



New South Wales

Teaching Standards Bill 1998

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This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Clerk of the Legislative Assembly.
Legislative Assembly*



New South Wales

Teaching Standards Bill 1998

Act No , 1998

An Act relating to standards for the teaching profession; to provide for the registration of teachers; to constitute the Teaching Standards Board and to provide for its functions; to amend the *Education Act 1990* and certain other Acts; and for other purposes.

EXAMINED

Chairman of Committees

Clause 1 Teaching Standards Bill 1998

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Teaching Standards Act 1998*.

2 Commencement

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

3 Objects of Act

The objects of this Act are as follows:

- (a) to recognise formally, and to enhance, the professional status of teachers, 10
- (b) to establish professional teaching standards,
- (c) to require teachers to comply with the professional teaching standards,
- (d) to establish a system of registration for teachers, 15
- (e) to provide that teachers employed in schools must be registered,
- (f) to provide for the deregistration of teachers who fail to comply with the professional teaching standards.

4 Definitions

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In this Act:

Board means the Teaching Standards Board constituted by this Act.

director means a director of the Board.

employ includes engage or appoint. 25

employer of a teacher means:

- (a) in the case of a teacher who is employed in a government school—the Director-General of the Department of Education and Training, or
- (b) in the case of a teacher who is employed in a non-government school—the proprietor of the school.

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exercise a function includes perform a duty.

function includes a power, authority or duty.

General Manager means the General Manager of the Board holding office as such under Part 2 of the *Public Sector Management Act 1988*.

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government school has the same meaning as in the *Education Act 1990*.

non-government school has the same meaning as in the *Education Act 1990*.

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professional teaching standards means the standards recommended by the Board and approved by the Minister from time to time under section 12.

proprietor of a non-government school has the same meaning as in the *Education Act 1990*.

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Register means the Register referred to in section 24.

registered teacher means a teacher who is registered for the time being as a teacher under this Act.

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

teacher means:

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- (a) a person who is employed in a school, or who is eligible to be so employed having regard to the professional teaching standards, to provide the curriculum for primary and secondary schools in accordance with the *Education Act 1990*, or
- (b) any other person who is of a class of persons prescribed by the regulations for the purposes of this definition.

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Tribunal means the Administrative Decisions Tribunal.

Part 2 Teaching Standards Board

5 Constitution of Teaching Standards Board

- (1) There is constituted by this Act a body corporate with the corporate name of the Teaching Standards Board.
- (2) The Board is, for the purposes of any Act, a statutory body representing the Crown. 5

6 Functions of Board

- (1) The Board has the functions conferred or imposed on it by or under this or any other Act.
- (2) The Board's functions include the following: 10
 - (a) recommending professional teaching standards for approval by the Minister,
 - (b) registering teachers in accordance with this Act,
 - (c) engaging in activities with respect to improving the quality of teaching and with a view to raising the status of the teaching profession. 15
- (3) The Board's functions do not extend to industrial matters such as the salaries of teachers or their conditions of employment, or to any other matter that is not related to the objects of this Act.
- (4) The Board may undertake such duties as may be requested by the Minister from time to time so long as those duties are consistent with the objects of this Act. 20

7 Directors of Board

- (1) There are to be 13 directors of the Board. The directors are to be appointed by the Minister on a part-time basis. 25
- (2) Subject to this section, the persons to be appointed as directors are as follows:
 - (a) one nominee of the Director-General of the Department of Education and Training,
 - (b) one person who is nominated by the Catholic Education Commission of New South Wales and the Catholic Commission for Employment Relations. 30

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- (c) one nominee of the Association of Independent Schools of New South Wales Limited.
- (d) two nominees of the New South Wales Teachers Federation.
- (e) one nominee of the New South Wales Independent Education Union. 5
- (f) three teachers who, in the opinion of the Minister, provide a suitable balance in relation to the expertise of the other directors,
- (g) one nominee of the Joint Council of New South Wales Professional Teachers' Associations. 10
- (h) one person who is nominated by the New South Wales Vice-Chancellors' Conference and the New South Wales Teacher Education Council.
- (i) one person who is chosen by the Minister from a list comprising one or more nominees of each of the following: 15
- (i) the Federation of Parents and Citizens' Associations of New South Wales,
- (ii) the New South Wales Federation of School Community Organisations. 20
- (iii) the New South Wales Parents' Council Incorporated,
- (iv) the Council of Catholic School Parents.
- (j) one person who is appointed by the Minister as the Chairperson of the directors. 25
- (3) The majority of the directors must be persons who are, or are eligible to be, registered teachers.
- (4) The Minister may require the body or bodies responsible for nominating a person for appointment as a director to furnish a list of persons from which the Minister may select the nominee to be appointed. 30
- (5) If the nominating body or bodies do not comply with any such requirement to the satisfaction of the Minister, the Minister may appoint such person as the Minister thinks fit.
- (6) Schedule 1 has effect with respect to the directors of the Board. 35

