

# Teacher Accreditation Act 2004 No 65

[2004-65]



New South Wales

## Status Information

### Currency of version

Current version for 29 November 2021 to date (accessed 20 January 2025 at 11:39)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Previously named**  
Institute of Teachers Act 2004

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 27 February 2023

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## Contents

|  |    |
|--|----|
| <b>Long title</b> .....  | 5  |
| <b>Part 1 Preliminary</b> .....                                      | 5  |
| 1 Name of Act .....  | 5  |
| 2 Commencement .....   | 5  |
| 3 Definitions .....  | 5  |
| 3A Meaning of “teach” .....  | 8  |
| 4 Protection of children paramount .....                             | 8  |
| 5 Mutual recognition laws .....                                      | 9  |
| <b>Part 2 Authority’s functions</b> .....                            | 9  |
| 6 Functions of Authority .....                                       | 9  |
| 7 Obtaining and sharing information .....                            | 9  |
| 8–15 (Repealed) .....  | 11 |
| <b>Part 3 Roll of teachers</b> .....                                 | 11 |
| 16 Authority to maintain roll of teachers .....                      | 11 |
| 17 Public register of teachers .....                                 | 11 |
| 18 Accreditation list .....  | 11 |
| <b>Part 4 Accreditation of teachers</b> .....                        | 12 |
| <b>Division 1 Professional teaching standards</b> .....              | 12 |
| 19 Minister may approve professional teaching standards .....        | 12 |
| 20 Matters to be dealt with by professional teaching standards ..... | 12 |

|   |    |
|---|----|
| <b>Division 2 Accreditation scheme—general provisions</b> .....                                 | 13 |
| 21 Accreditation of teachers at schools and early childhood education centres .....             | 13 |
| 22 Applications for accreditation .....   | 14 |
| 23 Notice of decisions by Authority .....   | 14 |
| 23A Conditions of accreditation.....  | 15 |
| 24 Revocation of accreditation .....  | 15 |
| 24A Suspension of accreditation .....   | 16 |
| 24B Criteria for determining revocation or suspension of accreditation on general grounds ..... | 17 |
| 24C Notice to be given of intention to suspend or revoke accreditation .....                    | 17 |
| 24D Placing accreditation on hold during leave of absence from teaching .....                   | 17 |
| 24E Voluntary cancellation of accreditation .....   | 18 |
| 25 Annual fee .....   | 18 |
| 25A Working with children check clearances.....   | 18 |
| 26 False information and representation .....   | 19 |
| 27 Administrative review of certain decisions .....   | 19 |
| <b>Division 3 Mandatory accreditation</b> .....   | 19 |
| 28 Requirement for teachers to be accredited .....  | 19 |
| 29 Provisions relating to employment .....  | 20 |
| 30 Provisional accreditation.....   | 20 |
| 31 Conditional accreditation.....   | 21 |
| 32 Accreditation of teachers at proficient teacher level .....                                  | 23 |
| 33 Provisional re-accreditation .....   | 23 |
| <b>Division 4 Assessment of suitability to teach</b> .....                                      | 24 |
| 34 Definition.....  | 24 |
| 35 When Authority may assess suitability to teach .....   | 24 |
| 36 Power to check criminal and disciplinary history .....                                       | 24 |
| 37 Authority’s other powers .....   | 25 |
| 38 Authority may refer matter for further investigation .....                                   | 25 |
| 38A Unsuitability to teach .....  | 26 |
| <b>Division 5 Voluntary accreditation</b> .....   | 26 |
| 38B Non-practising accreditation .....  | 26 |

|  |           |
|--|-----------|
| 39 Voluntary accreditation of teachers at various levels ..... | 27        |
| 40 Voluntary accreditation of teachers at higher levels .....  | 27        |
| 40A, 41 (Repealed) .....                                       | 28        |
| <b>Part 5 Miscellaneous</b> .....                              | <b>28</b> |
| 42 (Repealed) .....  | 28        |
| 42A Payment of suspended teachers .....                        | 28        |
| 42B Mandatory notifications by employers .....                 | 28        |
| 43, 44 (Repealed) .....  | 29        |
| 45 Delegations .....   | 29        |
| 46 Act to bind Crown .....                                     | 29        |
| 47 Relationship of Act with other instruments .....            | 29        |
| 48 (Repealed) .....  | 29        |
| 49 Nature of proceedings for offences .....                    | 30        |
| 50 Recovery of money .....                                     | 30        |
| 51, 51A (Repealed) .....                                       | 30        |
| 52 Regulations .....   | 30        |
| 53 Savings and transitional provisions .....                   | 30        |
| 54 (Repealed) .....  | 30        |
| 55 Review of Act .....   | 30        |
| <b>Schedules 1, 2 (Repealed)</b> .....                         | <b>31</b> |
| <b>Schedule 3 Savings and transitional provisions</b> .....    | <b>31</b> |
| <b>Schedule 4 (Repealed)</b> .....                             | <b>35</b> |

# Teacher Accreditation Act 2004 No 65



New South Wales

An Act to make provision for professional teaching standards and the accreditation of 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.

