

South Australia

Teachers Registration and Standards Act 2004

An Act to regulate the teaching profession.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Teachers Registration and Standards Act 2004*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Interpretation

In this Act—

condition includes a limitation;

Department means the administrative unit of the Public Service responsible for assisting the Minister in the administration of this Act;

director of a recognised kindergarten means the person responsible for providing educational leadership in the kindergarten and managing the day-to-day operations of the kindergarten;

practising teacher means a person in employment for which registration is required under this Act;

pre-school education means the provision of courses of education, training and instruction to children under the age of 5 years;

principal of a school means the person responsible for providing educational leadership in the school and managing the day-to-day operations of the school;

professional standards for teachers means professional standards for teachers required for the purposes of registration of teachers, as developed from time to time by the Teachers Registration Board;

recognised kindergarten means—

- (a) a kindergarten registered as a Children's Services Centre under Part 3 Division 4 of the *Children's Services Act 1985*; or
- (b) a pre-school education centre established by the Minister under the *Education Act 1972*;

registered teacher means a person registered as a teacher under Part 5;

Registrar means the Registrar of the Teachers Registration Board appointed under Part 3, or a person acting in the position of the Registrar;

registration includes, unless the context otherwise requires, provisional registration and renewal of registration;

repealed provisions means Part 4 of the *Education Act 1972*, as in force from time to time before the commencement of this Act;

school means a school established for the purpose of providing education at primary or secondary level, whether or not also for the purpose of providing a pre-school education;

Teachers Registration Board means the Teachers Registration Board of South Australia established under Part 3;

teacher regulatory authority means an authority with functions under the law of a place outside this State similar to those of the Teachers Registration Board;

unprofessional conduct means—

- (a) a contravention of this Act or the repealed provisions; or
- (b) a contravention of a condition of registration as a teacher under this Act or the repealed provisions; or
- (c) incompetence; or
- (d) disgraceful or improper conduct.

Part 2—Object of Act

4—Object of Act

The object of this Act is to establish and maintain a teacher registration system and professional standards for teachers to safeguard the public interest in there being a teaching profession whose members are competent educators and fit and proper persons to have the care of children.

Part 3—Teachers Registration Board

5—Establishment of Teachers Registration Board

- (1) The *Teachers Registration Board of South Australia* is established.
- (2) The Teachers Registration Board—
 - (a) is a body corporate; and
 - (b) has perpetual succession and a common seal; and

- (c) has the powers of a natural person and the functions and powers assigned or conferred under this or any other Act.
- (3) If a document appears to bear the common seal of the Teachers Registration Board, it will be presumed, in the absence of proof to the contrary, that the document was duly executed by the Teachers Registration Board.

6—Functions of Teachers Registration Board

The Teachers Registration Board has the following functions:

- (a) to administer the provisions of this Act for the regulation of the teaching profession;
- (b) to promote the teaching profession and professional standards for teachers;
- (c) to confer and collaborate with teacher education institutions with respect to the appropriateness for registration purposes of teacher education courses;
- (d) to confer and collaborate with teacher employers, the teaching profession, teacher unions or other organisations and other bodies and persons with respect to requirements for teacher registration and professional and other standards for teachers;
- (e) to confer and collaborate with other teacher regulatory authorities to ensure effective national exchange of information and promote uniformity and consistency in the regulation of the teaching profession within Australia and New Zealand;
- (f) to keep the teaching profession, professional standards for teachers and other measures for the regulation of the profession under review and to introduce change or provide advice to the Minister as appropriate.

7—Primary consideration in performance of functions

The Teachers Registration Board must have the welfare and best interests of children as its primary consideration in the performance of its functions.

8—Directions by Minister

- (1) Subject to this section, the Minister may give directions to the Teachers Registration Board when it appears to the Minister to be necessary in the public interest.
- (2) The Minister—
 - (a) may not give a direction that relates to—
 - (i) a particular person; or
 - (ii) a particular application or inquiry; or
 - (iii) the performance by the Teachers Registration Board of its function of determining qualifications or experience for registration; and
 - (b) must consult with the Teachers Registration Board before giving it a direction; and
 - (c) must, within 3 sitting days after giving a direction, cause a copy of the direction to be laid before each House of Parliament.

9—Membership of Teachers Registration Board

- (1) The Teachers Registration Board consists of 16 members appointed by the Governor of whom—
 - (a) 1 must be a person nominated by the Minister, who will be the presiding member of the Board; and
 - (b) 2 must be persons nominated by the person holding or acting in the office of Chief Executive of the Department; and
 - (c) 5 must be registered teachers (including at least 4 practising teachers) nominated by the Australian Education Union (S.A. Branch) after the holding of an election in accordance with the regulations; and
 - (d) 1 must be a person nominated by the Association of Independent Schools of South Australia Incorporated; and
 - (e) 1 must be a person nominated by the Catholic Education Office; and
 - (f) 2 must be registered teachers (including at least 1 practising teacher) nominated by the Independent Education Union (S.A. Branch) after the holding of an election in accordance with the regulations; and
 - (g) 1 must be a person employed in the field of teacher education nominated jointly by the universities in the State; and
 - (h) 1 must be a person nominated by the person holding or acting in the office of Director of Children's Services; and
 - (i) 1 must be a parent of a school student nominated by the Minister to represent the community interest; and
 - (j) 1 must be a legal practitioner nominated by the Minister; and
 - (k) not less than half must be registered teachers.
- (2) The Minister must ensure, as far as practicable, that the persons appointed under subsection (1) consist of equal numbers of women and men.

