



Government of **Western Australia**
Department of **Education Services**

Review of the
Western Australian College of Teaching Act 2004

Report

June 2010

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Review of the *Western Australian College of Teaching Act 2004*
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Government of **Western Australia**
Department of **Education Services**

Dr Elizabeth Constable MLA
Minister for Education
19th Floor, Governor Stirling Tower
197 St Georges Terrace
PERTH WA 6000

Dear Minister

I am pleased to inform you that pursuant to the requirements of section 90(1) of the *Western Australian College of Teaching Act 2004*, a review of that Act has been completed in accord with the provisions of the section and the attached report prepared.

If you are satisfied with the report, it would be in order for it to be tabled in the Parliament in accordance with section 90(2) of the Act.

Yours sincerely

RICHARD STRICKLAND
CHIEF EXECUTIVE OFFICER

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1 Introduction

Section 90 of the *Western Australian College of Teaching Act 2004* ("the College Act") obliges the responsible Minister to review the Act and table a report of the review in the Parliament. Section 90 reads as follows:

Review of Act

(1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 4 years from its commencement, and in the course of that review the Minister is to consider and have regard to —

- (a) the effectiveness of the operations of the College;
- (b) the need for the continuation of the functions of the College; and
- (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.

(2) The Minister is to prepare a report based on the review made under subsection (1) and as soon as is practicable after the preparation of the report, cause it to be laid before each House of Parliament.

1.1 Terms of Reference

Pursuant to section 90(1) of the College Act, the Minister for Education, Dr Constable, established a review with the following terms of reference:

1. the effectiveness of the operations of the College;
2. the need for the continuation of the functions, powers and activities of the College including consideration of their appropriateness relative to Government policies and priorities;
3. the objects of the Act, in particular the question of recognising and promoting the profession;
4. the relationship of the College with the Minister, having regard to the Minister's accountability to Parliament;
5. the appropriateness of the organisation's governance arrangements, having regard to similar legislative registration schemes for teachers and other professions;
6. the scheme of registration and information required to operate the scheme, including the criminal record checking provisions of the Act, having regard to relevant provisions in other legislation;
7. disciplinary provisions and whether the State Administrative Tribunal (SAT) should have a role in relation to appeals from decisions of the College;
8. whether the College's resources are appropriate in light of its statutory functions;
9. the appropriateness of the designation given by the Act to the College; and
10. other matters that arise in the course of the Review that are relevant to the operation and effectiveness of the Act.

Most Acts passed in Western Australia since the 1980s make provision for a statutory review. The main difference among them is the specified length of time that

is to expire after the Act's commencement before the review is to be carried out, with five years of operation being typical.¹

The aim of this review has been to provide feedback to the Parliament on how the legislation has fared since it was passed: Is it having the desired effect and, if not, does it now need to be amended?

1.2 Elements of the Review

The main elements of the Review were:

- the publication of a discussion paper;
- an examination of the legislation of comparable bodies in Australasia;
- discussions with interested parties;
- establishment of the Review website;
- a call for submissions; and
- a survey of a stratified random sample of registered teachers.

1.3 Discussion Paper

A Discussion Paper providing information and inviting comments on the terms of reference for the review was produced in February 2009. Hardcopies of the Discussion Paper were distributed to interested parties. A softcopy was also made available through the Review website (see below).

1.4 Examination of the legislation of comparable bodies in Australasia

A comparative analysis of the legislation of comparable bodies in Australasia was undertaken and reflected in the Discussion Paper. Aspects of the comparative analysis are included in this report.

As well as the College Act, the following legislation was examined:

- *Institute of Teachers Act 2004* (NSW);
- *Education and Training Reform Act 2006* (Vic);
- *Education (Queensland College of Teachers) Act 2005* (Qld);
- *Teachers Registration and Standards Act 2004* (SA);
- *Teachers Registration Act 2000* (Tas);
- *Teachers Registration Board (Northern Territory) Act 2004* (NT); and
- *Education Standards Act 2001* (NZ).

Western Australian legislation for regulatory bodies for other professions was also considered.

¹ The College of Teaching Bill when introduced to Parliament provided for a review after 5 years. The Opposition proposed that this be amended to 3 years, and the compromise of 4 was accepted by both sides.