8 Functions of directors

The directors of the Board have the following functions:

- (a) to determine policies relating to the functions of the Board,
- (b) to advise the Minister on any matter relating to the administration and execution of this Act (at the request of the Minister or on the initiative of the directors), 5
- (c) such other functions as may be conferred or imposed on the directors by or under this or any other Act.

9 General Manager to manage affairs of Board

- (1) The General Manager is responsible for the day to day management of the affairs of the Board subject to, and in accordance with, the policies and general directions of the directors. 10
- (2) Any act, matter or thing done in the name of, or on behalf of, the Board by the General Manager is taken to have been done by the Board. 15

10 Staff of Board

- (1) The staff of the Board is (subject to this section) to be employed under Part 2 of the *Public Sector Management Act 1988*.
- (2) The Board may, with the approval of the Minister, arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department, a public authority, the Education Teaching Service, or any other relevant body. 20
- (3) Any such staff of whose services the Board makes use in accordance with subsection (2) are taken to be the staff of the Board for the purposes of this Act. 25
- (4) The Board may employ other staff for any special purpose approved by the Minister. Part 2 of the *Public Sector Management Act 1988* does not apply to the employment of any such staff. 30
- (5) The Board may engage persons having suitable qualifications and experience as consultants to the Board.

11 Committees

- (1) The Board may establish committees to assist it in the exercise of its functions.
- (2) It does not matter that any or all of the members of a committee are not directors.
- (3) The procedure for the calling of meetings of a committee of the Board and for the conduct of business at those meetings is to be determined by the Board or, subject to any determination by the Board, by the committee.

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Part 3 Professional teaching standards

12 Minister may approve professional teaching standards

- (1) The Minister may, from time to time, approve of professional teaching standards that are recommended to the Minister by the Board. 5
- (2) The Board is to ensure that the professional teaching standards are made available to all teachers and to the general public.

13 Scope of standards

- (1) The professional teaching standards may deal with such matters as the following: 10
 - (a) requirements for quality teaching,
 - (b) the skills, experience and knowledge required for teachers,
 - (c) conditions and criteria for continuing registration, including requirements for maintaining and updating professional teaching skills. 15
 - (d) accreditation of teacher education programs,
 - (e) induction guidelines for teachers entering the teaching profession for the first time,
 - (f) any other matter relating to teaching standards.
- (2) The professional teaching standards may include provisions that relate to teaching generally, and provisions that relate to specific areas of teaching. 20

14 Teachers' Code of Ethics

- (1) The professional teaching standards are to include a Teachers' Code of Ethics. 25
- (2) Such a code may include any matter that relates to the professional conduct of teachers.

15 Requirement to comply with standards

A teacher must comply with the professional teaching standards to the extent that they relate to the teacher. 30

16 Responsibility to ensure compliance with standards

- (1) The Director-General of the Department of Education and Training is to ensure that each teacher who is employed in a government school complies with the professional teaching standards to the extent that they relate to that teacher. The Director-General may delegate that function to the principal of the school concerned. 5

- (2) In the case of a non-government school, it is the responsibility of the proprietor of the school to ensure that each teacher at the school complies with the professional teaching standards to the extent that they relate to that teacher. 10

Part 4 Registration of teachers

17 Requirement for teachers to be registered

- (1) A person must not be employed as a teacher in any school unless the person is a registered teacher.
- (2) In the case of a government school, if a person who is not a registered teacher is employed as a teacher at the school, the person's appointment to that teaching position is taken to be an invalid appointment for the purposes of any law. 5
- (3) In the case of a non-government school, if a person who is not a registered teacher is employed as a teacher at the school, the employment of that person is a contravention of the registration requirements for the school under the *Education Act 1990*. 10

18 System of teacher registration

- (1) The Board is to administer a system of registration of teachers.
- (2) The regulations may make provision for or with respect to any matter relating to the registration of teachers (including the procedure for making applications to the Board for registration as a teacher). 15

