any proceedings for unfair dismissal).

Division 3 Mandatory accreditation of new scheme teachers

Note—

New scheme teachers will need to be provisionally or conditionally accredited under this Division before they may be employed to teach.

Provisional accreditation will be available to a new scheme teacher who has met the requirements specified in the professional teaching standards for accreditation at that level (in most cases this means that the person holds full teaching qualifications) or if the person has completed a teacher education course approved by the Minister. The person will be required to obtain accreditation at professional competence level within 3 years after being provisionally accredited.

Conditional accreditation will be available to a new scheme teacher who has a degree in a relevant area or has completed a substantial part of a teacher education course approved by the Minister. Such a person will, however, be required to undertake professional development or further teacher education and will have 4 years to obtain accreditation at professional competence level.

The time for obtaining accreditation at professional competence level will vary in the case of new scheme teachers who are employed on a casual or part-time basis.

28 Definitions

- (1) In this Division:

approved course means an initial teacher education course or program approved by the Minister under the professional teaching standards.

new scheme teacher means:

- (a) a person:

- (i) who has never been employed to teach in New South Wales before the relevant date, and
- (ii) who is (or who would be) employed as a teacher for the first time after the relevant date, or

- (b) a person:

- (i) who was, immediately before the relevant date, the holder of a tertiary or teaching qualification prescribed by the regulations, and
- (ii) who returns, at any time after the relevant date, to employment as a teacher following a period of at least 5 years during which time the person was not employed to teach, or

- (c) a person who was employed to teach for the first time in New South Wales during

the period of 3 months (or such other period as may be prescribed by the regulations) immediately before the relevant date, or

(d) a person:

- (i) who was, immediately before the relevant date, the holder of a tertiary or teaching qualification prescribed by the regulations, and
- (ii) who, at any time after the relevant date, commences to teach following an absence from actual classroom teaching of 5 or more years, regardless of whether the person remained employed as a teacher during that absence.

Note—

The mutual recognition principle (as set out in the legislation referred to in section 5) in relation to occupations applies in respect of persons who are “registered” as teachers in certain other jurisdictions.

relevant date means the date on which this Division commences or, if the regulations prescribe a different date in respect of a class of new scheme teachers (either in relation to all of the provisions of this Division or in respect of specified provisions of this Division), the prescribed date.

- (2) If a teacher accreditation authority certifies in writing that it is of the opinion that a specified person has undertaken duties in an area of relevance to the professional teaching standards during a specified period, that period is taken to be a period of actual classroom teaching for the purposes of paragraph (d) (ii) of the definition of **new scheme teacher**.
- (3) The regulations may prescribe duties that are to be taken to be, or are to be taken not to be, in an area of relevance to the professional teaching standards for the purposes of the issuing of a certificate under subsection (2).

29 Employment of new scheme teachers

- (1) A person who is a new scheme teacher must not be employed to teach in a school unless:
 - (a) the person is accredited, and
 - (b) in the case of a person who is conditionally accredited under section 31—the person is working under the on-site supervision of another teacher (other than a person who is provisionally or conditionally accredited under this Division or who is conditionally accredited under Division 4).

Note—

Accredited is defined under section 3 to include provisionally or conditionally accredited under this Division.

- (2) If, in contravention of this section, a person:

- (a) is employed, or
 - (b) continues to be employed,
- the person's employer is guilty of an offence.

Maximum penalty: 100 penalty units.

- (3) The employment of a person as a new scheme teacher may be terminated if the person's accreditation is revoked.
- (4) A person who is a new scheme teacher may be suspended from employment as a teacher during any period in which the person's accreditation is suspended.
- (5) For the purposes of subsection (2), a person who is suspended from employment as a teacher under this section for any period is taken not to be employed as a teacher during that period.
- (6) Nothing in this section requires an employer who terminates or suspends the employment of a person as a new scheme teacher in accordance with this Act to provide alternative employment to the person.