1.4 Discussions with interested parties

Discussions concerning the Review were held with a range of interested parties, including the Board of the College.

1.5 Establishment of the Review website

A website was established for the purposes of the Review and went live in early March 2009.²

1.6 Call for submissions

The review was advertised and a call for submissions was made through:

- public notices published in *The West Australian* on 13 March 2009 and the *Sunday Times* on 15 March 2009;
- notices published in the Department of Education's *School Matters* and *The Catholic Education Circular*;
- notices distributed to all member schools of the Association of Independent Schools of Western Australia (AISWA); and
- notices and a link posted on the College website.³

The deadline for submissions was 14 May 2009. A total of 34 submissions to the review were received (see Attachment A). Subject to advice that authors did not want their submissions publicly disclosed, all submissions were posted on the Review website and will remain posted until 31 December 2010.⁴

1.7 Survey of Teachers

A survey of teachers, conducted between March and May 2009, was undertaken by Patterson Research on behalf of the review. The survey involved analysis of the responses of a stratified random sample of 974 teachers and focused on respondents' views about the operation and effectiveness of the College. Results from the survey are contained in relevant sections of this report. The consultant's final report may be viewed at the Review website until 31 December 2010.

² http://www.des.wa.gov.au/Legislative_Review/WACOT_Act.html

³ <http://www.wacot.wa.edu.au>

⁴ http://www.des.wa.gov.au/Legislative_Review/WACOT_Act.html

2 A brief history of teacher registration in Western Australia

2.1 The 1970s

The State Parliament passed teacher registration legislation in the form of the *Teachers' Registration Act 1976* ("the 1976 Act"). Under that Act all teachers were to become registered by 1 February 1978 after which, under sections 19 and 20, subject to section 21, unregistered teachers – and their employers – would incur penalties of \$500.

Section 21 is noteworthy in that it enabled the Governor to suspend the operation of sections 19 and 20 (and thereby effectively the operation of the Act as a whole). It read as follows:

21. (1) The Governor may, if he considers it necessary or expedient in the public interest, by proclamation declare the operation of sections 19 and 20 to be suspended for such period as is specified in the proclamation and may, by subsequent proclamation, vary or revoke such a proclamation.

(2) Nothing in section 19 or 20 applies to or in relation to any act, matter or thing done during any period for which the operation of those sections is suspended pursuant to a proclamation made under this section.

Section 21 of the 1976 Act may be characterised as a "Henry VIII" clause, so named because that King is widely regarded as the epitome of executive autocracy. His *Statute of Proclamations* allowed the King to issue proclamations which had the force of an Act of Parliament.⁵

These days, a Henry VIII clause is conventionally defined as "*a clause in an Act of Parliament which enables the Act to be amended by subordinate or delegated legislation*".⁶ The use of such clauses is generally frowned upon as not consistent with the Westminster tradition and it is very unlikely that section 21 of the 1976 Act – or one similar to it - would have escaped the scrutiny of the Western Australian Parliament in 2004.

Section 21 of the 1976 Act was invoked in October 1977 and at the same time the government appointed a three-person committee chaired by Dr W D Neal (then Chairman of the WA Post-secondary Education Commission) to consider the legislation.

Dr Neal's committee made several recommendations, including that the Act should be repealed. It found that the Act's mechanism for detecting, and either assisting or

⁵ Scrutiny of Legislation Committee, *The Use of Henry VIII Clauses in Queensland Legislation*, January 1997, Government Printer, Brisbane, p.2.

⁶ Queensland Law Reform Commission, Report No. 39, "*Henry VIII Clauses*", Brisbane, 1990, p.1.

discharging, incompetent teachers was inadequate and that consideration needed to be given to assessing teacher competence. It also concluded, however, that the Act's object remained valid and worthwhile.

