

Notifications to the Victorian Institute of Teaching: Guide for Employers, Principals and School Leaders



catholic education commission of victoria ltd

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1. Purpose of the guide

In certain circumstances, an employer has a legal obligation to notify the Victorian Institute of Teaching (VIT) of outcomes in relation to substantiated conduct of a teacher or in relation to whether a teacher is fit to teach. The purpose of this guide is to provide employers, principals and school leaders with information and guidance about when they are required to make a notification to the VIT. In addition to the legal obligations of an employer, notification to the VIT is important to uphold and maintain the integrity of the teaching profession.

2. Whose obligation is it to notify the VIT?

Under the Victorian *Education and Training Reform Act 2006* (ETR Act), it is the responsibility of the **employer of a registered teacher** to notify the VIT. In practice, this responsibility is usually delegated by the employer to the principal or may, in some cases, be delegated to the diocesan office.

A registered teacher includes a principal, deputy principal, other school leaders and other employees who hold VIT registration whether or not engaged in a position with the title of 'teacher'.

Where a notifiable matter is in relation to an emergency teacher engaged through an agency, it is the responsibility of the agency, as the employer, to notify the VIT.

Note: Employers should also consider other reporting obligations. For example, mandatory reporting and the Reportable Conduct Scheme (RCS).

3. When are employers required to provide notifications to the VIT?

| ✓ Required to notify the VIT | × Not required to notify the VIT |
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| <p>The employer of a registered teacher is required to notify the VIT if the employer:</p> <ul style="list-style-type: none"> • takes any action* against the teacher in response to substantiated allegations: <ul style="list-style-type: none"> – of <i>serious incompetence</i> (meaning a fundamentally flawed approach to teaching) – of <i>serious misconduct</i> (meaning a substantial departure from accepted standards for teachers) – of <i>unfitness to be a teacher</i> (meaning the character, reputation and conduct of the person are such that they should not be allowed to teach in a school – findings of guilt or convictions for indictable) | <p>The employer of a registered teacher is not required to notify the VIT regarding allegations (other than charges of a sexual offence) where the employer:</p> <ul style="list-style-type: none"> • does not consider the level of alleged incompetence to be serious (for example, a momentary lapse in performance) • does not consider the level of alleged misconduct to be serious (for example, a departure from standards that is not significant) • has not completed an investigation and substantiated the allegations (including in circumstances where the teacher has been stood down pending completion of an investigation) |

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| <p>offences are possible indications of unfitness, apart from the specific category of sexual offences discussed at 4 below)</p> <ul style="list-style-type: none">– that the registered teacher’s ability to practise is <i>seriously detrimentally affected (or likely to be) because of impairment</i> <ul style="list-style-type: none">• takes any <i>other actions</i> (meaning other than disciplinary actions) against the registered teacher that may be relevant to the teacher’s fitness to teach• becomes aware that the teacher is currently charged with, convicted or found guilty of, a category A offence or a category B offence (see 4 below), or has been given a negative Working with Children Check notice (not permitted to engage in child-related work). | <ul style="list-style-type: none">• takes no disciplinary action regarding the allegations on completion of an investigation• decides to adopt informal procedures or outcomes, such as informal counselling <p>except in circumstances where a registered teacher <i>leaves their employment during an investigation before any action is taken</i>, in which case the VIT requires notification in the interests of public protection.</p> |
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* The VIT advises on its website that:

You should **only notify** us of action taken against a registered teacher:

- once your investigation is finalised (i.e. a decision to stand a teacher down from their duties during an investigation would not constitute an action)
- if you have found one or more of the above allegations proven
- if you have taken action in relation to those allegations, which may include:
 - a formal warning or reprimand
 - a financial penalty
 - a reduction in classification
 - suspension or termination of employment.

4. What is a category A or category B offence?

From 1 September 2019, employers of a registered teacher must notify the VIT if the registered teacher is currently charged with, or has been convicted or found guilty of, a category A offence or category B offence.