**approved course** means an initial teacher education course or program approved by the Minister in accordance with the professional teaching standards.

**Authority** means the NSW Education Standards Authority constituted under the *Education Standards Authority Act 2013*.

**Children's Guardian** means the Children's Guardian appointed under the *Children's Guardian Act 2019*, section 115.

**degree** means a degree that meets the specifications under the *Australian Qualifications Framework*.

**dismiss** includes—

(a) in the case of a teacher who is appointed on probation—the annulment of that appointment, or

- (b) in the case of a teacher employed on a casual basis—dispensing with the services of the teacher.

**early childhood education centre** or **centre** means the following, but does not include a family day care service or an out-of-school hours or vacation care service—

- (a) an approved education and care service within the meaning of the *Children (Education and Care Services) National Law (NSW)* or the *Children (Education and Care Services) Supplementary Provisions Act 2011*,
- (b) a service or facility of a class declared by the regulations to be an early childhood education centre.

**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*.

**non-centre based teacher** means a person—

- (a) who holds a degree or teaching qualification recognised by the Authority, and
- (b) who is not teaching in an early childhood education centre but has taught in an early childhood education centre for a period of not less than the period prescribed for the purposes of this definition by the regulations or the rules of the Authority, and
- (c) who is employed to undertake any of the following—
- (i) duties relating to the development or implementation of the curriculum for early childhood education,
  - (ii) duties relating to the learning and wellbeing of children who attend early childhood education centres,
  - (iii) duties relating to curriculum teaching and learning in early childhood education centres,
  - (iv) duties as an early childhood education lecturer or tutor in a university or other higher education institution in New South Wales,
  - (v) duties as an educational consultant for early childhood education centres.

**non-school based teacher** means a person—

- (a) who holds a degree or teaching qualification recognised by the Authority, and

- (b) who is not teaching in a school but has taught in a school for a period of not less than the period prescribed for the purposes of this definition by the regulations or the rules of the Authority, and
- (c) who is employed to undertake any of the following—
  - (i) duties relating to the development or implementation of the curriculum (including assessment and reporting) for primary and secondary education,
  - (ii) duties relating to the learning and wellbeing of school students,
  - (iii) duties relating to curriculum teaching and learning in schools,
  - (iv) duties as a K-Year 12 education lecturer or tutor in a university or other higher education institution in New South Wales,
  - (v) duties as an educational consultant for schools.

**non-teaching school counsellor** means a school counsellor who is not teaching in a school.

**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.

**relevant complaint** about a person means an allegation that—

- (a) the person has engaged in misconduct, or
- (b) the person is incompetent in performing the work of a teacher, or
- (c) the person has failed to comply with the professional teaching standards.

**roll of teachers** means the roll maintained by the Authority under Part 3.

**rules of the Authority** means rules made by the Authority under section 25 of the [Education Standards Authority Act 2013](#).

**Note—**

The rules of the Authority only have effect if approved by the Minister.

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

**school counsellor** means a person—

- (a) who is employed in a school to undertake duties relating to the learning and wellbeing of school students, and
- (b) who holds a degree or teaching qualification recognised by the Authority.

**Secretary** means the Secretary of the Department of Education.

**teach**—see section 3A.

**working with children check clearance** has the same meaning as in the *Child Protection (Working with Children) Act 2012*.

**Note—**

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

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

### **3A Meaning of “teach”**

(1) In this Act, **teach** means—

(a) in relation to a school—to undertake duties that include—

- (i) delivering courses of study that are designed to implement the school curriculum under the *Education Act 1990*, and
- (ii) assessing the participation, performance and progress of students in those courses, and
- (iii) supporting and leading the development and implementation of the delivery and assessment of the courses, and

(b) in relation to an early childhood education centre—to undertake duties that include—

- (i) delivering an educational program based on an approved learning framework under the *Children (Education and Care Services) National Law (NSW)*, and
- (ii) assessing the participation, performance and progress of children in that educational program, and
- (iii) supporting and leading the development and implementation of the delivery and assessment of the educational program.

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

### **4 Protection of children paramount**

This Act must be administered by applying the principle that, in an action or decision concerning a child or young person, the safety, welfare and wellbeing of the child or young person are paramount.



## **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 Authority's functions**

### **6 Functions of Authority**

(1) The functions of the Authority 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 the Minister's other functions under this Act,
- (c) to monitor the accreditation process across all schools,
- (d) to ensure professional teaching standards are applied fairly and consistently,
- (e) to monitor, evaluate and report on the quality of initial and continuing teacher education courses and programs approved under the professional teaching standards,
- (f) to assess a person's suitability to teach,
- (g) to accredit teachers at all levels, including the voluntary accreditation of teachers at higher levels and non-practising teachers,
- (h) to suspend, revoke and impose conditions on accreditation,
- (i) other functions imposed by or under this Act or another Act.