When the then Minister for Education, Hon P V Jones, introduced a Bill to repeal the 1976 Act in August 1978, he informed the Parliament that the Act was unworkable because of:

significant changes in educational administration since the Act was originally passed in 1976; unforeseen problems in relation to technical, part-time and preschool teachers; and an increasing awareness that many of the supposed objectives would not be fully satisfied within the legislation.⁷

Mr Jones said that he accepted the Neal Committee's conclusion that the initial objective was still valid and that "therefore we intend to wipe the slate clean and start again".⁸

The *Teachers' Registration Act Repeal Act 1978* was assented to on 26 September 1978. It repealed the 1976 Act and ensured that all registration fees that had been so far collected were refunded.

The "slate" was thus wiped clean. As to the commitment to "start again", nothing further happened for nearly 20 years.

2.2 Starting again – the 1990s

On 11 March 1998, during debate on the School Education Bill, the member for Churchlands, Dr Elizabeth Constable, foreshadowed her intention to introduce a major amendment related to teacher registration. She noted that while at least 145 professions or occupations required members to be registered, teaching was not one of them.

On 23 June 1998, Dr Constable moved her foreshadowed amendment, which required the insertion in the School Education Bill of a new Part 7A with 31 clauses plus a schedule. It was indeed "a major amendment" that was being proposed.

Dr Constable gave three main reasons for introducing it:

1. to ensure that only fit and proper persons are registered to teach children - the protection of children being uppermost in the notion of teacher registration;
2. to ensure quality of teacher education; and
3. to formulate and maintain professional standards for teachers.

⁷ Western Australia, *Parliamentary Debates*, Legislative Assembly, 3rd August, 1978 (P V Jones, Minister for Education).

⁸ Ibid.

The aim was “to protect children from untrained and poorly trained teachers and from those who might be considered undesirable or inappropriate, or just plain bad”.⁹

The provisions of the amendment were to apply to all schools, government and non-government. There was to be a statutory body known as the Teacher Registration Board of Western Australia that would establish and maintain a register of teachers open to inspection by the public. The Board of 11 persons would represent major stakeholders and be chaired by a legal practitioner, the latter being “extremely important, given the nature of the board and some of its activities”.¹⁰

The amendments allowed for provisional registration of persons without standard qualifications and, finally, a small secretariat was envisaged to administer the system of registration.

The then Labor Opposition’s education spokesman, Hon Eric Ripper, supported the amendments, emphasising the significance of registration to the status and morale of professions.

The then Minister for Education, Hon Colin Barnett, declined to accept the amendment. He stated:

I am not opposed to the notion of teacher registration. I raised it at a national forum where I did not receive a lot of support. However, I do not discount it. It is not appropriate to include it in this Bill, certainly not in this format.

... If we were to progress the matter, we would start by initially commissioning a discussion paper to explore the issue, without any commitment, as a precursor before any further development of teacher registration in this State was progressed.¹¹

In due course, Mr Barnett established the Teacher Registration Cross-sectoral Reference Committee to oversee the development of the mooted discussion paper. The committee first met on 27 November 1998 and concluded its deliberations in September 2000. During that time it prepared and published:

- Teacher Registration in Western Australia: An Issues Paper (March 1999)
- Teacher Registration in Western Australia: A Discussion Paper (June 1999)
- Western Australian Council of Teaching: A Position Paper (September 2000)

Respectively, these papers were written to: identify what issues would need to be addressed; prompt discussion and written submissions on these issues; and recommend a course of action to government.

⁹ Western Australia, *Parliamentary Debates*, Legislative Assembly, 23rd June 1998, 4466-4475 (Dr E Constable, Member for Churchlands).

¹⁰ Ibid.

¹¹ Western Australia, *Parliamentary Debates*, Legislative Assembly, 23rd June 1998, 4477 (C Barnett, Minister for Education).

The discussion paper was launched by the Minister at a forum on 24 August 1999 and around 20 000 copies were distributed to schools, parent organisations and universities. The existence and availability of the paper were notified to the general public through advertisements in *The West Australian* at the beginning and near the end of the consultation period (respectively, August 1999 and March 2000).

The committee reported (in its position paper) that its analysis of the 348 submissions received by May 2000 showed that moves to establish a non-industrial registration body would be widely supported provided its functions were not restricted to the administration of a minimal licensing requirement.

The position paper made two principal recommendations: firstly, that government announce its intention to establish by legislation a body known as the *Western Australian Council of Teaching*; and secondly, that a planning group be established to develop, and consult widely on, the details of the model to be implemented.