10—Terms and conditions of membership

- (1) A member of the Teachers Registration Board will be appointed on conditions determined by the Governor and for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.
- (2) The Governor may appoint a person to be a temporary member of the Teachers Registration Board for a period not exceeding 6 months.
- (3) A temporary member of the Teachers Registration Board may act as a member of the Board—
 - (a) if a vacancy arises in the membership of the Board; or
 - (b) during any period of absence of a member of the Board.
- (4) The Governor may appoint a person to be the deputy of a member of the Teachers Registration Board and the deputy may act as a member of the Board during any period of absence of the member.

- (5) The Governor may remove a member of the Teachers Registration Board from office—
 - (a) for breach of, or non-compliance with, a condition of appointment; or
 - (b) for misconduct; or
 - (c) for failure or incapacity to carry out official duties satisfactorily.
- (6) The office of a member of the Teachers Registration Board becomes vacant if the member—
 - (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice to the Minister; or
 - (d) is removed from office under subsection (5).
- (7) A member of the Teachers Registration Board may continue to act as a member of the Board despite the expiry of his or her term of office for the purpose of continuing and completing the hearing of an application under Part 5 or an inquiry under Part 7.

11—Remuneration

A member of the Teachers Registration Board is entitled to remuneration, allowances and expenses determined by the Governor.

12—Conflict of interest etc under Public Sector Management Act

A member of the Teachers Registration Board will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector Management Act 1995* by reason only of the fact that the member has an interest in the matter that is shared in common with teachers generally or a substantial section of teachers in this State, or schools or kindergartens generally or substantial section of schools or kindergartens.

13—Validity of acts of Teachers Registration Board

An act or proceeding of the Teachers Registration Board or a committee of the Teachers Registration Board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

14—Procedures of Teachers Registration Board

- (1) A quorum of the Teachers Registration Board consists of 9 members.
- (2) If the presiding member of the Teachers Registration Board is absent from a meeting of the Board, a member chosen by the members present at the meeting will preside.
- (3) A decision carried by a majority of the votes cast by the members present at a meeting of the Teachers Registration Board is a decision of the Board.
- (4) Each member present at a meeting of the Teachers Registration Board has 1 vote on any question arising for decision.

- (5) A conference by telephone or other electronic means between the members of the Teachers Registration Board will, for the purposes of this section, be taken to be a meeting of the Board at which the participating members are present if—
 - (a) notice of the conference is given to all members in the manner determined by the Board for the purpose; and
 - (b) each participating member is capable of communicating with every other participating member during the conference.
- (6) A proposed resolution of the Teachers Registration Board becomes a valid decision of the Board despite the fact that it is not voted on at a meeting of the Board if—
 - (a) notice of the proposed resolution is given to all members of the Board in accordance with procedures determined by the Board; and
 - (b) a majority of the members express concurrence in the proposed resolution by letter, facsimile transmission, e-mail or other written communication setting out the terms of the resolution.
- (7) The Teachers Registration Board must have accurate minutes kept of its meetings.
- (8) Subject to this Act, the Teachers Registration Board may determine its own procedures.

15—Registrar of Teachers Registration Board

- (1) There will be a Registrar of the Teachers Registration Board.
- (2) The Registrar will be appointed by the Governor.
- (3) The Registrar must be a Public Service employee.
- (4) The Registrar is responsible for—
 - (a) managing the staff and resources of the Teachers Registration Board; and
 - (b) giving effect to the policies and decisions of the Board.

16—Committees

- (1) The Teachers Registration Board may establish committees—
 - (a) to advise the Board on any matter; or
 - (b) to carry out functions on behalf of the Board.
- (2) The procedures to be observed in relation to the conduct of the business of a committee will be—
 - (a) as determined by the Teachers Registration Board;
 - (b) insofar as a procedure is not determined under paragraph (a)—as determined by the relevant committee.

17—Delegation

- (1) The Teachers Registration Board may delegate a function or power of the Board under this Act to—
 - (a) a member of the Board; or
 - (b) the Registrar; or

- (c) a committee of the Board.
- (2) The Teachers Registration Board may only delegate the holding of an inquiry under Part 7 to a committee of the Board that is comprised of not less than 3 members of the Board and includes a member who is a legal practitioner and a member who is a practising teacher.
- (3) A delegation under this section—
 - (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the power of the Teachers Registration Board to act in any matter; and
 - (d) is revocable at will.

18—Accounts and audit

- (1) The Teachers Registration Board must keep proper accounting records in relation to its financial affairs, and must have annual statements of account prepared in respect of each financial year.
- (2) The Auditor-General may at any time, and must at least once in each year, audit the accounts of the Teachers Registration Board.

19—Annual report

- (1) The Teachers Registration Board must, on or before 30 September in each year, deliver to the Minister a report on the administration of this Act and the work of the Board during the 12 months ending on the preceding 30 June.
- (2) The report must—
 - (a) incorporate the audited accounts of the Teachers Registration Board for the relevant financial year; and
 - (b) include details of any delegation of a function or power of the Teachers Registration Board that was in operation during the relevant financial year.
- (3) The Minister must, within 12 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

Part 4—Requirement to be registered

20—Requirement to be registered

- (1) A person must not—
 - (a) undertake employment as a teacher, principal or director at a school or recognised kindergarten; or
 - (b) for a fee or other consideration, personally provide primary or secondary education, or offer to do so; or
 - (c) claim or pretend to be a registered teacher,unless the person is a registered teacher.