19 Board may register person

- (1) The Board may, having regard to the professional teaching standards, register a person as a teacher. 20
- (2) Subject to this Act, a person is eligible, even though the person does not hold a particular qualification or class of qualification, to be registered as a teacher if the person satisfies the Board that the person is able to meet the requirements of the professional teaching standards. 25
- (3) The registration of a person as a teacher is subject to such conditions as the Board thinks fit to impose.
- (4) A person is registered as a teacher when the Board includes the name of the person in the Register. 30

- (5) The registration of a person as a teacher does not cease merely because the person is no longer employed as a teacher in a school.

20 Board may refuse to register person

The Board may refuse to register a person as a registered teacher if the Board is satisfied that the person is not, having regard to the professional teaching standards, suitable to be registered as a teacher. 5

21 Registration of existing teachers

- (1) Any person who is an existing teacher is taken to be a registered teacher until such time as the person ceases to be registered in accordance with this Act. 10

- (2) Subsection (1) does not apply to any person who is an existing teacher if the person was, immediately before the commencement of this section, the subject of any disciplinary action (as determined by the Board) that has been commenced in relation to the teacher. However, such a person is taken to be provisionally registered in accordance with section 22. 15

- (3) Subsection (1) does not apply to any person who is an existing teacher if the person was not, immediately before the commencement of this section, the holder of a degree or other equivalent tertiary qualification conferred by a recognised tertiary institution. However, such a person is taken to be provisionally registered in accordance with section 22. 20

- (4) In this section: 25

existing teacher means:

- (a) a person who was, immediately before the commencement of this section, employed as a teacher in a school, or
 (b) a person who was, at any time during the period of 12 months before the commencement of this section, employed as a teacher on a casual basis in any school. 30

and includes any person who is of a class of persons determined by the Board for the purposes of this section.

recognised tertiary institution means:

- (a) any institution in New South Wales that confers degrees or equivalent qualifications, or
- (b) any other tertiary institution recognised by the Board.

- 22 Provisional registration** 5
- (1) The Board may provisionally register a person who is not a registered teacher but who has applied for a teaching position in a school or intends to be employed as a teacher.
 - (2) The provisional registration of a person is subject to such conditions as may be determined by the Board. 10
 - (3) The general criteria for provisional registration are to be approved by the Minister on the recommendation of the Board.
 - (4) Subject to subsection (5), a person who is provisionally registered is taken to be a registered teacher for the purposes of this Act. 15
 - (5) Provisional registration is effective until such time as the person is registered by the Board, or the Board decides to refuse to register the person as a teacher.
- 23 Annual registration fee and fee for registration**
- (1) Each registered teacher is required, before the end of each year, to pay to the Board a registration fee of \$25 (or such other fee as may be prescribed by the regulations). 20
 - (2) Except in the case of an existing teacher as referred to in section 21, an additional fee of \$20 (or such other fee as may be prescribed by the regulations) is payable to the Board by a person when the person's name is included in the Register. 25
 - (3) A person is not entitled to be registered as a teacher unless any such fee is paid in respect of that person.
- 24 Register**
- (1) The Board is to maintain a Register consisting of the names of the persons who are for the time being registered as teachers under this Act. 30

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- (2) The Register of teachers is to be kept in such manner as is determined by the Board.
- (3) The inclusion of a person's name in the Register is conclusive evidence of that person's status as a registered teacher.
- (4) The regulations may make provision for the particulars that are to be included in the Register and for the inspection of the Register. 5
- (5) The Board may maintain a list of persons who are not, in the opinion of the Board having regard to the professional teaching standards, suitable to be registered as teachers.
- (6) The Board may also maintain a list that includes the name of any person who has resigned, retired or taken leave from his or her teaching position pending disciplinary action against the teacher for failing to comply with the professional teaching standards. The employer or former employer of any such person is required to notify the Board of any such action. 10 15

25 Review by Tribunal of refusal to register

A person may apply to the Tribunal for a review of the refusal by the Board to register the person as a registered teacher.

Part 5 Provisions relating to non-compliance with standards

26 Independent advice as to compliance with standards

- (1) An employer of a teacher may, at any time, request the advice of an expert panel of teachers established by the Board as to whether a teacher has complied with the professional teaching standards relating to the teacher. 5
- (2) If any such request is made, the Board is to refer the matter to a member of the panel for review. The member may then advise the employer whether the employer would be justified in reaching a finding that the teacher has failed to comply with the professional teaching standards. 10
- (3) Any costs associated with any such request or advice is to be met by the employer.