Meanwhile, between June and September 2000, the Labor Party in Opposition released *Teacher Registration and a College of Teaching* with an invitation to people to make comments which would “be taken into account in the development of Labor’s final policy”.

The education policy that Labor took to the 2001 election included commitments to:

- support and facilitate the establishment of a College of Teaching, which will be self funded, independent of the Education Department and operate, at least initially, as a secretariat;
- introduce teacher registration as a prerequisite for teaching in WA – teachers would have to be registered with the College of Teaching;
- have the majority of the College’s Board made up of qualified teachers elected by their peers;
- require registered teachers to successfully complete a minimum number of hours of professional development every five years; and
- ensure the College of Teaching monitors the effectiveness of the professional development requirement.¹²

2.3 The establishment of the College of Teaching

Following the election of the Gallop Labor government in February 2001, a project team was established to implement the election commitment. The two main tasks ahead were the preparation of drafting instructions for legislation to establish the College and the preparation of a business plan for the College’s operations.

¹² *Investing in our Teachers, investing in our future: Teacher Registration and a College of Teaching*, Printed and Authorised by A Carpenter. n.d.

Cabinet approved the drafting of legislation on 29 April 2002. An Interim Board was formed in July 2002 to guide the work of the project team and provide “stakeholder input”. The Interim Board was chaired by Mr Brian Lindberg and had as members ten teachers and nine representatives of stakeholder organisations, all appointed by the Minister.

The Bill to establish the College was introduced in the Legislative Assembly on 13 August 2003 and passed there on 18 September 2003 with two amendments. It went to the Legislative Council on 14 October 2003 and passed there on 13 May 2004 with 14 amendments, all of which were accepted by the Legislative Assembly on 1 June 2004. The most noteworthy of the Council’s amendments was the insertion at clause 35(c) of the Bill of a requirement for successful completion of a prescribed police criminal record check.

The Bill was given assent by the Governor on 10 June 2004 and the Act formally commenced on 15 September 2004.

Thus it was that 26 years after the 1976 Act was repealed – and the “slate wiped clean” – Western Australia “started again” to regulate the teaching profession.

In 1976 only two other Australian States had teacher registration: Queensland and South Australia. Now all States and Territories (except the Australian Capital Territory) have statutory bodies with functions similar to those of the College of Teaching. Aspects of the legislation in those other jurisdictions – and in New Zealand – were considered for comparative purposes during the course of this review.

Another piece of legislation of relevance to this review is Western Australia’s *Working with Children (Criminal Record Checking) Act 2004* (the “Working with Children Act”). The Bill for this was introduced to the Parliament on 13 August 2004, a little over two months after the passage of the College of Teaching Bill. The relevance of the Working with Children Act is that teachers are subject to its requirements in addition to the requirements of the College Act. The implications of this are discussed later in this report.

3 Term of Reference 1: the effectiveness of the operations of the College

For the purposes of this review and taking the Macquarie Dictionary definition of “effective”, the question to be considered under this term of reference is whether the operations of the College of Teaching have served to give effect to the purpose of the College Act, thereby producing the results intended by Parliament when the legislation was passed.

Generally speaking, there are likely to be two possible reasons for operational ineffectiveness: shortcomings in the design of the legislative scheme in the Act itself or shortcomings in the arrangements for the implementation of the Act's provisions.

Shortcomings in the design of the legislative scheme are taken up in subsequent parts of this report. In order to gauge the extent of any shortcomings in the implementation of the Act, a survey of teachers was commissioned. A summary of the findings of this survey follows. The full report of the findings of the survey is available at www.des.wa.gov.au.

The survey was conducted by means of a research program consisting of on-line and hard copy self-completion questionnaires. The survey questionnaire was developed by the consultant commissioned to undertake the work, with input from the reviewers. It was pilot tested by computer assisted telephone interview with 20 respondents chosen at random from the College's database. The survey had a target sample of 800, but achieved a final sample of 973 completed questionnaires. This response rate provides for a very reliable and robust assessment of teacher attitudes and opinions. The data reveal a significant level of dissatisfaction with the value for money and standard of services provided by the College. The results also provide some indication of areas in which teacher satisfaction could be improved with modifications to the services and focus of the College.