Category A offences include various sexual offences committed by adults against children, offences relating to child abuse material, grooming, murder and attempted murder.

Category B offences include sexual offences against an adult, sexual offences committed by a child against another child, violent offences and drug offences.

See sections 1.1.3A and 1.1.3B of the ETR Act for the full definitions.

5. Serious incompetence

‘Serious incompetence’ is not defined in the ETR Act. The Oxford Dictionary defines ‘incompetence’ as ‘not having or showing the necessary skills to do something successfully’.

'Serious' is defined, relevantly, as 'significant or worrying because of possible danger or risk; not slight or negligible'.

The VIT states that serious incompetence refers to a situation where a teacher is failing to meet the Australian Professional Standards for Teachers to such a degree that their whole approach to teaching is 'fundamentally flawed'; however, a 'momentary lapse' in performance will not generally indicate serious incompetence.

Examples of serious incompetence include instances where professional practice is substantially below the standard expected of a competent teacher, such that student learning is compromised, in circumstances where mentoring and support fail to achieve any sustained improvement. A seriously incompetent teacher may fail to engage students over a lengthy period and lack insight or understanding of areas of professional practice without prospect of improvement.

Serious incompetence by a teacher may be characterised by, among other things, failure to:

- exercise appropriate classroom management
- structure and prepare lessons
- communicate effectively with students
- supervise and create a safe environment
- cater for special needs
- assess student work and maintain records appropriately
- treat colleagues with courtesy and respect.

Where an employer has concerns that a teacher may be seriously incompetent (i.e. serious performance concerns), the employer should apply the procedures for managing employment concerns in clause 13 of the *Victorian Catholic Education Multi-Enterprise Agreement 2018* (VCEMEA 2018) or the relevant provisions of any successor agreement.

See Appendix A – Flow chart: When to notify the VIT in a clause 13 process

6. Serious misconduct

For the purposes of the ETR Act, 'misconduct', in relation to a teacher, is defined in section 2.6.1 to include, among other things, conduct occurring in connection with the practice of teaching that is of a lesser standard than a member of the public or members of the teaching profession are entitled to expect from a reasonably proficient teacher. The VIT states that 'serious misconduct' generally involves a substantial departure from the accepted standards of the profession, including conduct that is infamous, disgraceful, dishonourable or shameful.

Examples of serious misconduct by a teacher include:

- conducting sexual or personal relationships with students
- using sexual innuendo in conversations with students
- making inappropriate social media contact with students
- making inappropriate physical contact with students
- accessing pornography on school equipment
- falsifying medical certificates.

Where an employer has concerns that a teacher may have engaged in serious misconduct, the employer should apply the procedures for managing employment concerns in clause 13 of the VCMEA 2018 (or the relevant provisions of any successor agreement).

See Appendix A – Flow chart: When to notify the VIT in a clause 13 process

7. Fitness to teach

'Fitness to teach', in relation to a person, is defined in the ETR Act (section 2.6.1) to mean, relevantly, whether the character, reputation and conduct of a person are such that the person should be allowed to teach in a school. 'Fitness', as defined for the purposes of the ETR Act, does not refer to physical or mental fitness, which is covered by 'impairment' (discussed at 8 below) (see *Hickey v Victorian Institute of Teaching (Review and Regulation)* [2017] VCAT 1622 at [48]).

Any behaviour found to be inappropriate for a teacher is relevant to the determination of whether a person is fit to be a teacher. The VIT states that a teacher's behaviour, whether in the practice of teaching or their private life, may demonstrate qualities of a kind that indicate the person is not fit to practise as a teacher.

The Victorian Civil and Administrative Tribunal (VCAT) has observed that a finding that a teacher is unfit to teach must carry with it a perception that the conduct complained of is of a continuing and persistent nature, which throws doubt on how the teacher would conduct themselves in the future in the classroom (see *Davidson v Victorian Institute of Teaching (Occupational and Business Regulation)* [2007] VCAT 920). In distinguishing 'unfitness' from 'serious misconduct', VCAT stated at [169]:

A teacher may commit a single act of serious misconduct, or a series of such acts, but those acts may be explicable in context and unlikely to recur. A determination that a teacher is unfit to teach appears to us to be a more severe penalty. It carries with it an assessment that that person should not be in a position of authority and trust with children, because his whole approach to teaching and to the children in his care is profoundly and irretrievably flawed. It would often involve consideration of criminal conduct.