27 Employer to notify Board of dismissal

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If an employer dismisses a teacher from a teaching position on the grounds of the teacher's failure to comply with the professional teaching standards, the employer must notify the Board in writing of the dismissal.

28 Board may apply to Tribunal for suspension or cancellation of teacher's registration

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- (1) If a teacher is dismissed from a teaching position on the grounds of the teacher's failure to comply with the professional teaching standards, the Board may apply to the Tribunal for an order to suspend or cancel the teacher's registration. 25
- (2) The Board may only make an application for such an order if:
 - (a) in the case of a teacher who has appealed to GREAT or the Industrial Relations Commission against the dismissal, the appeal:
 - (i) has not been allowed by GREAT or the Commission, or 30
 - (ii) has lapsed or been withdrawn, or
 - (b) any right to appeal against the dismissal is no longer available to the teacher.
- (3) In subsection (2), *GREAT* means the Government and Related Employees Appeal Tribunal. 35

29 Tribunal may order suspension or cancellation of teacher's registration

- (1) If the Board makes an application under section 28 and the Tribunal is satisfied that there are sufficient grounds to justify the suspension or cancellation of the registration of the teacher for failing to comply with the professional teaching standards, the Tribunal may make an order: 5
- (a) suspending the registration of the teacher for such period as the Tribunal thinks fit, or
- (b) cancelling the teacher's registration. 10
- (2) The Tribunal may dismiss the application if it is not satisfied that there are sufficient grounds to justify the suspension or cancellation of the teacher's registration.
- (3) If the Tribunal orders the cancellation of a teacher's registration, the Tribunal may also order that the teacher cannot re-apply for registration with the Board within such period (including the period of his or her lifetime) as may be specified by the Tribunal. 15
- (4) An order by the Tribunal to suspend or cancel a teacher's registration takes effect on the date specified in the order. The Board is authorised to amend the Register accordingly. 20

30 Appeals to Appeal Panel against decisions and orders of Tribunal

An order or other decision made by the Tribunal under section 29 may be appealed to an Appeal Panel of the Tribunal under Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997* by a party to the proceedings in which the order or decision is made. 25

Part 6 Miscellaneous

31 False representation

A person must not make any representation to the effect that the person is a registered teacher if that person is not a registered teacher.

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Maximum penalty: 50 penalty units.

32 Contracting out void

(1) The provisions of this Act and the regulations have effect despite any stipulation to the contrary.

(2) No contract or agreement made or entered into before or after the commencement of this section operates to annul, vary or exclude any of the provisions of this Act or the regulations.

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33 Delegation of functions

The Board may delegate to any person or body any of the functions of the Board (other than this power of delegation).

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34 Personal liability

Any thing done or omitted to be done by:

(a) the Board, or

(b) a director, or

(c) a member of a committee of the Board, or

(d) the General Manager, or

(e) a member of the staff of the Board, or

(f) a member of a panel referred to in section 26 (2), or

(g) any other person acting under the direction of the Board,

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does not, if the thing was done or omitted to be done in good faith for the purposes of executing this or any other Act, subject the director, member of the committee, General Manager, staff member, member of the panel, or person so acting, personally to any action, liability, claim or demand.

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35 Proceedings for offences

Proceedings for an offence under this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

36 Act to bind Crown

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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.

37 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. 10
- (2) The regulations may create an offence punishable by a penalty not exceeding 50 penalty units. 15

38 Amendment of Acts

Each Act specified in Schedule 2 is amended as set out in that Schedule.

39 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. 20
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to 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 5 years. 25

Schedule 1 Directors of Board

(Section 7 (6))

1 Terms of office of directors

Subject to this Schedule, a director holds office for such period (not exceeding 3 years) as is specified in the instrument of appointment of the director, but is eligible (if otherwise qualified) for re-appointment. 5

2 Remuneration

A director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the director. 10

3 Deputies

- (1) The Minister may, from time to time, appoint a person to be the deputy of a director, and the Minister may revoke any such appointment. A person who is appointed as such a deputy must be nominated by the relevant body or bodies in accordance with section 7. 15
- (2) In the absence of a director, the director's deputy may, if available, act in the place of the member.
- (3) While acting in the place of a director, a person: 20
 - (a) has all the functions of the director and is taken to be a director, and
 - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person. 25
- (4) For the purposes of this clause, a vacancy in the office of a director is taken to be an absence of the director.