30 Provisional accreditation of new scheme teachers

- (1) A teacher accreditation authority may, on application by a person who is a new scheme teacher:
 - (a) provisionally accredit the person, or
 - (b) refuse to provisionally accredit the person.
- (2) A teacher accreditation authority may provisionally accredit any such person if the authority is satisfied that:
 - (a) the person meets the requirements specified in the professional teaching standards for provisional accreditation, or
 - (b) the person has completed an approved course and will receive a qualification in relation to that course.
- (3) In the case of a person referred to in subsection (2) (b), it is a condition of a person's provisional accreditation that the person provides, as soon as practicable after receiving his or her qualification in relation to the approved course, the teacher accreditation authority with evidence of the person's qualification.
- (4) The provisional accreditation of a person who is a new scheme teacher ceases (unless sooner revoked by a teacher accreditation authority):
 - (a) at the end of the relevant period, or

- (b) if, before the end of the relevant period, the person is accredited at professional competence level by a teacher accreditation authority—when the person is accredited at that level.

(5) In this section:

relevant period, in relation to a person who is provisionally accredited under this section, means:

- (a) if the person is employed on a full-time basis—the period of 3 years (or such longer period as may be determined by the Minister in any particular case) following the date on which the person was provisionally accredited, or
- (b) if the person is employed on a casual or part-time basis:
 - (i) the period determined in accordance with the regulations to be commensurate with the 3-year period for persons employed on a full-time basis, or
 - (ii) such longer period as may be determined by the Minister in any particular case,

following the date on which the person was provisionally accredited.

31 Conditional accreditation of new scheme teachers

- (1) This section applies to a person who is a new scheme teacher but who:
 - (a) does not meet the requirements specified in the professional teaching standards for provisional accreditation, or
 - (b) has not completed an approved course.
- (2) A teacher accreditation authority may, on application by a person to whom this section applies:
 - (a) conditionally accredit the person, or
 - (b) refuse to conditionally accredit the person.
- (3) A teacher accreditation authority may conditionally accredit any such person if:
 - (a) the person holds a degree in an area that is relevant to the area in which the person is or is to be employed to teach, or
 - (b) the authority is satisfied that the person has completed a substantial part of an approved course.
- (4) It is a condition of a person's conditional accreditation under this section that the person undertakes such professional development or further teacher education (or both) as may be determined by the teacher accreditation authority for the school in

which the person is employed.

(5) In making any determination in relation to a person for the purposes of subsection (4), the teacher accreditation authority is to have regard to:

(a) any advice of the Board, and

(b) the skills, knowledge and relevant experience of the person.

(6) The conditional accreditation of a person under this section ceases (unless sooner revoked by a teacher accreditation authority):

(a) at the end of the relevant period, or

(b) if, before the end of the relevant period, the person is accredited at professional competence level by a teacher accreditation authority—when the person is accredited at that level.

(7) In this section:

relevant period, in relation to a person who is conditionally accredited under this section, means:

(a) if the person is employed on a full-time basis—the period of 4 years (or such longer period as may be determined by the Minister in any particular case) following the date on which the person was conditionally accredited, or

(b) if the person is employed on a casual or part-time basis:

(i) the period determined in accordance with the regulations to be commensurate with the 4-year period for persons employed on a full-time basis, or

(ii) such longer period as may be determined by the Minister in any particular case,

following the date on which the person was conditionally accredited.

32 Accreditation of new scheme teachers at professional competence level

A teacher accreditation authority may, on application by a person who is a new scheme teacher:

(a) accredit the person at the professional competence level if:

(i) the person is provisionally accredited under section 30 or conditionally accredited under section 31, and

(ii) the authority is satisfied that the person meets the requirements for accreditation at professional competence level, or

(b) refuse to accredit the person at professional competence level.

33 Revocation of accreditation of new scheme teachers under this Division

A teacher accreditation authority may:

- (a) revoke the provisional accreditation of a person under section 30 if the authority is satisfied that the person has failed to comply with any of the requirements of the professional teaching standards that apply to the person, or
- (b) revoke the conditional accreditation of a person under section 31 if the authority is satisfied that the person has failed to comply with:
 - (i) the condition referred to in section 31 (4), or
 - (ii) any of the requirements of the professional teaching standards that apply to the person, or
- (c) revoke the accreditation of a person who is a new scheme teacher at professional competence level if the authority is satisfied that the person has failed to comply with any of the requirements of the professional teaching standards for accreditation at professional competence level.

Note—

Section 24 provides other grounds for revocation of accreditation.