The VIT's published disciplinary decisions under the category of 'Fitness to Teach' relate to findings of guilt and/or convictions for various offences, which may indicate that the person found guilty or convicted of such offences is not fit to teach, including:

- theft-related offences
- property damage offences
- assault
- indecent assault
- multiple breaches of intervention orders
- stalking
- drug trafficking, possession and cultivation
- making false documents
- making false statements
- dealing with the proceeds of crime
- blackmail
- use of a carriage service (the internet) to cause offence.

Where an employer becomes aware, for example, that a teacher is the subject of a criminal investigation or proceedings and the employer takes any disciplinary action, after application of the procedures in clause 13 of the VCMEA 2018 (or any successor agreement), against the teacher in response to substantiated allegations of unfitness to be a teacher (i.e. arising from a conviction for an indictable offence), the employer is required to notify the VIT.

See Appendix A – Flow chart: When to notify the VIT in a clause 13 process

Note: Where a matter involves a sexual offence committed against, with or in the presence of, a child, whether or not a criminal proceeding in relation to the offence has commenced or concluded, a report to the [Commission for Children and Young People \(CCYP\)](#) is required under the RCS. In such circumstances, the school should not commence (or should suspend) any investigation until the police completes an investigation or provides a clearance for the school to commence or continue its investigation.

8. Impairment

‘Impairment’, in relation to a person, is defined in the ETR Act (section 2.6.1) to mean the person has a physical or mental impairment, disability, condition or disorder, including substance abuse or dependence.

The type of impairment envisaged under this provision is impairment that seriously detrimentally affects a teacher’s ability to practise as a teacher (or is likely to do so). A serious detrimental effect could be one that seriously negatively impacts a teacher’s ability to teach competently and safely.

Depending on the circumstances and the nature of the condition, such impairments may be constituted by, for example:

- depression
- anger management
- alcohol or drug addiction
- mental illness.

Where an employer has concerns that a teacher may lack capacity due to an impairment that seriously detrimentally affects a teacher’s ability to practise as a teacher (or is likely to do so), the employer may apply the procedures for managing employment concerns in clause 13 of the VCMEA 2018 (or any successor agreement). Where, following application of the procedures in clause 13, the employer takes action regarding the matter by way of an outcome under clause 13.5, the school is required to notify the VIT.

See Appendix A – Flow chart: When to notify the VIT in a clause 13 process

9. What is the meaning of ‘action against’ a registered teacher?

Action against a registered teacher means action taken after allegations are substantiated and may include:

- formal warning or reprimand
- financial penalty (rare in the education sector)

- demotion or reduction in classification, including removal of a position of leadership
- suspension or termination of employment.

According to information published by the VIT, an employer is required to notify it of such action against a registered teacher after an investigation is completed, allegations have been substantiated and action has been determined (with the exception of where the teacher resigns mid-process – see below).

An employer is not required to notify the VIT regarding:

- unsubstantiated allegations which have yet to result in any action against a registered teacher
- any decision to stand down a registered teacher from their duties during an investigation and prior to its completion
- a decision that no further action is required, on completion of an investigation.

However, the VIT requires notification, in the interests of public protection, when:

- an employer is investigating allegations of serious incompetence, serious misconduct, lack of fitness to teach or an impairment that may seriously adversely affect the teacher's ability to teach
- the teacher leaves their employment before any action is taken.

An employer is not required to notify the VIT regarding informal outcomes, such as informal counselling.

See Appendix A – Flow chart: When to notify the VIT in a clause 13 process

10. Making a notification to the VIT

Employers seeking information may contact the VIT, including by calling the Principal hotline on **1300 650 375** (school number and password required).