4 Vacancy in office of director

- (1) The office of a director becomes vacant if the director:
 - (a) dies, or 30
 - (b) completes a term of office and is not re-appointed, or

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- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Minister under this clause, or
- (e) is absent from 4 consecutive meetings of the directors of which reasonable notice has been given to the director personally or by post, except on leave granted by the Minister or unless the director is excused by the Minister for having been absent from those meetings, or 5
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or 10
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable. 15
- (2) The Minister may at any time remove a director from office. 20

5 Filling of vacancy in office of director

If the office of any director becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

6 Acting Chairperson

- (1) In the absence of the Chairperson of the directors, the Minister is to appoint one of the other directors to act in the place of the Chairperson. 25
- (2) While acting in the place of the Chairperson, the director has all the functions of the Chairperson and is taken to be the Chairperson. 30

7 Disclosure of pecuniary interests

- (1) If:
- (a) a director has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the directors, and 5
 - (b) the interest appears to raise a conflict with the proper performance of the director's duties in relation to the consideration of the matter,
- the director must, as soon as possible after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the directors. 10
- (2) A disclosure by a director at a meeting of the directors that the director:
- (a) is a member, or is in the employment, of a specified company or other body, or 15
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1). 20
- (3) Particulars of any disclosure made under this clause must be recorded by the directors in a book kept for the purpose and that book must be open at all reasonable hours for inspection by any person on payment of the fee determined by the directors. 25
- (4) After a director has disclosed the nature of an interest in any matter, the director must not, unless the Minister or the directors otherwise determine: 30
- (a) be present during any deliberation of the directors with respect to the matter, or
 - (b) take part in any decision of the directors with respect to the matter.

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- (5) For the purposes of the making of a determination by the directors under subclause (4), a director who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the directors for the purpose of making the determination, or 5
 - (b) take part in the making of the determination.
- (6) A contravention of this clause does not invalidate any decision of the directors.

8 Effect of certain other Acts 10

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a director.
- (2) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or 15
 - (b) prohibiting the person from engaging in employment outside the duties of that office.

the provision does not operate to disqualify the person from holding that office and also the office of a director or from accepting and retaining any remuneration payable to the person under this Act as a director. 20

9 General procedure

The procedure for the calling of meetings of the directors and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the directors. 25

10 Quorum

The quorum for a meeting of the directors is a majority of its members, of whom one must be the Chairperson of the directors.

11 Presiding member

- (1) The Chairperson of the directors (or, in the absence of the Chairperson, the director appointed to act as Chairperson) is to preside at a meeting of the directors.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote. 5

12 Voting

A decision supported by a majority of the votes cast at a meeting of the directors at which a quorum is present is the decision of the directors. 10

13 First meeting

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

Schedule 2 Amendment of other Acts

(Section 38)

2.1 Administrative Decisions Tribunal Act 1997 No 76**[1] Schedule 2 Composition and functions of Divisions**

Insert in alphabetical order of Acts in clause 2 (1) of Part 4: 5
Teaching Standards Act 1998

[2] Schedule 2, Part 4, clause 4A

Insert after clause 4:

4A Teaching Standards Act 1998 (Original decisions and reviewable decisions) 10

For the purposes of exercising a function conferred or imposed on the Tribunal under the *Teaching Standards Act 1998*, the Tribunal is to be constituted by 3 Division members of the General Division of the Tribunal.

2.2 Education Act 1990 No 8 15**Section 47 Registration requirements for schools**

Omit section 47 (b). Insert instead:

(b) only registered teachers (within the meaning of the *Teaching Standards Act 1998*) are to be employed as teachers at the school. 20

(b1) the proprietor of the school is to ensure that each registered teacher at the school complies with the professional teaching standards (within the meaning of the *Teaching Standards Act 1998*) to the extent that they relate to that teacher. 25

(b2) the Teaching Standards Board is to be notified of the dismissal of any teacher for failing to comply with the professional teaching standards.

2.3 Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory bodies

Insert in alphabetical order:

Teaching Standards Board.

2.4 Public Sector Management Act 1988 No 33

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Schedule 1 Departments

Insert in alphabetical order of departments:

Teaching Standards Board

General Manager