

Suspension of registration or permission to teach

Information sheet

Purpose

There are circumstances in which the Queensland College of Teachers (QCT) will exercise legislative power to suspend a teacher's registration or permission to teach (approval to teach).

The purpose of this document is to provide relevant information to teachers about what they can expect in circumstances where their registration has been suspended.

Types of suspensions

Mandatory suspensions

Section 48

In circumstances where a person has been charged with a serious or disqualifying offence under the *Education (Queensland College of Teachers) Act 2005* (QCT Act), section 48 of the QCT Act mandates that a teacher's registration or permission to teach be suspended immediately.

Mutual Recognition

In circumstances where a person has obtained registration or permission to teach through the Mutual Recognition Scheme operating pursuant to the *Mutual Recognition Act 1992* (Cth) as adopted by the *Mutual Recognition Act 1992* (Qld) (MR Act), section 33 of the MR Act mandates that if a person's registration in an occupation in a State is suspended on disciplinary grounds or as a result of or in anticipation of criminal, civil or disciplinary proceedings, then the person's registration in the equivalent occupation in another State is affected in the same way.

Discretionary suspensions

Section 49

Where the QCT believes the teacher poses an unacceptable risk of harm to children, the QCT will apply the *Suspension of registration or permission to teach for unacceptable risk of harm policy* and may determine to suspend a teacher's approval to teach pursuant to section 49 of the QCT Act.

Section 160

In circumstances where a person has been subject to disciplinary proceedings that have been referred to the Queensland Civil and Administrative Tribunal (QCAT), QCAT may make an order suspending a teacher's approval to teach when determining the sanction for disciplinary proceedings.

Note: this information sheet does not apply to suspensions that may be effected pursuant to section 47 of the QCT Act.

How does the QCT receive information leading to a suspension?

The QCT receives information from various sources regarding teacher conduct including from:

- Queensland Police Service
- Interstate and Federal Police Services
- Employing Authorities

- Queensland Family and Child Commission (reportable conduct allegations)
- Blue Card Services (negative notices)
- Interstate and New Zealand teacher regulatory authorities
- Members of the public

Information that gives rise to a mandatory suspension or consideration of a discretionary suspension will be initially provided for the purpose of considering whether a ground for disciplinary action arises against the teacher. Where that information raises a reasonable belief that the teacher may pose an unacceptable risk of harm to children, protective suspension action is taken as a preventative measure to reduce the risk of harm to children.

A suspension is not determinative of any allegations. A teacher may be suspended but ultimately the grounds for disciplinary action may not be able to be established against them. The QCT's primary consideration is the welfare and best interests of children, and a protective suspension action is a critical response to assist the QCT to exercise its functions effectively.

Notice of suspension

The QCT will ensure that the teacher is notified of the suspension of their approval to teach by sending notification to the email address nominated by the teacher with the QCT for communications. A hard copy will also be sent via registered post.

A common issue arising when a teacher has only nominated an employer email as a contact address, is that if the person no longer has access to that email, for example when the person is stood down by their employer, they may experience a delay in receiving the notification of suspension. It is therefore recommended that teachers maintain a personal email address with QCT as well as a work email to ensure that notices can be received if an employment email becomes inaccessible for any reason.

Suspension takes effect immediately once the notice has been sent, not when the notice is received.

A notice of suspension will include:

- reasons for the decision (note: for section 48 suspensions the reason will be that a person is charged with a serious or disqualifying offence)
- a list of evidence and/or material upon which the decision was based
- a statement confirming that it is an offence to teach in a Queensland school once suspended.

For section 48 and 49 suspensions, the QCT is also required, pursuant to the provisions of the QCT Act, to notify the employing authority for, and the principal of, each school at which the teacher is employed and to notify QCAT.

What happens when registration is suspended

If a teacher's approval to teach is suspended, it is an offence against the QCT Act for the person to undertake the duties of a teacher. It is also an offence against the QCT Act for an employing authority to allow the person to teach where their approval to teach has been suspended.