The VIT has published requirements in relation to employer notifications, which are to be in writing and include the following:

- a description of the allegations substantiated against the teacher and the action taken by the employer (or, in cases where the teacher's employment ceased prior to taking any action, a description of the concerns)
- relevant documentation, which may contain:
 - complaints received about the registered teacher (including from staff, parents, students)
 - statements of complainants and the identity of witnesses
 - correspondence with the registered teacher concerning the allegations
 - any statements or responses received from the registered teacher (or their representative)
 - any relevant letter of resignation
 - investigation reports and materials
 - any other relevant information.

In relation to allegations of serious incompetence, the employer should also include:

- a description of the registered teacher's performance assessed against the Australian Professional Standards for Teachers
- the registered teacher's performance appraisals across the period of employment
- classroom observations
- the teacher's planning, assessment and evaluation documentation
- details of any performance management processes and support (including relevant professional development)
- details of any similar concerns or issues arising in the registered teacher's previous employment (where known).

Under subsection 2.6.31(2) of the ETR Act, the employer must also provide the VIT with any information it may **reasonably require** to conduct an inquiry.

11. The VIT's role in respect of the RCS

The *Child Wellbeing and Safety Act 2005* (CWS Act) established the RCS, which provides independent oversight into the responses of organisations, including schools, to allegations of child abuse and neglect. The CCYP is responsible for administering the RCS.

Under the RCS, it is mandatory for the 'head of entity' of a school to report to the CCYP any reportable allegation within three days of becoming aware of the allegation. A 'reportable allegation' is defined in section 3 of the CWS Act to mean any information that leads a person to form a reasonable belief that an employee has committed reportable conduct or misconduct that may involve reportable conduct, whether or not the conduct or misconduct is alleged to have occurred within the course of the person's employment.

'Reportable conduct' is defined to mean:

- a sexual offence committed against, with or in the presence of, a child, whether or not a criminal proceeding in relation to the offence has been commenced or concluded
- sexual misconduct committed against, with or in the presence of, a child
- physical violence committed against, with or in the presence of, a child
- any behaviour that causes significant emotional or psychological harm to a child
- significant neglect of a child.

Under the RCS, on becoming aware that a registered teacher is the subject of a reportable allegation, the CCYP is required to notify the VIT. The CCYP also notifies the VIT of the findings in relation to all reportable allegations. If the VIT considers it to be appropriate, it may conduct its own investigation into the reportable allegation in accordance with its powers under the ETR Act.

Employers should note that this does not impact an employer's obligation to notify the VIT, where appropriate.

On notification from the CCYP of a reportable allegation, the VIT may contact the relevant school for further written information to assist in determining whether the teacher poses an unacceptable risk of harm to children, and whether it is necessary to suspend the teacher on an interim basis to protect the children.

In practice, the VIT will generally request information regarding:

- what, if any, action the school has taken or is taking in respect of the allegation
- what, if any, action the school has taken to ensure the teacher does not pose an ongoing, unacceptable risk of harm to children
- details of the alleged incident
- copies of any reports in respect of the alleged incident
- the full name and date of birth of any children or other persons involved in the matter – along with contact details of the parents/guardians of the children
- details of any injury sustained or medical treatment provided to the children or other persons
- full names and contact details of any witnesses to the alleged incident
- whether or not the teacher has been the subject of any previous substantiated complaints in respect of their workplace conduct
- any other information which might indicate the teacher may be unfit or unsuitable to practise as a teacher.

12. Further information

| Websites | |
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| Commission for Children and Young People | https://ccyp.vic.gov.au |
| <i>Education and Training Reform Act 2006 (Vic.)</i> | www.legislation.vic.gov.au |
| Victorian Institute of Teaching | www.vit.vic.edu.au |

For any queries in relation to this guide, contact the Employee Relations Unit or your relevant diocesan office.

Appendix A – Flow chart: When to notify the VIT in a clause 13 process

Victorian Catholic Education Multi-Enterprise Agreement 2018 (VCEMEA 2018)