(2) The functions of the Authority under this Act also include making decisions about whether or not to approve—

- (a) a teacher education course or program for the purposes of this Act, or
- (b) a person or body to provide professional development in accordance with the requirements of the professional teaching standards.

(3) The functions of the Authority under this Act do not extend to industrial matters concerning teachers, for example, the salaries of teachers or the conditions of employment of teachers.

### **7 Obtaining and sharing information**

(1) The Authority may obtain relevant information from, and disclose relevant information

to, the following **relevant entities**, for an authorised purpose—

- (a) the Children’s Guardian,
- (b) the Commissioner of Police,
- (c) a school or early childhood education centre, or an equivalent entity in another jurisdiction, including outside Australia,
- (d) an organisation to which a matter relevant to an assessment of suitability has been referred under section 38.

(2) In this section—

**authorised purpose** means a purpose for or in connection with the execution or administration of this Act and includes the following purposes—

- (a) the verification of the identity of a person who is an applicant for, or the holder of, an accreditation under this Act,
- (b) the consideration and determination of a person’s application under this Act,
- (c) assessing and determining under Part 4, Division 2 whether to suspend or revoke a person’s accreditation,
- (d) assessing and determining under Part 4, Division 4 whether a person is suitable to teach.

**clearance history**, of a person, means the history of action taken in relation to an application for a clearance by the person or a clearance held by the person under the [Child Protection \(Working with Children\) Act 2012](#), including the following—

- (a) a risk assessment determination,
- (b) an interim bar,
- (c) a refusal of an application,
- (d) the suspension or cancellation of a clearance.

**relevant information** means the following information about a person—

- (a) information relevant to the verification of the identity of the person,
- (b) information about the person disclosed by the person to a relevant entity,
- (c) information about the person’s criminal history in this jurisdiction or another jurisdiction,
- (d) information about disciplinary proceedings against the person in this jurisdiction or another jurisdiction,

- (e) information about the person's clearance history,
- (f) information about whether the person continues to comply with accreditation requirements and teaching standards under the professional teaching standards,
- (g) other information relevant to assessing the person's suitability to teach, including a relevant complaint.

**8-15 (Repealed)**

**Part 3 Roll of teachers**

**16 Authority to maintain roll of teachers**

- (1) The Authority 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 public register of teachers, and
  - (b) the accreditation list.

**17 Public register of teachers**

- (1) A public register of accredited persons must be published on the Authority's website.
- (2) The public register must contain the following information about an accredited person—
  - (a) the person's full name,
  - (b) the accreditation number specified on the person's certificate of accreditation,
  - (c) the type or level of accreditation held by the person.

**18 Accreditation list**

- (1) The accreditation list must contain the following particulars in relation to each person who is accredited—
  - (a) the full name and date of birth of the person,
  - (b) the type or level of accreditation held by the person,
  - (c) the date on which the person was accredited,
  - (d) other information required by or under this Act or the regulations to be included on the accreditation list.
- (2) The accreditation list must contain the details of a decision by the Authority—

- (a) to refuse an application to accredit a person, or
  - (b) to revoke the accreditation of a person, or
  - (c) to suspend the accreditation of a person.
- (3) The Authority may provide information contained in the accreditation list to the following—
- (a) a school or an early childhood education centre,
  - (b) the person or body responsible for registering or accrediting teachers under the law of another jurisdiction, including outside Australia,
  - (c) another person or body prescribed by the regulations.

## **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 Authority, 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,
  - (c) accreditation at proficient teacher level under Division 3 or 5,
  - (d) accreditation at highly accomplished teacher level under Division 5,
  - (e) accreditation at lead teacher level under Division 5.
- (2) The Authority is to ensure that the professional teaching standards are made available to all teachers.

#### **20 Matters to be dealt with by professional teaching standards**

- (1) 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,

- (b1) the conditions and criteria relating to an individual's suitability to teach,
  - (c) the procedures and guidelines to be followed in relation to the accreditation of persons under this Part, including the suspension or revocation of accreditation,
  - (d) the approval by the Authority 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 Authority of those persons or bodies who may provide professional development,
  - (f) ethical conduct of teachers,
  - (g) any other matter relating to teaching standards.
- (2) Any procedures or guidelines under the professional teaching standards in relation to the suspension or revocation by the Authority of the accreditation of persons—
- (a) must be consistent with the rules of procedural fairness, and
  - (b) are subject to section 24C.
- (3) Any approval by the Authority under the professional teaching standards of a teacher education course or program or of the persons or bodies who may provide professional development—
- (a) is subject to such conditions as the Authority thinks fit to impose (including while the approval is in force), and
  - (b) may be suspended or revoked at any time by the Authority.