Division 4 Mandatory accreditation of transition scheme teachers

34 Definitions

In this Division:

relevant date means the date on which this Division commences or, if the regulations prescribe a different date in respect of a class of transition scheme teachers (either in relation to all of the provisions of this Division or in respect of specified provisions of this Division), the prescribed date.

transition scheme teacher means a person:

- (a) who was, at any time before the relevant date, employed to teach in a school, and
- (b) who was not, as at that date, the holder of:
 - (i) a teaching qualification prescribed by the regulations, or
 - (ii) a degree in an area that is relevant to the area in which the person is employed to teach.

35 Employment of transition scheme teachers

- (1) A person who is a transition scheme teacher must not be employed to teach in a school unless the person:

- (a) is accredited, and
- (b) is working under the on-site supervision of another teacher (other than a person who is provisionally or conditionally accredited under Division 3 or who is conditionally accredited under this Division).

Note—

Accredited is defined under section 3 to include conditionally accredited under this Division.

- (2) If, in contravention of this section, a person:

- (a) is employed, or
- (b) continues to be employed,

the person's employer is guilty of an offence.

Maximum penalty: 100 penalty units.

- (3) The employment of a person as a transition scheme teacher may be terminated if the person's accreditation is revoked.
- (4) A person who is a transition scheme teacher may be suspended from employment as a teacher during any period in which the person's accreditation is suspended.
- (5) For the purposes of subsection (2), a person who is suspended from employment as a teacher under this section for any period is taken not to be employed as a teacher during that period.
- (6) Nothing in this section requires an employer who terminates or suspends the employment of a person as a transition scheme teacher in accordance with this Act to provide alternative employment to the person.

36 Conditional accreditation of transition scheme teachers

- (1) A teacher accreditation authority may, on application by a person who is a transition scheme teacher:
 - (a) conditionally accredit the person under this section, or
 - (b) refuse to conditionally accredit the person.
- (2) It is a condition of the accreditation of a person under this section that the person works, to the satisfaction of the teacher accreditation authority for the school in which the person is or is to be employed, towards obtaining a degree in an area that is relevant to the area in which the person is employed to teach.
- (3) The conditional accreditation of a person under this section ceases (unless sooner revoked by a teacher accreditation authority):

- (a) 7 years after the date on which the person was conditionally accredited (or such longer period as the Minister may determine in any particular case), or
- (b) if, before the end of that period, the person is accredited at professional competence level by a teacher accreditation authority—when the person is accredited at that level.

37 Accreditation of transition scheme teachers at professional competence level

A teacher accreditation authority may, on application by a person who is a transition scheme teacher:

- (a) accredit the person at the professional competence level if:
 - (i) the person is conditionally accredited under section 36, and
 - (ii) the authority is satisfied that the person meets the requirements of the professional teaching standards for accreditation at professional competence level, or
- (b) refuse to accredit the person at professional competence level.

38 Revocation of accreditation under this Division of transition scheme teachers

A teacher accreditation authority may:

- (a) revoke the conditional accreditation of a person who is a transition scheme teacher if the authority is satisfied that the person has failed to comply with:
 - (i) the condition referred to in section 36 (2), or
 - (ii) any of the requirements of the professional teaching standards that apply to the person, or
- (b) revoke the accreditation of any such person at professional competence level if the authority is satisfied that the person has failed to comply with any of the requirements of the professional teaching standards for accreditation at professional competence level.

Note—

Section 24 provides other grounds for revocation of accreditation.

Division 5 Voluntary accreditation

39 Voluntary accreditation of teachers at various levels

- (1) This section applies to any person who is a teacher (other than a new scheme teacher within the meaning of Division 3 or a transition scheme teacher within the meaning of Division 4).

- (2) A teacher accreditation authority may, on application by a person to whom this section applies:
 - (a) accredit the person at any one or more of the following levels:
 - (i) professional competence level,
 - (ii) professional accomplishment level,
 - (iii) professional leadership level, or
 - (b) refuse to accredit the person at any such level.
- (3) A person may be accredited at more than one such level at any one time.
- (4) A teacher accreditation authority may not accredit a person to whom this section applies at the level of accreditation in respect of which the application is made unless the authority is satisfied that the person meets the requirements for accreditation at that particular level.
- (5) A teacher accreditation authority may revoke the accreditation of a person at a particular level under this section if the authority is satisfied that the person has failed to comply with any of the requirements of the professional teaching standards for accreditation at that level.

Note—

Section 24 provides other grounds for revocation of accreditation.