The remainder of this chapter is a lightly amended version of the executive summary of the report of the survey (Table numbers correspond to those used in the consultant's report).

3.1 Poor Value for Money and Level of Service Delivery

Three out of four respondents indicated that they “disagreed” with the statement that the College represents good value for money. 16% neither agreed nor disagreed with the proposition, and only 8% agree that the College membership represents value for money.

Only 12% indicated that they were satisfied with the services provided by the College overall, with about three in ten (29%) “neither satisfied nor dissatisfied”, and almost six out of ten (59%) indicating that they were dissatisfied with the services provided

by the College. Having noted that however, it appears that there is majority satisfaction with the processes by which the College seeks to deliver its services.

3.2 Assessment of College Efficiency

Two thirds of respondents indicated that they agreed that the College's management of Membership applications is efficient. (Just about one in seven or 15% disagreed with the residual in the "neither one nor the other" camp). A similar proportion (63%) believed that the College had been efficient in the Police Criminal Record check (one in ten disagreed) and the efficiency of the annual membership payment process was found to be efficient by almost seven out of ten (68%) of respondents. Only 15% disagreed that the annual membership fee payment was efficiently managed.

Six out of ten believed that the registration renewal was efficiently managed (12% disagreed with this assertion). One is left with the impression that while teachers are dissatisfied with the value for money and overall services provided by WACOT, the majority believe that the administration of membership renewal and fee payment is managed satisfactorily.

3.3 Assessment of the Performance of Key College Functions

Ratings¹³ of importance and satisfaction across a range of service areas in which the College is involved were analysed to produce a "hot list" of factors in which the level of satisfaction is very low, but the assessed importance of the factor is very high.

Table T4.3.1

	IMPORTANCE		PERFORMANCE		"HOT LIST" FACTORS
	NET IMPOR- TANT	MEAN SCORE	NET SATIS- FIED	MEAN SCORE	
	%		%		
Promote importance of teachers	87	4.3	13	2.2	16.3
Ensure education programmes provide knowledge & skills	82	4.1	21	2.6	13.9
Provide advice to Government on promotion and regulations	83	4.1	14	2.5	14.4
Ensure recognition of registration	78	4.1	13	2.8	13.1
Engage in public discussions	81	4.0	15	2.4	14.4
Undertake and distribute findings	75	3.8	16	2.5	13.3
Promote awareness of professional development	63	3.5	24	2.7	11.6
Promote the College standards	62	3.5	25	2.8	11.2
Arrange elections to vote for teacher representatives	55	3.5	27	3.0	10.5
Provide option to record professional development	46	3.2	23	2.8	10.2

¹³ The rating scales ranged from 1-5, with 5 being high.