## **Division 2 Accreditation scheme—general provisions**

### **21 Accreditation of teachers at schools and early childhood education centres**

- (1) The Authority may, in accordance with this Part—
- (a) grant accreditation for the purpose of teaching in a school or early childhood education centre, or
  - (b) accredit a non-school based teacher or non-centre based teacher, or
  - (c) grant non-practising accreditation.
- (1A) (Repealed)
- (2) If a person is accredited under this Part, the person's accreditation has effect in relation to any school or early childhood education centre, but is subject to revocation by the Authority.

- (3) The accreditation of a person under this Part is not restricted to accreditation in relation to a specific area of study, learning or expertise. Accordingly, a person's accreditation does not, in itself, limit the areas of study or learning in which the person teaches.

## **22 Applications for accreditation**

- (1) A person may apply to the Authority for accreditation under this Part.
- (2) An application must—
- (a) be in the form approved by the Authority (the **approved form**), and
  - (b) be accompanied by other information required by the Authority, and
  - (c) specify the type of accreditation applied for.
- (3) The approved form must include provision for the authorisation by the applicant of, and the consent by the applicant to, the following in connection with the application and at any time while the accreditation is in force—
- (a) the conduct of a criminal record check in relation to the applicant,
  - (b) the disclosure of the applicant's criminal history and disciplinary history,
  - (c) other inquiries about the applicant relevant to—
    - (i) the suitability of the applicant to teach, or
    - (ii) the type of accreditation for which the applicant has applied.
- (4) The regulations may—
- (a) prescribe the fee payable for an application and the way in which it must be paid, and
  - (b) require proof of identity to be provided by an applicant in the way prescribed by the regulations or approved by the Authority.

## **23 Notice of decisions by Authority**

- (1) The Authority must give written notice to the applicant of the following—
- (a) a decision to grant an accreditation,
  - (b) a decision to refuse to grant an accreditation,
  - (c) an assessment the person is not suitable to teach under Division 4.
- (2) If the Authority grants an accreditation, the Authority must issue a certificate of accreditation to the person in the form approved by the Authority.

- (3) Notice of a decision referred to in subsection (1)(b) or (c) must state the following—
- (a) the reasons for the decision,
  - (b) that the individual may appeal against the decision,
  - (c) how an application for appeal may be made and the period within which the application must be made.

### **23A Conditions of accreditation**

- (1) The accreditation of a person under this Part is subject to such conditions as are imposed by this Act or prescribed by the regulations.
- (2) The accreditation of a person under this Part is also subject to such conditions as may be specified in the rules of the Authority.

### **24 Revocation of accreditation**

- (1) The Authority may revoke the accreditation of a person on any of the following grounds—
  - (a) the Authority is satisfied that the person is a disqualified person within the meaning of the *Child Protection (Working with Children) Act 2012*,
  - (b) the person is found guilty of an offence punishable by imprisonment for 12 months or more,
  - (c) the person is found guilty of an offence under this Act,
  - (d) the person is found guilty more than once during the period of 5 years immediately before the revocation of any other type of offence that, in the opinion of the Authority, involves an act or conduct that is of a nature that would reflect adversely on a teacher's professional standing or integrity or suitability or competence to teach,
  - (e) the person has—
    - (i) been dismissed from employment as a teacher (whether on a permanent, temporary, part-time or casual basis) or has resigned from such employment before being dismissed, or
    - (ii) been included in the list of persons maintained by the Secretary under section 7 (1) (e) of the *Teaching Service Act 1980* as a person who is not to be employed in the Teaching Service,

because of any misconduct that, in the opinion of the Authority, is of a nature that would reflect adversely on a teacher's professional standing or integrity or suitability or competence to teach,

- (f) the Authority is satisfied that the person has failed to comply with any condition to which the person's accreditation is subject,
- (g) 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,
- (h) the Authority has made an assessment the person is not suitable to teach under Division 4.

(2) (Repealed)

#### **24A Suspension of accreditation**

- (1) The 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 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.
- (2) The 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 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 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) (Repealed)
- (4) A person's accreditation is not in force during any period for which it is suspended whether under this or any other section of this Act.
- (5) (Repealed)



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

The 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 or 25 (4)—

- (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(1)(c)).

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

- (1) The 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 Authority in relation to the proposed suspension or revocation within 14 days after the date of the notice.
- (3) This section also applies in relation to the suspension by the Authority of a person's accreditation for failure to pay the annual fee under section 25.
- (4) This section does not apply to the suspension or revocation of a person's accreditation on the following grounds—
  - (a) the person is subject to an interim bar imposed under the *Child Protection (Working with Children) Act 2012*, section 17,
  - (b) the working with children check clearance for the person is cancelled under the *Child Protection (Working with Children) Act 2012*, section 23.