Maximum penalty: \$5 000.

- (2) A person must not employ another person as a teacher, principal or director at a school or recognised kindergarten unless the other person is a registered teacher.
Maximum penalty: \$10 000.
- (3) A person must not employ another person in the course of a business to provide primary or secondary education unless the other person is a registered teacher.
Maximum penalty: \$10 000.
- (4) Subsections (1), (2) and (3) do not apply in relation to a person acting in accordance with a special authority to teach granted by the Teachers Registration Board under Part 6 or in relation to a person of a class prescribed by regulation.

Part 5—Registration

21—Eligibility for registration

- (1) Subject to this Act, a person is eligible for registration as a teacher if the person—
- (a) has qualifications and experience—
 - (i) prescribed by regulation; or
 - (ii) determined by the Teachers Registration Board to be appropriate for registration; and
 - (b) has met any other requirements for registration—
 - (i) prescribed by regulation or contained in professional standards for teachers; or
 - (ii) determined by the Teachers Registration Board to be necessary for registration; and
 - (c) is a fit and proper person to be a registered teacher.
- (2) Subject to this Act, a person is eligible for provisional registration as a teacher if the person does not have the necessary experience but is otherwise eligible for registration under subsection (1).

22—Application for registration

- (1) An application for registration as a teacher must—
- (a) be made to the Teachers Registration Board in the manner and form prescribed by regulation or approved by the Board; and
 - (b) be accompanied by the fee prescribed by regulation.
- (2) An applicant for registration must—
- (a) consent to the conduct by the Teachers Registration Board of a criminal record check relating to the applicant; and
 - (b) if the Board so requires for the purpose of determining whether the applicant's capacity to teach is seriously impaired by an illness or disability affecting the applicant's behaviour or competence as a teacher—
 - (i) submit to a medical examination by a medical practitioner selected by the applicant from a panel of medical practitioners nominated by the Board; and

- (ii) provide, or authorise the medical practitioner to provide, a report on the results of the medical examination to the Board; and
 - (c) provide the Board with any information required by the Board for the purposes of determining the application, verified, if the Board so requires, by statutory declaration.
- (3) An applicant for registration must pay, in addition to the prescribed fee, an amount specified by the Teachers Registration Board, being an amount payable by the Board for the conduct by the Board of a criminal record check relating to the applicant.
- (4) An application for renewal of registration must be made not less than 1 month before the expiry of the registration.

23—Grant of registration

- (1) The Teachers Registration Board may, on application under this Part, grant registration to the applicant if satisfied that the applicant is eligible for registration as a teacher.
- (2) The Teachers Registration Board may, on application under this Part, grant provisional registration to the applicant if satisfied that the applicant is eligible for provisional registration as a teacher.
- (3) The Teachers Registration Board may, on application under this Part, grant provisional registration to the applicant if—
 - (a) the applicant has the necessary qualifications and experience but has not met requirements under section 21(1)(b); and
 - (b) the Board is satisfied that the applicant should be granted provisional registration.
- (4) The Teachers Registration Board is not required, if it has assessed a person's qualifications or experience to be appropriate for registration, to assess the person's qualifications or experience again on a subsequent application by the person.

24—Conditions of registration

- (1) The Teachers Registration Board may impose conditions of registration which may include (but are not limited to) the following:
 - (a) conditions requiring the person to complete a course or acquire experience as a teacher;
 - (b) conditions requiring the supervision of the person;
 - (c) conditions restricting the subjects that the person may teach;
 - (d) conditions restricting the education that the person may provide;
 - (e) conditions limiting the period for which the registration remains in force;
 - (f) conditions requiring the provision of further evidence as to competence.
- (2) Without limiting the effect of subsection (1), the Teachers Registration Board must—
 - (a) make it a condition of every registration that—

- (i) if the person is charged with or convicted of an offence of a kind specified in the condition (which may include offences under the law of South Australia or elsewhere), the person must, within 14 days, give written notice of the charge or conviction to the Board containing the details specified in the condition; and
 - (ii) if the person is dismissed from employment as a practising teacher in response to allegations of unprofessional conduct, or resigns from employment as a practising teacher following allegations of unprofessional conduct, the person must, within 14 days, give written notice of the person's dismissal or resignation to the Board containing the details specified in the condition; and
 - (iii) if the person is dismissed from any employment in response to allegations of improper conduct relating to a child, or resigns from employment following allegations of improper conduct relating to a child, the person must, within 14 days, give written notice of the person's dismissal or resignation to the Board containing the details specified in the condition; and
 - (b) make it a condition of every provisional registration that the person acquire the experience or meet the requirements (as the case may be) necessary for the person to be eligible for registration under section 21(1).
- (3) The Teachers Registration Board may, on application or by written notice, vary or revoke a condition, or impose a condition, of a person's registration as a teacher.

25—Offence to contravene certain conditions of registration

If a registered teacher contravenes a condition of the person's registration that requires the Teachers Registration Board to be notified of a matter or imposes a restriction on the practice of teaching by the person, the person is guilty of an offence.

Maximum penalty: \$5 000.

Expiation fee: \$315.