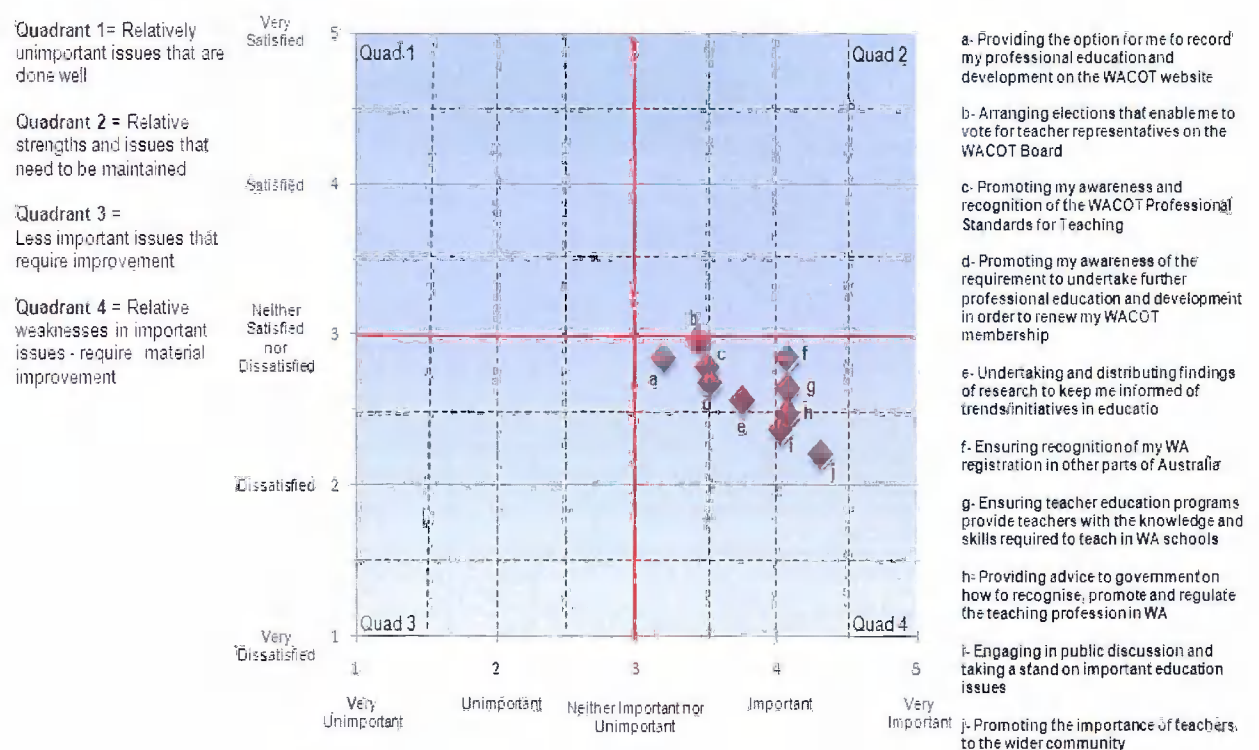
Table T4.3.1, which has been extracted from Section 4.3.1 of the report, shows the disparity between the perceived importance of various services that the College can or could provide and teacher satisfaction with the delivery of these services.

The functions rated most important are “promote the importance of teachers amongst the broader community”, and “providing advice to Government on promotion and regulations” (relating to education). The “promotion of the importance of teachers” was rated as a slightly more important aspect of the College’s functions than even ensuring teacher education programs provide adequate knowledge and skills for teachers.

A further point to note from the above is the very low satisfaction level for each of these functions. Indeed, the issue shown in the table above to be of greatest importance to teachers (promotion of importance to the community) only achieved a net satisfaction rating of 13%, and even the function which attracted the greatest level of satisfaction (“arranging elections to vote for teacher Representatives on WACOT”) only achieved a satisfaction rating of 27%.

The differences between the assessed importance of a factor and the College performance in that factor may be clearly seen in figure 4.3.2 below which has been extracted from section 4.3.2. Note that all factors are to be found in the lower right hand quadrant of the graph, designating high importance and low perceived performance.

Figure 4.3.2. Gap Analysis for WACOT's functions



The three items closest to the lower right hand corner of the graph relate to representing teachers either to the broader community (promoting the importance of teachers) or in dealings with Government or engaging in public discussion and “taking a stand” in support of teachers. These three “advocacy functions” form the three most important issues for the College to address.

The importance levels of these issues are rated slightly ahead of the need to ensure teacher education programs provide the requisite skills for teachers to meet the teaching requirements of the West Australian education system.

3.4 Adequacy of Professional Education and Development

One in four respondents disagreed with the proposition that their academic training has prepared them well for their first job. Indeed, one in four indicated that their education did not prepare them well for their current teaching job.

There appears to be an issue over the extent to which formal education and training prepares teachers for their tasks and this is reflected in the finding that only a third (35%) believe that newly graduated teachers are well prepared for the tasks (44% disagreed with this proposition). Almost all teachers (93%) believe that newly graduated teachers should be mentored in their first year and half (51%) believe that teacher education courses in Western Australia should be accredited by the College (one in five disagree).

The “returning teachers seminar” appears to be a successful innovation. Of respondents who reported it was applicable for them (371 respondents), only 15% were dissatisfied with the seminar and 30% were satisfied (the residual neither one nor the other).

Three out of four respondents believe that it is important that the College provides professional education and development for teachers (13% rate this as unimportant).