#### **24D Placing accreditation on hold during leave of absence from teaching**

- (1) The Authority may, on application by a person who is accredited, place the person's accreditation on hold during any period that the person takes leave of absence from teaching in New South Wales.
- (2) Any such period may not, except in any particular case approved by the Authority, be less than 6 months or more than 5 years.
- (3) A person is taken not to be accredited under this Act during a period in which the person's accreditation is placed on hold.

(3A) During the period—

- (a) the person may undertake courses or carry out duties to enable the person to satisfy the requirements of the professional teaching standards relating to professional development and continuing teacher education, and
- (b) the Authority may suspend or revoke the person's accreditation.

(4) The placing of a person's accreditation on hold under this section also has the effect of suspending the period in which the person is required to satisfy conditions for continuing accreditation under the professional teaching standards.

**Note—**

See also sections 30 (7) and 31 (6) which provide that any period that a person's accreditation is placed on hold under this section is to be disregarded when determining the period of a person's provisional or conditional accreditation.

## **24E Voluntary cancellation of accreditation**

The Authority may, on application by a person who is accredited, cancel the person's accreditation.

## **25 Annual fee**

- (1) A person who is accredited under this Part must, in accordance with the regulations, pay an annual fee to the Authority.
- (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) The Authority may suspend the accreditation of a person for failure to pay the annual fee.
- (5) The Authority must, before suspending a person's accreditation for failure to pay the annual fee, give at least 14 days' notice of its intention to do so to the person's employer.

## **25A Working with children check clearances**

- (1) A person must not be accredited under this Part unless the person holds a working with children check clearance under the [Child Protection \(Working with Children\) Act 2012](#) that authorises the person to engage in paid child-related work.
- (2) It is a condition of the accreditation of a person under this Part that the person holds a working with children check clearance under the [Child Protection \(Working with Children\) Act 2012](#) that authorises the person to engage in paid child-related work.

## **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 of certain 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 the Authority to accredit the person under this Part,
  - (b) the revocation or suspension of the person's accreditation by the Authority under this Part,
  - (c) the refusal or failure of the Authority to approve—
    - (i) a teacher education course or program for the purposes of this Act, or
    - (ii) a person or body to provide professional development in accordance with the requirements of the professional teaching standards,
  - (d) the revocation or suspension of any such approval by the Authority.
- (2) A decision of a kind referred to in subsection (1) 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**

### **28 Requirement for teachers to be accredited**

- (1) A person must not teach in a school or early childhood education centre unless the person is accredited.

Maximum penalty—100 penalty units.

- (2) A person must not employ another person to teach in a school or early childhood education centre unless the other person—
  - (a) is accredited, and
  - (b) if conditionally accredited under section 31—is working under the supervision of a

teacher who is not provisionally or conditionally accredited.

Maximum penalty—100 penalty units.

(3), (4) (Repealed)

## **29 Provisions relating to employment**

- (1) The employment of a person as a teacher may be terminated by the person's employer if the person's accreditation is revoked under this Act.
- (2) A person who is required to be accredited may be suspended from employment as a teacher by the person's employer during any period in which the person's accreditation is suspended.
- (3) A person who is suspended from employment as a teacher under this section for any period is, for the purposes of section 28 (2), taken not to be employed as a teacher during that period.
- (4) Nothing in this Act requires an employer who terminates or suspends the employment of a person as a teacher in accordance with this Act to provide alternative employment to the person.
- (5) This section does not apply in relation to a person who is employed as a teacher in a government school.

### **Note—**

The Secretary may, under section 77 of the [Teaching Service Act 1980](#), suspend or terminate a person's employment in the Teaching Service if the person's accreditation is suspended or revoked.

## **30 Provisional accreditation**

- (1) The Authority may, on application by a person who is required to be accredited—
  - (a) provisionally accredit the person, or
  - (b) refuse to provisionally accredit the person.
- (2) The Authority may provisionally accredit a person if the Authority is satisfied that—
  - (a) the person meets the requirements specified in the professional teaching standards for provisional accreditation, and
  - (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 the Authority with evidence of the person's qualification as soon as practicable after receiving his or her qualification in

relation to the approved course.

- (4) The Authority may also provisionally accredit a person who is conditionally accredited if the person—
- (a) has completed an approved course, and
  - (b) has provided the Authority with evidence of that completion.
- (5) The provisional accreditation of a person ceases (unless sooner revoked under this Act)—
- (a) at the end of the relevant period, or
  - (b) if the person is accredited at proficient teacher level before the end of the relevant period.
- (6) 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 Authority 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 Authority in any particular case,following the date on which the person was provisionally accredited.
- (7) However, any period during which a person’s accreditation is placed on hold under section 24D is to be disregarded for the purposes of determining the relevant period for a person.

### **31 Conditional accreditation**

- (1) This section applies to a person who is required to be accredited and who meets the requirements specified in the professional teaching standards for provisional accreditation but who has not completed an approved course.
- (2) The 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) The Authority may conditionally accredit a person only if—

(a) the person—

(i) holds a degree in an area that, in the opinion of the Authority, is relevant to the area in which the person is or is to be employed to teach, and

(ii) produces evidence of an offer of employment as a teacher, or

(b) the Authority is satisfied that the person has completed a substantial part of an approved course.