26—Term of registration

- (1) Subject to this Act, registration as a teacher remains in force—
 - (a) until 31 January in the third year following the year in which the registration was granted or last renewed; or
 - (b) if the registration is subject to a condition limiting the period for which it remains in force to a lesser period—for that period.
- (2) The Teachers Registration Board may, if it thinks fit, on granting registration, determine that the term of the registration commences from the end of a preceding term of registration.

27—Requirement for provision of information

- (1) The Teachers Registration Board or the Registrar may, at any time, require a registered teacher or the employer or a former employer of a registered teacher to provide information relating to the teacher or the teacher's employment.

- (2) A person who fails to comply with a requirement under this section is guilty of an offence.

Maximum penalty: \$5 000.

Expiation fee: \$315.

28—Register

- (1) The Teachers Registration Board must keep a register of persons registered under this Part.

- (2) The register must include, in relation to each registered person—

- (a) the person's full name, personal address and business address (if any); and
- (b) the qualifications for registration held by the person; and
- (c) details of any specialist qualifications held by the person and determined by the Teachers Registration Board to be appropriate for inclusion on the register; and
- (d) details of any condition of the person's registration; and
- (e) the expiry date of the person's registration; and
- (f) the person's registration number; and
- (g) details concerning the outcome of any action taken against the person by the Board under Part 7,

and may include other information as the Board thinks fit.

- (3) The Registrar will be responsible to the Teachers Registration Board for the form and maintenance of the register.

- (4) A registered person must, within 28 days after changing name or address, inform the Registrar in writing of the change.

Maximum penalty: \$1 250.

Expiation fee: \$160.

- (5) The Registrar may remove or correct an entry in the register as required without giving notice to any person.

- (6) The Registrar must—

- (a) make a record of the full name of each registered teacher and the information entered in the register under subsection (2)(b), (c), (d), (e) and (f) in relation to the teacher available for inspection on application to the Registrar; and
- (b) make a record of the full name of each registered teacher and the information entered in the register under subsection (2)(e) and (f) in relation to the teacher available for inspection on a website established by the Board.

- (7) An apparently genuine document purporting to be signed by the Registrar stating that, at a specified date, or during a specified period—

- (a) a specified person was registered under this Part unconditionally or subject to specified conditions; or
- (b) a specified person was not registered under this Part,

will, in any legal proceedings, constitute proof of the matters stated in the document in the absence of proof to the contrary.

29—Certificates of registration

- (1) The Registrar must, on the registration of a person as a teacher, issue to the person a certificate of registration in a form approved by the Teachers Registration Board that includes the following information:
 - (a) the person's full name and registration number; and
 - (b) the conditions (if any) of the registration; and
 - (c) the expiry date of the registration; and
 - (d) any other information the Board thinks fit.
- (2) A registered teacher must, within 28 days after—
 - (a) a condition of the person's registration has been varied or revoked; or
 - (b) any other change in the information recorded in the certificate of registration has occurred; or
 - (c) the registration has been suspended or cancelled,

return the certificate of registration to the Registrar.

Maximum penalty: \$1 250.

Expiation fee: \$160.

- (3) On receipt of a certificate of registration under subsection (2), the Registrar must—
 - (a) if the person's registration has been cancelled, destroy the certificate; or
 - (b) if the person's registration has been suspended, retain the certificate until the end of the period of suspension, and then return the certificate to the person; or
 - (c) in any other case, unless the Registrar determines otherwise, alter the certificate or issue a new certificate.

Part 6—Special authority for unregistered person to teach

30—Special authority for unregistered person to teach

- (1) The Teachers Registration Board may, on application by a person who is not a registered teacher, in its discretion, grant the applicant a special authority to teach for a period and subject to conditions specified by the Board (which must include conditions limiting the places or circumstances in which the person may teach under the special authority).
- (2) Without otherwise limiting the discretion of the Board under subsection (1), the Teachers Registration Board may not grant a person a special authority unless the person—
 - (a) consents to the conduct by the Board of a criminal record check relating to the person; and
 - (b) has met any requirements prescribed by regulation for the purposes of this section.

- (3) An application for a special authority must—
 - (a) be made to the Teachers Registration Board in the manner and form approved by the Board; and
 - (b) be accompanied by the fee fixed by regulation.
- (4) An applicant for a special authority must provide the Teachers Registration Board with any information required by the Board for the purposes of determining the application, verified, if the Board so requires, by statutory declaration.
- (5) The Teachers Registration Board may, in its discretion and without any requirement for a hearing or other process, by written notice to the holder of a special authority, vary or revoke the special authority.

31—Register

- (1) The Teachers Registration Board must keep a register of persons granted special authorities under this Part.
- (2) The register must include, in relation to each person granted a special authority—
 - (a) the person's full name, personal address and business address (if any); and
 - (b) the qualifications (if any) held by the person determined by the Teachers Registration Board to be relevant to the person's activities under the special authority; and
 - (c) details of the conditions of the special authority; and
 - (d) the expiry date of the special authority,and may include other information as the Board thinks fit.
- (3) The Registrar will be responsible to the Teachers Registration Board for the form and maintenance of the register.
- (4) The holder of a special authority must, within 28 days after changing name or address, inform the Registrar in writing of the change.
Maximum penalty: \$1 250.
Expiation fee: \$160.
- (5) The Registrar may remove or correct an entry in the register as required without giving notice to any person.
- (6) The Registrar must make the information recorded on the register (other than addresses of any person) available for inspection on application to the Registrar and on a website established by the Board.
- (7) An apparently genuine document purporting to be signed by the Registrar stating that, at a specified date, or during a specified period—
 - (a) a specified person was the holder of a special authority under this Part subject to specified conditions; or
 - (b) a specified person was not the holder of a special authority under this Part,will, in any legal proceedings, constitute proof of the matters stated in the document in the absence of proof to the contrary.