3.5 The Working with Children Check

Almost two thirds (63%) report that they have a Working with Children Check Card and eight out of ten of those who do not yet have the card are aware that all teachers are required to gain a Working with Children Check Card.

About two thirds of the Government sector teachers who had secured a Working with Children Check Card reported that their employer had reimbursed them, though about a third indicated that they would not be reimbursed (or believe they will not be reimbursed). Interestingly, the situation is reversed amongst Catholic School and Independent School respondents with about six out of ten respondents in each sector reporting that their employer had not (and they believe would not) reimburse them for the cost of their Working With Children Check Card.

3.6 Representation on the College Board

Almost nine out of ten respondents believe it is important that the Department of Education and elected teachers are represented on the College Board. Eight out of ten believe that the Independent Education Union and the State School Teachers' Union should be represented on the Board, as should the Catholic Education Commission and the universities. Seven out of ten believe that the WA Council of State Schools Organisations should be included and six out of ten believe that Parents and Friends' Federation should be included on the Board.

It appears that respondents believe it is more important for teachers to be included on the Board than are school principals.

3.7 The College Website

Only half the sample reported that they have accessed the College website. Amongst those who have seen the website, about half report that they are satisfied with aspects of it and only about one in ten reported dissatisfaction (the residual in neither camp).

In comparison, almost eight out of ten (77%) report that they regularly receive a copy of the College Bulletin and whilst the level of satisfaction with the bulletin was in the main similar to that expressed for the website, a larger proportion of one in five indicated that they were dissatisfied with the information provided in the bulletin, which was the higher "dissatisfied" assessment of either communication medium.

3.8 General Comments / Overview of the College

At the close of the survey questionnaire respondents were offered the opportunity to provide some general comment or overview of what the College could do to better meet teachers' needs. Respondents used this opportunity to be critical of the College's value for money and "usefulness". There were, however, also some comments relating to the College needing to do more for teachers in professional development, providing information about "what the College does", and comments to the effect that the College should "do more for teachers generally", "provide better value for money" or "disband altogether".

There seems to be a sense of frustration that the College appears (from the teachers' perspective) to be a body with little apparent purpose that is not already met. There is a sense that it is an unnecessary level of the education bureaucracy. For example, 13% commented that there is "no benefit in being a Member / no value for money" in the College Membership. There were also specific comments to the effect that the College should be disbanded (E.g. "get rid of WACOT"), or that "WACOT is simply not relevant".

There was a wide range of comments to the effect of questioning the relevance or need for the College, with very few comments to the effect that the College makes a positive contribution to the teaching profession (for further details see Sections 4.8.3,

and 4.8.4, and the actual verbatim comments as provided by teachers in Appendix C of the full report of the survey).

3.9 Younger Vs Older Teacher Attitudes

The survey analysed teacher attitudes by age group, splitting the sample of respondents into age groups of 18 to 39 years and 40 years and over. This analysis showed broadly little difference in attitudes between the younger and older members of the profession, though it is noted that:

- Older teachers are slightly more likely than their younger counterparts to agree that the College is efficient in its Membership applications (68% compared to 63% for their 18 to 39 counterparts).
- Older teachers may be slightly more likely to agree that the College is efficient in their Police Criminal Record check (64% compared to 61%).
- Older teachers also may be slightly more likely to agree that the College was efficient in its management of the registration renewal (62% compared to 58%).
- Older teachers were more likely than their younger counterparts to agree that their academic training prepared them well for their first teaching job (74% compared to 61%).
- Three out of four teachers with eleven or more years experience agreed that their academic training had prepared them well for their first teaching job compared to slightly over half (55% to 58%) of teachers with up to ten years experience. They were also more likely to be of the view that the academic training that they had received had prepared them well for their current teaching job (61% of those aged 40 years and over compared to 53% of those aged up to 39 years).
- Older teachers may be slightly less likely than their younger counterparts to agree that newly graduated teachers are well prepared, but it is interesting that the difference is so small. Only 37% of teachers up to 39 years and 34% of teachers aged 40 and over agree that newly graduated teachers are well prepared. Moreover, 91% of younger teachers and 95% of older teachers believe that new teachers should be mentored in their first year of teaching.
- Not surprisingly, older teachers were more likely to have been a Mentor to a younger teacher than were teachers in the 18 – 39 category, but they were slightly less likely to believe it was important that teacher education courses be accredited by the College (54% of 18-39 year olds compared to 49% of teachers 40+ year olds were of this view).
- Younger teachers were more likely to believe that it was important that professional development and education be provided by the College (72% of those aged 40 plus compared to 80% of those aged 18 to 39 believed it was important that the College provided professional education and development).
- Overall, there was very little difference between the younger and older age groups on the issue of whether or not the College membership represented value for money. Just 6% of teachers aged up to 39 years and 9% of teachers aged 40 years and older agreed that the College membership