(4) The conditional accreditation of a person under this section ceases (unless sooner revoked under this Act)—

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

(b) if the person is provisionally accredited by the Authority before the end of the relevant period, or

(c) if the person is accredited at proficient teacher level before the end of the relevant period.

(5) 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 Authority 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 Authority in any particular case,

following the date on which the person was conditionally accredited.

(6) However, any period during which a person's accreditation is placed on hold under section 24D is to be disregarded for the purposes of determining the relevant period for a person.

### **32 Accreditation of teachers at proficient teacher level**

- (1) The Authority may, on application by a person who is required to be accredited, accredit the person at proficient teacher level if—
  - (a) the person—
    - (i) is provisionally accredited under section 30, or
    - (ii) is conditionally accredited under section 31 and has completed an approved course, or
    - (iii) satisfies the requirements for accreditation prescribed by the regulations or specified in the rules of the Authority, and
  - (b) the Authority is satisfied the person meets the requirements for accreditation at proficient teacher level.
- (2) The Authority may refuse an application to accredit a person at proficient teacher level.
- (3) A decision by the Authority to accredit a person at proficient teacher level has no effect unless the person has completed an approved course.
- (4) A person who is accredited at proficient teacher level may for any purpose be referred to as a person who is fully accredited.

**Note—**

Under transitional arrangements referred to in Schedule 3, persons formerly referred to in this Act as “transition scheme teachers” may also be accredited at proficient teacher level.

### **33 Provisional re-accreditation**

- (1) This section applies to a person—
  - (a) whose accreditation at proficient teacher level has been revoked on the grounds that the person has failed to comply with the continuing accreditation requirements under the professional teaching standards, or
  - (b) whose provisional accreditation or provisional re-accreditation has ceased because the person has failed to be accredited at proficient teacher level, or
  - (c) whose accreditation at any level has been revoked on any of the grounds referred to in section 24 (1) (b)-(g).
- (2) The Authority may, on application by a person to whom this section applies—
  - (a) provisionally re-accredit the person, or
  - (b) refuse to provisionally re-accredit the person.

- (3) The Authority may determine the criteria for provisional re-accreditation and the conditions to which a person's provisional re-accreditation is subject.
- (4) The provisional re-accreditation of a person ceases (unless sooner revoked)—
  - (a) at the end of the period determined by the Authority as the person's provisional re-accreditation period, or
  - (b) if the person is accredited at proficient teacher level before the end of that period.
- (5) A reference in any other provision of this Act to provisional accreditation includes a reference to provisional re-accreditation under this section.

## **Division 4 Assessment of suitability to teach**

### **34 Definition**

In this Division—

**assessment of suitability**—see section 35.

### **35 When Authority may assess suitability to teach**

The Authority may carry out an assessment of a person's suitability to teach (an **assessment of suitability**)—

- (a) if the person applies for accreditation under this Part, or
- (b) periodically, as required by the rules of the Authority, or
- (c) if a complainant makes a relevant complaint to the Authority about the person, or
- (d) if the person is the subject of disciplinary proceedings commenced by a school or centre, or
- (e) if the person is the subject of criminal proceedings that, in the Authority's opinion, relate to an act or conduct that reflects adversely on a teacher's—
  - (i) professional standing or integrity, or
  - (ii) suitability or competence to teach, or
- (f) on the basis of a ground on which the Authority may revoke the person's accreditation.

### **36 Power to check criminal and disciplinary history**

- (1) In carrying out an assessment of suitability, the Authority must check the individual's criminal and disciplinary history.
- (2) For the purpose of checking an individual's criminal and disciplinary history, the Authority may obtain a written report about the criminal and disciplinary history of the



individual from the following—

- (a) the Commissioner of Police,
- (b) the Children’s Guardian,
- (c) the employer or a former employer of the individual,
- (d) another person, body or organisation in the State, another State or Territory or the Commonwealth, or outside Australia, that has access to records about the criminal or disciplinary history of the individual.

### **37 Authority’s other powers**

- (1) In carrying out an assessment of suitability, the Authority may, by written notice given to the individual, require the individual to do 1 or more of the following within a reasonable time stated in the notice—
  - (a) give the Authority further information or a document the Authority reasonably requires to assess the individual’s suitability to teach,
  - (b) if the Authority is unable to obtain the criminal or disciplinary history of the person from another jurisdiction, including outside Australia—make a statutory declaration setting out the individual’s criminal or disciplinary history in the jurisdiction,
  - (c) undergo a health assessment at a reasonable place.
- (2) If the individual has applied for accreditation under this Part, the Authority may reject the application if the individual does not comply with the notice.
- (3) Information obtained under this section must not be used as evidence in civil or criminal proceedings against the person.