It is a requirement under section 64 of the QCT Act that the teacher return their certificate of registration or permission to teach to the QCT within fourteen (14) days after receiving notice of the suspension, unless the teacher has a reasonable excuse.

The QCT will take all reasonable steps to effect a suspension outside classroom hours to limit disruption and reduce potential for distress, however, in circumstances where this cannot be avoided the QCT will also contact the principal of the school to enable them to take appropriate steps to have the teacher removed from the classroom and from the school premises.

Disciplinary proceedings can often involve delays both before and after a referral of a disciplinary matter to a practice and conduct body. This may be because the QCT is waiting for additional information such as the

finalisation of an investigation or criminal proceedings, before determining whether disciplinary action is to be taken. A person may therefore be suspended for a period of time while the QCT awaits material from the primary source of the notification.

The QCT is cognisant that suspension of an approval to teach may impact the livelihood of the teacher and the financial and reputational consequences that such a decision may have. Discretionary suspension decisions are not made without careful deliberation including an assessment of human rights impacts, however, the paramount consideration of the QCT is always the welfare and best interests of children.

There is no requirement for a teacher to maintain their approval to teach whilst suspended, however, a teacher who is suspended still holds registration or permission to teach with the QCT and remains liable for payment of the annual fee and renewal fees should they wish to maintain their approval to teach. Failure to pay the required fees while suspended may result in a teacher's approval to teach lapsing. A teacher who is suspended and has not paid their fees but seeks to be restored to the register of teachers, may experience difficulty meeting the eligibility requirement that they are suitable to teach.¹

Conduct that may warrant suspension for unacceptable risk of harm (section 49)

Teacher conduct that may be relevant for suspension for unacceptable risk of harm can range from the most serious conduct which has the potential to cause serious harm to a child, to conduct that may seem less serious, but is still likely to cause harm to a child.

Harm to a child is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing. Harm can be caused through a wide range of conduct, and the examples which follow are not exhaustive. For example, harm can be caused by:

- child sexual abuse or exploitation
- sexual misconduct committed in relation to, or in the presence of, a child
- ill treatment of a child
- significant neglect of a child
- physical violence committed in relation to or in the presence of a child
- behaviour that causes significant emotional or psychological harm to a child
- failure to uphold a duty of care to a child
- failure to address bullying, teasing or poor behaviour of other children.

It is not necessary to establish that harm has occurred, it is an assessment of the risk of likely harm occurring as a result of the teacher's conduct.

Harm can be caused by a single act or omission or circumstance, or a series of acts, omissions or circumstances. Importantly, harm could be cumulative, and information gathering will include current and all incidents of previous harm.

Harm may extend further than the child or children who may have been subject to the conduct of the teacher. Harm can extend to any child/ren who may have witnessed the conduct or be aware of the conduct, and child/ren who may be harmed in the future if the teacher was to continue teaching.

Assessment of harm and risk

The QCT will assess the quality and strength of evidence, including:

- how the allegation was communicated
- credibility of witnesses
- conflicting statements from material witnesses

¹ Refer to the QCT's Suitability to Teach Policy and Suitability to Teach Guidelines for more information.

- any exculpatory material available

The QCT may form a reasonable belief the teacher poses an unacceptable risk of harm to children by considering a range of facts and circumstances, including but not limited to:

- the evidence available to the QCT
- the impact or potential impact of the alleged behaviour of the teacher on the child or other children
- the potential for future harm
- the type, severity and circumstances of the alleged behaviour
- the recency, frequency and duration of the alleged behaviour
- the source of the allegations
- any historical allegations or substantiated inappropriate behaviour of the teacher
- whether the behaviour is reportable conduct.