Part 7—Action to deal with unprofessional conduct or incapacity of teachers

32—Application and interpretation

- (1) This Part applies to conduct engaged in by a teacher whether before or after the commencement of this Act and whether within or outside South Australia.
- (2) In this Part—

teacher means a person who is or has been employed as a teacher whether or not the person is or has been registered as a teacher under this Act or the repealed provisions.

33—Cause for disciplinary action

- (1) There is proper cause for disciplinary action against a teacher if—
 - (a) the teacher has improperly obtained registration as a teacher; or
 - (b) the teacher has been guilty of unprofessional conduct; or
 - (c) the teacher is not a fit and proper person to be a registered teacher; or
 - (d) the teacher's registration or other authority to teach has been suspended, cancelled or otherwise withdrawn by another teacher regulatory authority.
- (2) In determining whether there is proper cause for disciplinary action against a teacher, regard may be had to any evidence of the teacher's conduct that the Teachers Registration Board considers relevant (no matter when the conduct is alleged to have occurred), including information that existed at the time of registration, or extension of registration, of the teacher under this Act or the repealed provisions, regardless of whether that information was before or could have been before the registering body at that time.

34—Registrar may conduct investigation

- (1) The Registrar, or a person authorised by the Registrar, may, for the purpose of determining whether there is a basis for the Registrar to make a complaint to the Teachers Registration Board under this Part, require a person—
 - (a) to answer questions and to be present or attend a specified place and time for that purpose;
 - (b) to provide information or to produce material for inspection.
- (2) The Registrar or other person acting under this section may retain any material produced under this section for such reasonable period as he or she thinks fit, and make copies of the material, or any of its contents.
- (3) A person who fails, without reasonable excuse, to comply with a requirement under this section is guilty of an offence.
Maximum penalty: \$10 000 or imprisonment for 1 year.
- (4) This section does not limit or affect a power of investigation or inquiry that exists apart from this section.

35—Inquiries and disciplinary action

- (1) The Teachers Registration Board may, on complaint by the Registrar or of its own motion, hold an inquiry to determine whether conduct of a teacher constitutes proper cause for disciplinary action.
- (2) If, after conducting an inquiry under this section, the Teachers Registration Board is satisfied on the balance of probabilities that there is proper cause for disciplinary action against the teacher, the Board may do one or more of the following:
 - (a) reprimand the teacher;
 - (b) order the teacher to pay a fine not exceeding \$5 000;
 - (c) in the case of a registered teacher—
 - (i) impose conditions of the teacher's registration;
 - (ii) suspend the teacher's registration for a specified period or until the fulfilment of specified conditions or until further order;
 - (iii) cancel the teacher's registration with immediate effect or effect at a future specified date;
 - (d) disqualify the teacher from being registered as a teacher permanently or for a specified period or until the fulfilment of specified conditions or until further order.
- (3) A fine imposed under subsection (2) is recoverable by the Teachers Registration Board as a debt.

36—Punishment of conduct that constitutes offence

- (1) If conduct constitutes an offence and also proper cause for disciplinary action, the taking of disciplinary action under this Part is not a bar to conviction and punishment for the offence, nor is conviction and punishment for the offence a bar to disciplinary action under this Part.
- (2) However, if—
 - (a) a person has been found guilty of an offence; and
 - (b) circumstances of the offence are the subject matter of an inquiry under this Part,

the person is not liable to a fine under this Part in respect of conduct giving rise to the offence.

37—Employer to report dismissal etc for unprofessional conduct

- (1) If the employer of a practising teacher dismisses the teacher in response to allegations of unprofessional conduct, or accepts the resignation of the teacher following allegations of unprofessional conduct, the employer must, within 7 days, submit a written report to the Teachers Registration Board—
 - (a) describing the circumstances of the dismissal or resignation; and
 - (b) containing all other prescribed information.

Maximum penalty: \$10 000.

- (2) A person incurs no liability by making a report purportedly in compliance with this section in good faith.

38—Action by Teachers Registration Board to deal with impairment of teacher's capacity

- (1) The Teachers Registration Board may, on complaint by the Registrar or of its own motion, hold an inquiry to determine whether a teacher's capacity to teach is seriously impaired by an illness or disability affecting the person's behaviour or competence as a teacher.
- (2) The Teachers Registration Board may, during the course of an inquiry under this section, require the teacher—
- (a) to undergo a medical examination by a medical practitioner selected by the teacher from a panel of medical practitioners nominated by the Board; and
 - (b) to provide, or authorise the medical practitioner to provide, a report on the results of the medical examination to the Board.
- (3) If the teacher refuses or fails, without reasonable excuse, to comply with a requirement under subsection (2), the Teachers Registration Board may suspend the teacher's registration until the teacher complies with the requirement.
- (4) The Teachers Registration Board must furnish the teacher with a copy of any report on the results of a medical examination required under this section.
- (5) If, after conducting an inquiry under this section, the Teachers Registration Board is satisfied on the balance of probabilities that the teacher's capacity to teach is seriously impaired by an illness or disability affecting the person's behaviour or competence as a teacher, the Board may do one or more of the following:
- (a) impose conditions of the teacher's registration;
 - (b) suspend the teacher's registration for a specified period or until the fulfilment of specified conditions or until further order;
 - (c) cancel the teacher's registration with immediate effect or effect at a future specified date.