### **38 Authority may refer matter for further investigation**

- (1) The Authority may, at any time, refer a matter relevant to an assessment of suitability to an appropriate entity for further investigation.
- (2) An appropriate entity to whom a matter is referred must provide the Authority with a report setting out the findings of the investigation.
- (3) In this section—

**appropriate entity** includes the following—

  - (a) the Children’s Guardian,
  - (b) a law enforcement agency,

- (c) the employer of the person being assessed,
- (d) another person, body or organisation empowered by a law of the State or of another State or Territory or the Commonwealth to take investigatory, disciplinary or other action.

### **38A Unsuitability to teach**

- (1) The Authority may, after carrying out an assessment, decide an individual is not suitable for teaching if—
  - (a) considering the person's criminal and disciplinary history, the individual is not, in the Authority's opinion, a suitable person to teach, or
  - (b) the individual fails to meet a standard in the professional teaching standards in relation to the individual's suitability to teach, or
  - (c) in the Authority's opinion, the individual is for another reason—
    - (i) not a fit and proper person to teach, or
    - (ii) unable to teach competently.
- (2) Despite another provision of this Act, if the Authority decides the individual is not suitable for teaching, the Authority—
  - (a) if the individual has applied for accreditation under this Part—must refuse to accredit the individual, or
  - (b) if the individual holds an accreditation granted under this Part—may do 1 or more of the following—
    - (i) impose conditions on the accreditation as considered appropriate by the Authority in the circumstances,
    - (ii) suspend the accreditation,
    - (iii) revoke the accreditation.

## **Division 5 Voluntary accreditation**

### **38B Non-practising accreditation**

- (1) The Authority may, on application by a person who is not required to be accredited, accredit the person at non-practising level if the person—
  - (a) satisfies the requirements for accreditation at non-practising level prescribed by the regulations or specified in the rules of the Authority, and
  - (b) does not intend to undertake the duties of a teacher in a school or early childhood

education centre.

(2) The Authority may refuse an application to accredit a person at non-practising level.

### **39 Voluntary accreditation of teachers at various levels**

(1) This section applies to any person who is a teacher but who is not required to be accredited under this Act.

**Note—**

The accreditation of a person under this section may be revoked under section 24.

(2) The 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) proficient teacher level,
- (ii) highly accomplished teacher level,
- (iii) lead teacher 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) The 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) (Repealed)

(6) The revocation of a person's accreditation at proficient teacher level under this section operates to revoke the person's accreditation (if any) at highly accomplished teacher level or lead teacher level, or both, under this section.

### **40 Voluntary accreditation of teachers at higher levels**

(1) This section applies to any person who is accredited at proficient teacher level.

**Note—**

The accreditation of a person under this section may be revoked under section 24.

(2) The 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) highly accomplished teacher level,
- (ii) lead teacher level, or

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

(3) The 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) (Repealed)

(5) The revocation of a person's accreditation at proficient teacher level under Division 3 operates to revoke the person's accreditation (if any) at highly accomplished teacher level or lead teacher level, or both, under this section.

#### **40A, 41 (Repealed)**

### **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 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 Secretary so directs, and

(b) if so withheld, is forfeited to the State unless the Secretary otherwise directs.

#### **42B Mandatory notifications by employers**

(1) An employer of an accredited person who makes a relevant decision in relation to the person must—

(a) notify the Authority of the decision, and

(b) give the Authority all information that is or may be relevant to the decision.

Maximum penalty—50 penalty units.

(2) A **relevant decision**, in relation to an accredited person, means a decision to—

(a) start or finalise disciplinary proceedings against the person in relation to alleged misconduct while employed as a teacher, or

(b) dismiss the person from employment as a teacher for a reason for which the accreditation of a person may be revoked under this Act, or

(c) include the person in the list of persons maintained by the Secretary under the *Teaching Service Act 1980*, section 7(1)(e) as a person who is not to be employed in the Teaching Service.

(3) An employer of an accredited person must notify the Authority, in accordance with subsection (4), if the employer has, or is aware of, information that is or may be relevant to the grounds for which the person's accreditation may be suspended or revoked by the Authority.

Maximum penalty—50 penalty units.

(4) Notification must be given in accordance with the rules of the Authority.

#### **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 Authority to delegate its functions under this Act is contained in the *Education Standards Authority Act 2013*.

(2) In this section—

**office holder** means the Minister or the Secretary.

#### **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 (Repealed)**

#### **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 approval by the Authority, on application, of teacher education courses and programs for the purposes of this Act or of persons or bodies to provide professional development in accordance with the professional teaching standards,
    - (c) the requirements for accreditation of teachers of a specified class or in specified circumstances.
- (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.

## **Schedules 1, 2 (Repealed)**

## **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*
  - any other Act that amends this Act
- (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.

## Part 4 Provisions consequent on enactment of **Teacher Accreditation Amendment Act 2014**

### 7 Definition

In this Part, **amending Act** means the *Teacher Accreditation Amendment Act 2014*.

