

# Matters Pursuant to Part 7

## Teachers Registration and Standards Act 2004

The Teachers Registration Board (the Board) is an independent statutory authority established under the *Teachers Registration and Standards Act 2004* (the Act).

### The Board

The Board consists of 16 members appointed by the Governor and delegates the conduct of proceedings to a panel of the Board that includes a legal practitioner and a practising teacher.

The functions of the Board include two types of proceedings:

- **applications** by teachers to be registered where registration has not been approved by the Registrar - Qualification or Fitness and Propriety issues and;
- **inquiries** to determine if there is a proper cause for disciplinary action against a teacher or whether the capacity of a teacher to teach is impaired.

### The Registrar

- is delegated by the Board to approve applications for registration of teachers and;
- is the person authorised under the Act for investigating concerns and allegations about teachers and laying complaints before the Board to commence an inquiry (The Board may also initiate an inquiry of its own motion).

### How Matters are Referred to the Board

Anyone is entitled to contact the Board to complain or raise concerns about the conduct of a registered teacher.



The Board may also receive information of concern from South Australia Police (SAPOL), the Director of Public Prosecutions (DPP), a teacher's employer or another teacher regulatory authority.

If a complaint is made about you, you will receive a letter advising of the nature of the allegations and your right to natural justice.

The Registrar may forward the complaint to the Board's Investigations Unit of trained investigators for a preliminary assessment or, if it is a serious or complex matter, seek the advice of the Crown Solicitor.

Allegations of criminal offences may be referred to SAPOL.

If the preliminary assessment determines further investigation is necessary then a full investigation is usually undertaken by an investigations officer of the Investigations Unit. You will be informed as to whether a further investigation will commence or the matter will not proceed further.

\*Note: A '**Complaint**' is the document which commences formal disciplinary proceedings (see page 3) and is to be distinguished from a complaint or concern raised generally about the conduct of a teacher.

## Investigations

The purpose of an investigation is for the Registrar to determine whether there is a basis to lay a Complaint before the Board alleging:

- There may be cause for **disciplinary action** under s33 of the Act because a teacher:
  - has improperly obtained registration;
  - is guilty of unprofessional conduct;
  - is not a fit and proper person to be registered;
  - has had their authority to teach suspended or withdrawn by another teaching authority.

OR

- **Incapacity** to teach under s38 of the Act where a teacher's capacity to teach is seriously impaired by an illness or disability affecting behaviour or competence as a teacher.

The Registrar, or an investigation officer authorised by the Registrar, has certain **powers of investigation** under the Act to ask questions and obtain information and materials.

If required under the Act you are obliged to co-operate in an investigation process. It is an **offence not to answer** the questions or provide information and materials requested. This is so even if you have already provided similar information to SAPOL, your employer or another body and if the information you provide would tend to incriminate you or make you liable to a penalty.

However, the latter information cannot be used against you in proceedings for an offence except one against the Act or if the information is false or misleading.

If you refuse to answer questions or produce materials you may be liable to a fine of \$10,000 or imprisonment for 1 year.

You are entitled to a support person during an investigation.

You will retain your registration during the investigation process unless the Board makes an order otherwise.

An investigation may be conducted even if your registration has expired. Similarly, a hearing/inquiry may take place even if your registration has expired.

Under the Act, the Board can access certain information from SAPOL and the DPP.

If the investigation relates to your capacity to teach you may be required to provide a medical report.

The parties at an **inquiry hearing** are the teacher (the respondent) and the Registrar (complainant) (unless the Board initiates the inquiry of its own motion), but the Registrar does not attend and legal counsel acts on the Registrar's behalf.

### *Support Person*

You may have a support person during an investigation and during the hearing who:

- should not be someone involved with the matter as they may be required as a witness;
- cannot act as your advocate and must remain seated and quiet in the hearing and during questioning in an investigation and cannot answer on your behalf.

### *Investigation Outcome*

If the Registrar concludes there is insufficient evidence to proceed further with the matter you will be advised and the matter closed.

You may receive a letter of warning or advisory counselling about a matter.

All documents and information will remain on a confidential file.

The Registrar may decide **to lay a Complaint** before the Board to determine whether there is proper cause for disciplinary action or whether your capacity to teach is seriously impaired.

'**Complaint**' is the term used for the formal document provided to the Board by the Registrar which outlines the allegations against a teacher and forms the **basis of an inquiry** into a teacher's conduct or capacity to teach. It is to be **distinguished** from general complaints or concerns made about a teacher by others. Evidence is given at the inquiry hearing to support the allegations made in the Complaint. The Registrar becomes the **complainant** in any inquiry.

The Complaint and accompanying documents will be served upon you with at least 21 days notice of a date of a preliminary conference and will set out particulars of the allegations. Before the hearing/ inquiry you and your counsel may be provided with further relevant documents.

The Registrar is obligated under section 40 of the Act to notify your employer, the Chief Executive of the Department for Education, the Catholic Education Office, the Association of Independent Schools, the Director of Children's Services and other teacher regulatory bodies in Australia and New Zealand of the commencement of an inquiry.