39—Employer to report impairment of teacher's capacity

- (1) If the employer of a practising teacher has reason to believe that the teacher's capacity to teach is seriously impaired by an illness or disability affecting the person's behaviour or competence as a teacher, the employer must, as soon as practicable, submit a written report to the Teachers Registration Board—
- (a) describing the grounds on which the belief is based; and
 - (b) containing all other prescribed information.

Maximum penalty: \$10 000.

- (2) A person incurs no liability by making a report purportedly in compliance with subsection (1) in good faith.

40—Notification by Registrar of inquiry and outcome

The Registrar must, as soon as practicable, give notice of the commencement of an inquiry under this Part, and then of the outcome of the inquiry, to—

- (a) the person's employer if the person to whom the inquiry relates is a practising teacher; and
- (b) the chief executives of the Department, the Catholic Education Office and the Association of Independent Schools of South Australia Incorporated; and
- (c) the Director of Children's Services; and
- (d) the other teacher regulatory authorities in Australia and New Zealand.

Part 8—Provisions relating to proceedings of Teachers Registration Board

41—Application

- (1) This Part applies to proceedings of the Teachers Registration Board—
 - (a) on an application under Part 5; or
 - (b) on an inquiry under Part 7.
- (2) This Part does not apply to an application that the Teachers Registration Board decides to grant without a hearing.

42—Natural justice and right to be heard and to call evidence etc

- (1) The Teachers Registration Board must observe the rules of natural justice in proceedings.
- (2) Without limiting the effect of subsection (1), the Teachers Registration Board must—
 - (a) give the person to whom the proceedings relate at least 21 days' written notice of the time and place at which it intends to conduct the proceedings; and
 - (b) if the proceedings are on an inquiry, include in the notice particulars of the allegations that are the subject of the inquiry; and
 - (c) afford the person a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses, and to make submissions to the Board.
- (3) The requirement to give written notice does not extend to adjournments.
- (4) If the person to whom the proceedings relate does not attend at the time and place fixed by the Teachers Registration Board for the commencement or resumption of the proceedings, the Board may proceed to hear and determine the matter in the absence of the person.

43—Evidence and findings in other proceedings

The Teachers Registration Board may, in the course of proceedings—

- (a) receive in evidence a transcript of evidence taken in proceedings before a court, tribunal or other body constituted under the law of South Australia or any other place and draw conclusions of fact from the evidence that it considers proper;

- (b) adopt, as in its discretion it considers proper, any findings, decision, judgment, or reasons for judgment, of any such court, tribunal or body that may be relevant to the proceedings.

44—Power to issue summons etc

- (1) The Teachers Registration Board may, for the purpose of proceedings—
 - (a) by summons signed on behalf of the Board by a member, or by the Registrar, require a person to appear before the Board or require material to be produced to the Board;
 - (b) inspect material produced to it, and retain the material for such reasonable period as it thinks fit, and make copies of the material, or any of its contents;
 - (c) require a person appearing before the Board to make an oath or affirmation to answer truthfully all questions put to him or her relating to any matter in issue before the Board (which oath or affirmation may be administered by a member of the Board or the Registrar);
 - (d) require a person appearing before the Board to answer any relevant question.
- (2) On the receipt of an application for the issue of a summons under this section, a member of the Teachers Registration Board or the Registrar may, without referring the matter to the Board, issue a summons on behalf of the Board.
- (3) If a person—
 - (a) who has been served with a summons to appear before the Teachers Registration Board fails, without reasonable excuse, to attend in accordance with the summons; or
 - (b) who has been served with a summons to produce material fails, without reasonable excuse, to comply with the summons; or
 - (c) misbehaves during any proceedings, or interrupts any proceedings; or
 - (d) refuses to answer a relevant question when required to do so under this section; or
 - (e) refuses to be sworn or to affirm when required to do so under this section,the person is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 1 year.

- (4) If a person summoned under this section fails to produce material or to appear as required by the summons, or having appeared before the Teachers Registration Board refuses to be sworn or to affirm, or to answer a relevant question when required to do so, the Registrar may sign a certificate of the failure or refusal and such a certificate may be filed in the District Court.
- (5) If a certificate is filed under subsection (4), an application may be made to the District Court for an order directing that the material be produced or that the person appear, or be sworn or affirm, or answer questions (as the case may require), and, on that application, the District Court may make such orders as it thinks fit (including orders for costs).

45—Principles governing proceedings

In proceedings, the Teachers Registration Board—

- (a) is not bound by the rules of evidence and may inform itself on any matter as it thinks fit; and
- (b) may, of its own motion or on the application of a party, direct that the proceedings or a part of the proceedings be held in private; and
- (c) may, subject to this Act, determine its own procedures.

46—Protection of children etc

If evidence is to be given in proceedings by a student or a vulnerable witness within the meaning of section 13 of the *Evidence Act 1929*, the Teachers Registration Board should, before evidence is taken in the proceedings from the witness, determine whether an order should be made under that section.

47—Representation at proceedings

A party to proceedings is entitled to be represented at the hearing of those proceedings by a legal counsel or other person.

48—Counsel to assist Teachers Registration Board

The Teachers Registration Board may be assisted by a legal counsel at the hearing of proceedings.