### 8 Existing provisional and conditional accreditation by teacher accreditation authorities

Any provisional or conditional accreditation by a teacher accreditation authority in force under this Act immediately before the substitution of sections 30 and 31 by the amending Act is, on that substitution, taken to be a provisional or conditional accreditation (as the



case requires) by the Board under section 30 or 31 as so substituted.

### **9 Existing accreditation of transition scheme teachers**

- (1) Any accreditation by a teacher accreditation authority under section 37 that was in force immediately before the repeal of that section by the amending Act is, on that repeal, taken to be an accreditation by the authority at proficient teacher level under section 32 (as inserted by the amending Act).
- (2) Division 4 of Part 4 of this Act continues, despite its repeal by the amending Act, to apply in relation to those persons whose conditional accreditation by a teacher accreditation authority under that Division was still in force immediately before that repeal.

### **10 Change in terminology relating to levels of accreditation**

- (1) A person who, immediately before the commencement of this clause, was accredited under this Act at professional competence level is, on that commencement, taken to have been accredited at proficient teacher level.
- (2) A person who, immediately before the commencement of this clause, was accredited under this Act at professional accomplishment level is, on that commencement, taken to have been accredited at highly accomplished teacher level.
- (3) A person who, immediately before the commencement of this clause, was accredited under this Act at professional leadership level is, on that commencement, taken to have been accredited at lead teacher level.

### **11 Existing early childhood education centre teachers**

A person who was employed as a teacher in an early childhood education centre immediately before the date appointed by proclamation for the purposes of section 28 (4) (as inserted by the amending Act) is taken to have been accredited at proficient teacher level.

## **Part 5 Provisions consequent on enactment of [Education and Teaching Legislation Amendment Act 2016](#)**

### **12 Existing approvals by Minister**

Any approval by the Minister of an initial or continuing teacher education course or program for the purposes of this Act or of any person or body to provide professional development in accordance with the professional teaching standards, being an approval in force immediately before the commencement of this clause, is taken to be an approval by the Authority.

### **13 Abolition of Quality Teaching Council**

- (1) The Quality Teaching Council (as established under Division 4 of Part 2 of this Act immediately before the substitution of that Division by the *Education and Teaching Legislation Amendment Act 2016*) is abolished.
- (2) Each member of the Quality Teaching Council ceases to hold office as a member and is not entitled to any remuneration or compensation because of the loss of that office.

### **14 Interim elected members of QTC**

Until such time as members of the QTC are elected in accordance with section 13 (1) (a) (as substituted by the *Education and Teaching Legislation Amendment Act 2016*), the elected members of the QTC are to consist of those former elected members of the Quality Teaching Council as are determined by or in accordance with the regulations.

## **Part 6 Provisions consequent on enactment of *Teacher Accreditation Amendment Act 2021***

### **15 Definitions**

In this Part—

**amending Act** means the *Teacher Accreditation Amendment Act 2021*.

**pre-amended Act** means the *Teacher Accreditation Act 2004* as in force immediately before the commencement of the amending Act.

**teacher accreditation authority** has the same meaning as in the pre-amended Act.

### **16 Information sharing**

Section 7, as inserted by the amending Act, extends to information held by the Authority or a relevant entity before the commencement of the section.

### **17 Existing accreditation and decisions by teacher accreditation authorities**

- (1) An accreditation granted by a teacher accreditation authority and in force immediately before the repeal day is taken to be an accreditation granted by the Authority.
- (2) A decision made by a teacher accreditation authority before the repeal day is taken to be a decision made by the Authority.
- (3) In this clause—

**repeal day** means the day on which section 21(1) is substituted by the amending Act.

## **18 Teacher accreditation authorities—transitional arrangements for accreditation**

- (1) During the relevant period—
  - (a) a reference to the Authority in an accreditation provision is taken to include a reference to a person or body who was, immediately before the repeal of section 4 by the amending Act, a teacher accreditation authority, and
  - (b) section 4 of the pre-amended Act continues to apply to a teacher accreditation authority for the purpose of accrediting a person under this Act.
- (2) In this clause—

**relevant period** means the period of 12 months after the substitution of section 21(1) by the amending Act.

## **19 Assessment of suitability**

Part 4, Division 4, as inserted by the amending Act—

- (a) extends to offences committed, and conduct occurring, before the commencement of the Division, and
- (b) applies to a person accredited under this Act, whether or not the accreditation—
  - (i) was granted before the day on which the Division commences, or
  - (ii) is suspended.

## **20 Abolition of Quality Teaching Committee**

- (1) The Quality Teaching Committee, as established under Part 2, Division 4 immediately before its repeal by the amending Act, is abolished.
- (2) Each member of the Quality Teaching Committee ceases to hold office as a member and is not entitled to remuneration or compensation because of the loss of the office.

## **Schedule 4 (Repealed)**