- (6) The revocation of a person's accreditation at professional competence level under this section operates to revoke the person's accreditation (if any) at professional accomplishment level or professional leadership level, or both, under this section.

40 Voluntary accreditation of new scheme and transition scheme teachers at higher levels

- (1) This section applies to any person:
 - (a) who is a new scheme teacher within the meaning of Division 3 and who is accredited under that Division at professional competence level, or
 - (b) who is a transition scheme teacher within the meaning of Division 4 and who is accredited under that Division at professional competence level.
- (2) A teacher accreditation authority may, on application by a person to whom this section applies:
 - (a) accredit the person at either or both of the following levels:
 - (i) professional accomplishment level,
 - (ii) professional leadership level, or

(b) refuse to accredit the person at any such level.

- (3) A teacher accreditation authority may not accredit a person under this section at the level of accreditation in respect of which the application is made unless the authority is satisfied that the person meets the requirements for accreditation at that particular level.
- (4) A teacher accreditation authority may revoke the accreditation of a person at a particular level under this section if the authority is satisfied that the person has failed to comply with any of the requirements of the professional teaching standards for accreditation at that level.

Note—

Section 24 provides other grounds for revocation of accreditation.

- (5) The revocation of a person's accreditation at professional competence level under Division 3 or 4 operates to revoke the person's accreditation (if any) at professional accomplishment level or professional leadership level, or both, under this section.

41 Application fee

- (1) A person who applies for accreditation under this Division must pay an application fee to the Board.
- (2) The amount of the application fee is to be prescribed by the regulations.
- (3) If a person applies for accreditation under this Division, the teacher accreditation authority concerned may refuse to accredit the person unless the authority is satisfied that the person has paid the application fee.

Part 5 Miscellaneous

42 (Repealed)

42A Payment of suspended teachers

- (1) A person may be suspended without pay in relation to his or her employment as a teacher for any period or part of a period during which that employment is required to be suspended under section 29 or 35 as a result of the suspension of the person's accreditation for a failure to comply with any condition to which the person's accreditation is subject.
- (2) Any amount payable to a person in relation to his or her employment as a teacher in a government school:
- (a) may only be withheld under this section if the Director-General so directs, and
 - (b) if so withheld, is forfeited to the State unless the Director-General otherwise directs.

43, 44 (Repealed)

45 Delegations

- (1) An office holder may delegate to any person any function conferred or imposed on the office holder by or under this Act, other than this power of delegation.

Note—

The power of the Board to delegate its functions under this Act is contained in the [Board of Studies, Teaching and Educational Standards Act 2013](#).

- (2) In this section:

office holder means the Minister or the Director-General.

46 Act to bind Crown

- (1) This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.
- (2) However, nothing in this Act renders the Crown liable to prosecution for an offence.

47 Relationship of Act with other instruments

- (1) The provisions of this Act and the regulations have effect despite any stipulation to the contrary.
- (2) No contract, agreement or industrial instrument operates to annul, vary or exclude any of the provisions of this Act or the regulations.

48 Protection from personal liability for members of Council

Anything done or omitted to be done by a person who is:

- (a) a member of the Council, or
- (b) acting under the direction of the Council,

in exercising functions conferred or imposed on the person under this Act or in the course of the administration of this Act does not, if it was done or omitted to be done in good faith, subject the person personally to any action, liability, claim or demand.

49 Nature of proceedings for offences

Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.

50 Recovery of money

Any fee or charge due and payable under this Act may be recovered as a debt in a court

of competent jurisdiction.

51, 51A (Repealed)

52 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (1A) In particular, the regulations may make provision for or with respect to the following:
 - (a) fees and charges for services provided under this Act, including prescribing the basis on which any such fee or charge is to be determined and the waiver of any such fee or charge,
 - (b) without limiting paragraph (a), fees and charges in relation to the assessment by the Board, on application, of a course, program, person or body for the purpose of providing advice to the Minister under section 7 (3).
- (2) The regulations may exempt any specified class of persons from any provision of this Act or the regulations. The exemption of any such class of person is subject to such conditions as may be prescribed by the regulations.
- (3) The regulations may create an offence punishable by a penalty not exceeding 50 penalty units.

53 Savings and transitional provisions

Schedule 3 has effect.

54 (Repealed)

55 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) A review is to be undertaken as soon as possible after the period of 3 years from the date of commencement of this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.
- (4) A further review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the *Institute of Teachers Amendment Act 2008*.
- (5) A report on the outcome of the further review is to be tabled within 12 months after

the end of that period of 5 years.