Part 9—Appeals

49—Right of appeal

- (1) A right of appeal to the Administrative and Disciplinary Division of the District Court lies against a decision of the Teachers Registration Board made in the exercise or purported exercise of a power under Part 5 or Part 7.
- (2) Subject to this section, an appeal must be instituted within one month of the making of the decision appealed against.
- (3) The Teachers Registration Board must, on application by a person affected by a decision that may be the subject of an appeal, give the person a written statement of the reasons for its decision.
- (4) If a written statement of the reasons for a decision are not given by the Teachers Registration Board at the time of making the decision and the person affected by the decision, within one month of the making of the decision, applies to the Board for a written statement of reasons for the decision, the time for instituting an appeal runs from the time when the person receives the written statement of reasons.

Part 10—Miscellaneous

50—Information from Commissioner of Police relevant to registration

- (1) The Commissioner of Police—
 - (a) must, at the request of the Teachers Registration Board; and

- (b) may, at the Commissioner's own initiative, make available to the Teachers Registration Board information about criminal convictions and other information to which the Commissioner has access relevant to the question of a person's fitness to be, or continue to be, registered as a teacher.
- (2) The Commissioner of Police is not required to provide information under subsection (1) that the Commissioner considers—
 - (a) may prejudice or otherwise hinder an investigation to which the information may be relevant; or
 - (b) may lead to the identification of an informant; or
 - (c) may affect the safety of a police officer, complainant or other person.
- (3) Subsection (1) applies whether or not the person to whom the information relates has consented to the provision of the information.

51—Arrangements between Teachers Registration Board, DPP, and Commissioner of Police for reporting of offences

- (1) This section applies to an offence that—
 - (a) has been committed, or is alleged to have been committed, by a person who is a registered teacher, or is believed to be or to have been a registered teacher; and
 - (b) raises serious concerns about the person's fitness to be, or continue to be, registered as a teacher.
- (2) The Teachers Registration Board, the Director of Public Prosecutions and the Commissioner of Police must establish arrangements for reports to be made to the Board of the laying of charges for offences to which this section applies and the outcomes of the proceedings on the charges.
- (3) The arrangements must define the offences to which they are to apply and specify the contents of the reports and the times within which the reports must be made.
- (4) The Teachers Registration Board, the Director of Public Prosecutions and the Commissioner of Police must conduct reviews, at least annually, to ensure the continuing effectiveness of the arrangements and their implementation.

52—Notification of offences to employer etc

- (1) If the Registrar becomes aware that a person who is or has been registered as a teacher has been charged with or convicted of an offence (whether an offence under the law of South Australia or elsewhere) that, in the opinion of the Registrar, raises serious concerns about the person's fitness to be, or continue to be, registered as a teacher, the Registrar must, as soon as practicable, give details of the matter to—
 - (a) the person's employer if the person is a practising teacher; and
 - (b) the chief executives of the Department, the Catholic Education Office and the Association of Independent Schools of South Australia Incorporated; and
 - (c) the Director of Children's Services.

- (2) If the Registrar gives details under subsection (1), the Registrar must—
- (a) if the details concern a person's being charged with an offence—at the same time give notice to the person concerned that the Registrar is taking that action; and
 - (b) if the details concern a person's being charged with an offence and the charge is subsequently withdrawn or the person is subsequently acquitted—as soon as practicable give notice of the withdrawal or acquittal to—
 - (i) the person's employer if the person is a practising teacher; and
 - (ii) the chief executives of the Department, the Catholic Education Office and the Association of Independent Schools of South Australia Incorporated; and
 - (iii) the Director of Children's Services.

53—Confidentiality

- (1) A person engaged or formerly engaged in the administration of this Act or the repealed provisions must not divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—
- (a) as required or authorised under this Act or the regulations or any other Act or law; or
 - (b) with the consent of the person to whom the information relates; or
 - (c) in connection with the administration of this Act or the repealed provisions; or
 - (d) to another teacher regulatory authority; or
 - (e) to another statutory authority of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions.

Maximum penalty: \$10 000.

- (2) Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.
- (3) Information that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by—
- (a) the person to whom the information was disclosed; or
 - (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: \$10 000.

54—False or misleading information

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this Act.

Maximum penalty: \$10 000.

55—Procurement of registration by fraud

A person who by fraud or any other dishonest means procures registration for himself or herself, or for another person, is guilty of an offence.

Maximum penalty: \$10 000.

56—Self-incrimination

If a person is required to provide information or produce material under this Act and the information or material would tend to incriminate the person or make the person liable to a penalty, the person must nevertheless provide information or material, but the information or material so provided or produced will not be admissible in evidence against the person in proceedings for an offence, other than an offence against this or any other Act relating to the provision of false or misleading information.

57—Service of documents

- (1) A notice or document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may—
 - (a) be given to the person personally; or
 - (b) be posted in an envelope addressed to the person—
 - (i) at the person's last known address; or
 - (ii) at the person's address for service.
- (2) The address for service of a person registered under this Act is the address for the person that appears on the register under this Act.

58—Continuing offence

- (1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—
 - (a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and
 - (b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.
- (2) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

59—Liability of members of governing bodies of bodies corporate

- (1) If—
 - (a) a body corporate commits an offence against this Act; and
 - (b) a member of the governing body of the body corporate intentionally allowed the body corporate to engage in the conduct comprising the offence,

that person also commits an offence and is liable to the same penalty as may be imposed for the principal offence.

- (2) A person may be prosecuted and convicted of an offence under this section whether or not the body corporate has been prosecuted or convicted of the offence committed by the body corporate.