## Preliminary Conference

The preliminary conference is usually attended by the Registrar and legal counsel and you and your legal counsel. A Board member or delegate will preside at a preliminary conference which is held at the Board's premises.

The Registrar will have legal counsel, usually from the Crown Solicitor's Office, and you are entitled to have legal counsel acting for you.

The purpose of a preliminary conference is to clarify any administrative issues so that the hearing is able to proceed efficiently.

These issues may include discussing the possible length of the hearing, the number of witnesses, whether any matters can be agreed, the exchange of information, whether any summons is required from the Board, what documents, if any, can be provided to the Board in advance and suitable hearing dates.

It is also to ensure the requirements of natural justice are satisfied and that you are aware of the allegations and your entitlement to representation.

More than one preliminary conference may be necessary.

If the matter relates to your capacity to teach you may be informed that an application will be made under s38 of the Act for a medical examination. The Board can require you to undergo a medical examination by a medical practitioner selected by you from a panel nominated by the Board and obtain a report. If you refuse the Board can suspend your registration.

## The Hearing

The hearing is usually held at the Board's premises.

The Board generally consists of a panel of five members including a legal practitioner, (Chair of the Subcommittee) and a practising teacher.

The Board has the power to issue a summons to witnesses and to require witnesses to produce documents and require you and witnesses to give evidence on oath or affirmation.

The Board

- is not bound by the rules of evidence and can inform itself as it sees fit;
- can determine its own procedure; and
- hold part or all of the hearing in private.

You must be afforded the opportunity to call and give evidence, examine and cross-examine witnesses and make submissions to the Board

If you do not attend the hearing the Board can proceed in your absence.

The Board can:

- receive in evidence transcripts from a court, tribunal or body relevant to the proceedings; and
- adopt findings and decisions of such court, tribunal or body.

## Parties

The parties at an **inquiry hearing** are the teacher (the respondent) and the Registrar (complainant) (unless the Board initiates the inquiry of its own motion), but the Registrar does not attend and legal counsel acts on the Registrar's behalf.

Only the parties and their legal counsel are permitted to be present throughout the hearing.

**A witness is not a party** to the proceedings and as such does not have the rights of parties under the Act.

Parties have the right to be represented by counsel, to call evidence, question witnesses and be present during the hearing.

## Role of Registrar

The Registrar is the **complainant** at an inquiry hearing and, through legal counsel, calls evidence and **examines witnesses** in support of allegations in the complaint laid before the Board. Legal counsel can question you and any witness called on your behalf (**cross-examination**).

## The Teacher

You are entitled to be represented by legal counsel and have the right yourself or by your legal counsel, if you are represented, to cross-examine any witnesses called by the Registrar, give evidence, produce documents and call and examine witnesses.

## Procedure at the Inquiry Hearing

The Registrar's witnesses are called to give evidence and questioned (**examined**) one at a time.

Your legal counsel or you, if you are not represented, may question (**cross-examine**) each witness after they have given their evidence.

The witness is then released from the hearing.

Your legal counsel may call you to give evidence and present other evidence and call witnesses. The Registrar's legal counsel can cross-examine you and your witnesses.

Submissions are made to the Board by both legal counsel.

The Board may adjourn the inquiry for further hearing.

At the conclusion of the inquiry the Board adjourns and may make its decision at that time or at some later date.

The proceedings are recorded.

## Powers of the Board

### Disciplinary Inquiry

The Board can do one or more of the following:

- dismiss the complaint
- reprimand you
- order you to pay a fine not exceeding \$5,000
- impose conditions on your registration
- suspend your registration for a period with or without conditions or until further order; or
- cancel your registration immediately or at some future date
- disqualify you from being registered permanently; or for a specific period; or until conditions are met; or until further order.

### Incapacity Inquiry

The Board can do one or more of the following:

- dismiss the complaint
- impose conditions on your registration
- suspend your registration for a period with or without conditions or until further order; or
- cancel your registration immediately or at some future date.



## At the Conclusion of the Inquiry

You will receive a letter of outcome from the Registrar followed by a copy of the Board's Reasons for Decision.

The Registrar must give notice of the outcome to your employer, the Chief Executives of the Department for Education, the Catholic Education Office, the Association of Independent Schools, the Director of Children's Services and other teacher regulatory bodies in Australia and New Zealand.

A case summary of the inquiry and outcomes will also be posted on the Board's website at [www.trb.sa.edu.au](http://www.trb.sa.edu.au) and summarised in the Board's Annual Report. The case summary does not identify the teacher or other persons involved in the inquiry.

## Rights of Appeal

If you do not agree with the Board's decision you have the right to appeal to the Administrative and Disciplinary Division of the District Court pursuant to s49 of the Act. You must lodge the appeal within 28 days of the receipt of the written Reasons for Decision.

## Confidentiality

The Act requires persons engaged in the administration of the Act not to divulge personal information obtained in the course of official duties except in certain circumstances, including to another teacher regulatory authority or another statutory authority of any State or the Commonwealth for the proper performance of their functions.

Written records are placed in a confidential file and retained by the Board and held in accordance with the Board's Records Management Policy and disposed of in accordance with the *State Records Act 1997* and an approved Retention and Disposal Schedule.



**For more information on any of the above matters please contact:**

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