The QCT will have regard to potential risk to children by considering:

- the harm or potential harm that would be caused by the alleged behaviour
- the significance of the potential harm on the child
- the likelihood the potential harm would continue
- the likelihood the potential behaviour would continue
- the vulnerability of the child or children, considering age, disability, medical conditions or social isolation
- actions taken to mitigate risk in line with the reportable conduct scheme
- any other relevant matters including possible escalation, dishonesty, concealment, or acceptance of responsibility, Queensland Police Service investigation, current employment and registration status, public perception and the length of time between the QCT's assessment and the alleged conduct.

The QCT will not have regard to:

- intention – it is irrelevant whether the teacher intended to cause harm. Harm may occur inadvertently due to the teacher's failure to appreciate social norms or interpersonal boundaries.
- practical implications – will not influence the QCT's decision to suspend a teacher's registration, these include considerations around employment, personal wellbeing, financial implications.

The decision to suspend a teacher for unacceptable risk of harm is made at a particular point in time, with the evidence and material available at that time. The suspension will be monitored and revisited throughout any ongoing investigation as new information becomes available to ensure that the suspension is still necessary.

Ending a suspension

Suspensions under the QCT Act

Section 48

In circumstances where the criminal proceeding for the serious or disqualifying offence results in a finding of guilt, or the person otherwise becomes an excluded person, the QCT must cancel the teacher's approval to teach, which ends the suspension attached to it.

However, where the criminal proceeding did not result in a finding of guilt of the serious or disqualifying offence, only QCAT can end the suspension. The matter must still be referred to QCAT to enable it to examine the circumstances of the charge/s to determine whether a ground for disciplinary action exists against the teacher.

Section 49

The QCT can only end a section 49 suspension in circumstances where the QCT authorised an investigation into the matters upon which the suspension was based, and the investigation found that the matters investigated do not

raise a ground for disciplinary action against the teacher **and** the QCT delegate is reasonably satisfied that there is no ground for disciplinary action against the teacher.

However, in circumstances where a teacher's approval to teach is suspended and either the Professional Capacity and Teacher Conduct Committee (PC&TCC) or QCAT find that a ground for disciplinary action exists against the teacher, only QCAT can end the suspension. QCAT has previously taken account of the period of time that the approval to teach has been suspended when determining the appropriate sanction for the disciplinary matter.

In circumstances where QCAT has ordered a suspension of a teacher's approval to teach, it will also set the date by which the suspension will end or any conditions to be fulfilled before the suspension can end.

Suspensions under the MR Act

The QCT may exercise discretion to end a suspension of an approval to teach where the suspension arises by operation of the MR Act. The QCT will apply the same principles of assessing harm and risk in relation to whether to exercise a discretion to end a suspension of a teacher where that suspension originated in another jurisdiction.

Registration lapsed

In circumstances where a suspended teacher does not pay their annual fee or renew their approval to teach, the approval to teach will lapse thereby also ending the suspension attached to it. If the person subsequently applies for restoration and that restoration is granted by the QCT, the status of the approval to teach immediately prior to lapsing will also be restored, including that a suspension will continue.

Review

Suspensions under the QCT Act

The suspension process contains an in-built review process when the matter is referred to QCAT for it to determine whether or not to continue the suspension.

Section 48

For mandatory suspensions resulting from serious or disqualifying offence charge/s, where a teacher considers that theirs is an exceptional case in which the best interests of children would not be harmed if the suspension was ended, they can make submissions to QCAT and provide evidence for consideration.

Section 49

If a teacher seeks to dispute the QCT's assessment of unacceptable risk of harm, the teacher may make submissions and provide evidence to QCAT to demonstrate why they do not pose an unacceptable risk of harm.

Decisions of the tribunal

The *Queensland Civil and Administrative Tribunal Act 2009* provides that a party to a proceeding may seek a review of a QCAT decision, this includes decisions to continue a suspension under section 48 and 49 of the QCT Act as well as decisions by QCAT to impose a suspension under section 160 of the QCT Act.

QCAT may hear applications for review where there has been a material change in circumstances from when the suspension was initially continued.

Suspensions under the MR Act

Teachers who have been suspended pursuant to the MR Act have a right of review to the Administrative Review Tribunal.