60—General defence

It is a defence to a charge of an offence against this Act if the defendant proves that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

61—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), those regulations may make provision for or relating to—
- (a) exemptions (conditional or unconditional) from specified provisions of this Act; and
 - (b) assessment by the Teachers Registration Board, on application, of qualifications for registration; and
 - (c) fees in respect of any matter under this Act and their payment, recovery or waiver; and
 - (d) fines, not exceeding \$5 000, for offences against the regulations; and
 - (e) facilitation of proof of the commission of offences against the regulations.
- (3) The regulations may—
- (a) be of general application or vary in their application according to prescribed factors;
 - (b) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or the Teachers Registration Board.

Schedule 1—Consequential amendments and transitional provisions

Part 1—Preliminary

1—Amendment provisions

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Education Act 1972*

2—Amendment of section 5—Interpretation

Section 5(1), definitions of *the register* and *registered*—delete the definitions

3—Repeal of Part 4

Part 4—delete the Part

4—Amendment of section 107—Regulations

Section 107(2)(q) and (r)—delete paragraphs (q) and (r)

Part 3—Transitional provisions

5—Transitional provisions

- (1) Subject to this Act, registration of a person as a teacher in force under Part 4 of the *Education Act 1972* immediately before the commencement of this clause, will, on that commencement, continue as registration of the person as a teacher under this Act for the balance of the term of the registration.
- (2) Subject to this Act, an authority in writing for the employment of an unregistered person as a teacher or administrator granted by the Teachers Registration Board and in force under Part 4 of the *Education Act 1972* immediately before the commencement of this clause, will, on that commencement, continue as a special authority under Part 6 of this Act for the balance of the period for which it was granted.

Schedule 2—Temporary provisions

1—Conflict of interest

- (1) A member of the Teachers Registration Board who has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the Board—
 - (a) must, as soon as reasonably practicable, disclose in writing to the Board full and accurate details of the interest; and
 - (b) must not take part in any discussion by the Board relating to that matter; and
 - (c) must not vote in relation to that matter; and
 - (d) must be absent from the meeting room when any such discussion or voting is taking place.

Maximum penalty: \$20 000.

- (2) If a member of the Teachers Registration Board makes a disclosure of interest and complies with the other requirements of subclause (1) in respect of a proposed contract—
 - (a) the contract is not liable to be avoided by the Board; and
 - (b) the member is not liable to account to the Board for profits derived from the contract.
- (3) If a member of the Teachers Registration Board fails to make a disclosure of interest or fails to comply with any other requirement of subclause (1) in respect of a proposed contract, the contract is liable to be avoided by the Board or the Minister.
- (4) A contract may not be avoided under subclause (3) if a person has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.

- (5) Where a member of the Teachers Registration Board has or acquires a personal or pecuniary interest, or is or becomes the holder of an office, such that it is reasonably foreseeable that a conflict might arise with his or her duties as a member of the Board, the member must, as soon as reasonably practicable, disclose in writing to the Board full and accurate details of the interest or office.
Maximum penalty: \$20 000.
- (6) A disclosure under this clause must be recorded in the minutes of the Teachers Registration Board and reported to the Minister.
- (7) If, in the opinion of the Minister, a particular interest or office of a member of the Teachers Registration Board is of such significance that the holding of the interest or office is not consistent with the proper discharge of the duties of the member, the Minister may require the member either to divest himself or herself of the interest or office or to resign from the Board (and non-compliance with the requirement constitutes misconduct and hence a ground for removal of the member from the Board).
- (8) Without limiting the effect of this clause, a member of the Teachers Registration Board will be taken to have an interest in a matter for the purposes of this clause if an associate of the member has an interest in the matter.
- (9) This clause does not apply in relation to a matter in which a member of the Teachers Registration Board has an interest while the member remains unaware that he or she has an interest in the matter, but in any proceedings against the member the burden will lie on the member to prove that he or she was not, at the material time, aware of his or her interest.
- (10) In this clause—
associate has the same meaning as in the *Public Corporations Act 1993*.
- (11) This clause will expire on the commencement of section 6H of the *Public Sector Management Act 1995* (as inserted by the *Statutes Amendment (Honesty and Accountability in Government) Act 2003*), or if that section has come into operation before the commencement of this clause, will be taken not to have been enacted.

2—Protection from personal liability

- (1) No personal liability is incurred for an act or omission by—
 - (a) a member of the Teachers Registration Board; or
 - (b) the Registrar of the Board; or
 - (c) any other person engaged in the administration of this Act,in good faith in the performance or purported performance of functions or duties under this Act.
- (2) A civil liability that would, but for subclause (1), lie against a person, lies instead against the Crown.
- (3) This clause will expire on the commencement of section 28 of the *Statutes Amendment (Honesty and Accountability in Government) Act 2003*, or if that section has come into operation before the commencement of this clause, will be taken not to have been enacted.

3—Power to direct criminal record checks

- (1) The Minister may, within 1 month after the commencement of this Act, after consultation with the Teachers Registration Board, give written directions to the Board requiring it to obtain information to which the Commissioner of Police has access about criminal convictions and other matters relevant to the fitness for registration of persons currently registered as teachers.
- (2) This clause will expire 1 month after the commencement of this Act.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act

Year	No	Title	Assent	Commencement
2004	57	<i>Teachers Registration and Standards Act 2004</i>	16.12.2004	uncommenced