Schedule 1 (Repealed)

Schedule 2 Provisions relating to members and procedure of the Council

(Section 13 (5))

1 Definitions

In this Schedule:

appointed member means an appointed member as referred to in section 13 (1) (b).

elected member means an elected member as referred to in section 13 (1) (a).

member means any member of the Council (including the President).

2 Terms of office of appointed and elected members

- (1) Subject to this Schedule, an appointed member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) Subject to this Schedule and the regulations, an elected member holds office for a period of 3 years.

3 Acting appointed and elected members

- (1) The Minister may, from time to time, appoint a person to act in the office of an appointed member during the illness or absence of the appointed member, and the person, while so acting, has and may exercise all the functions of the member and is taken to be a member. The Minister may remove any person from the office to which the person was appointed under this subclause.
- (2) The regulations may provide for the appointment of a person to act in the office of an elected member during the illness or absence of the elected member, and the person, while so acting, has and may exercise all the functions of the member and is taken to be a member.

4 Remuneration of appointed and elected members

An appointed member or an elected member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

5 Filling of vacancy in office of appointed or elected members

- (1) If the office of any appointed member becomes vacant, a person is, subject to this

Act, to be appointed to fill the vacancy.

- (2) If the office of any elected member becomes vacant, the vacancy is to be filled in accordance with the regulations.

6 Vacancy in office of appointed or elected member

- (1) The office of an appointed member or an elected member becomes vacant if the member:
- (a) dies, or
 - (b) completes a term of office and, in the case of an appointed member, is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this clause, or
 - (e) is absent from 3 consecutive meetings of the Council of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove an appointed member from office at any time.
- (3) The Minister may remove an elected member from office at any time for misbehaviour or incompetence.

7 Disclosure of pecuniary and other conflicts of interests

- (1) If:
- (a) a member has a direct or indirect pecuniary interest, or any other interest, in a matter being considered or about to be considered at a meeting of the Council, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.

- (2) A disclosure by a member at a meeting of the Council that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Council in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Council otherwise determines:
- (a) be present during any deliberation of the Council with respect to the matter, or
 - (b) take part in any decision of the Council with respect to the matter.
- (5) For the purposes of the making of a determination by the Council under subclause (4), a member who has a direct or indirect pecuniary interest, or any other interest, in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Council for the purpose of making the determination, or
 - (b) take part in the making by the Council of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Council.

8 General procedure

The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Council.

9 Quorum

The quorum for a meeting of the Council is 12 members.

10 Presiding member

- (1) The President or, in the absence of the President, another member elected to chair the meeting by the members present is to preside at a meeting of the Council.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

11 Voting

A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

12 Transaction of business outside meetings or by telephone

- (1) The Council may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Council for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Council.
- (2) The Council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the President and each member have the same voting rights as they have at an ordinary meeting of the Council.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Council.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

13 First meeting

The Minister may call the first meeting of the Council in such manner as the Minister thinks fit.

Schedule 3 Savings and transitional provisions

(Section 53)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

Institute of Teachers Amendment Act 2008

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Interim Council

- (1) Until such time as the elected members of the Council are elected in accordance with section 13 (1) (a), the Council is to consist of such members as may be appointed by the Minister.
- (2) Schedule 2 to this Act applies, with such modifications as are necessary, to and in respect of any such interim Council.

Part 3 Provisions consequent on enactment of *Institute of Teachers Amendment Act 2008*

3 Definition

In this Part, **amending Act** means the *Institute of Teachers Amendment Act 2008*.

4 Application of amendments to existing teachers

Paragraph (d) of the definition of **new scheme teacher** (as inserted by the amending

Act) in section 28 does not apply to a person's absence from actual classroom teaching during any period occurring before the relevant date (within the meaning of section 28 as amended by that Act) if the person was still employed as a teacher during that period.

5 Suspension and revocation of accreditation

A provision of section 24 or 24A (as inserted by the amending Act) extends to offences committed before the commencement of the provision and conduct occurring before that commencement.

6 Contracts, agreements and industrial instruments

Section 47 (2) (as substituted by the amending Act) applies to a contract, agreement or industrial instrument whether made or entered into before, on or after the substitution of that subsection.

Schedule 4 (Repealed)