represented value for money (respectively 78% and 73% disagreed on this measure).

3.10 Submissions

Submissions, too, were critical of the College's performance of at least some of its functions in its beginning years. Some critics were particularly trenchant.

In summary, WACOT has been a disincentive for new members of the teaching profession, has been a burden to existing members and a nuisance financially, and has created considerable extra administrative work for the school. No discernible advantage has been gained by having WACOT in existence. The most effective professional associations for secondary teachers are the subject associations. (John Allen-Williams, submission 10)

While the establishment of WACOT was promoted as an organisation run by teachers, for teachers and safeguarding the interests of teachers, the experience of many teachers is to the contrary. (Independent Education Union WA, submission 19; see also Jacqueline Wright, submission 13)

The Registration processes of the College have been, in short, a nightmare. Delays in processing information, paperwork that has been lost, the confusion of responsibilities between employing authorities and WACOT, the duplication of processes, the different advice given by different employees at WACOT and the lack of clarity about what WACOT does have led to total disenchantment and misunderstanding about the purpose of registration. (Professional Teaching Council of WA, submission 11)

Despite such views, most submissions supported the continuation of the College in some form. The Independent Education Union WA, quoted above, recognised that "the fact of registration to teach itself raises the status of the profession" and voiced its support for the regulatory functions of the College.

The State School Teachers' Union of WA (submission 30) was understanding of the teething problems experienced by the College in its start-up period, problems acknowledged by the College itself (submission 28).

4 Term of Reference 2: the need for the continuation of the functions, powers and activities of the College including consideration of their appropriateness relative to Government policies and priorities

4.1 Overview of Functions of the College

Section 90(1)(b) of the College Act's review provisions specifically requires consideration of "the need for the continuation of the functions of the College". The College's 10 functions are at section 16 of the Act:

16. Functions

The functions of the College are:

- (a) to enhance the status of the teaching profession by facilitating the professional growth and development of teachers throughout their careers;
- (b) to establish and promote professional standards and values relating to teaching in schools;
- (c) to provide and foster professional leadership within the teaching profession;
- (d) to identify areas of priority for research in relation to teaching and education in schools and the education of teachers and, where appropriate, to promote, subsidise or conduct such research;
- (e) to confer and collaborate with persons who employ or engage teachers, teacher education institutions, the teaching profession, teacher organisations and the general community in relation to standards of courses of teacher education acceptable for the purpose of teacher registration and to provide advice on this to the Minister;
- (f) to promote and encourage —
 - (i) the continuing education of teachers in the practice of teaching; and
 - (ii) increased levels of skill, knowledge and competence in the practice of teaching;
- (g) to encourage and facilitate diversity, flexibility and responsiveness in the education of teachers;
- (h) to advise the Minister on matters to which this Act relates;
- (i) to administer the scheme of registration under Part 4; and
- (j) to perform —
 - (i) the disciplinary and other functions that are conferred on the College by this Act; and
 - (ii) any functions conferred on the College by any other Act.

In essence, these functions form a list of the work Parliament expected the College to undertake in pursuit of the Act's objectives. Given the degree of independence of the Board it is important that there is clarity in the specification of the functions and as clear an indication as possible of which functions, if any, are more important than others.

As indicated in the review's discussion paper, the Act's list of functions might be read as having an implicit order of importance, with the function at section 16(a) being most important and that at section 16(j) least important.

The two functions which are the *raison d'être* of the Act – the registration and disciplinary functions – are listed last rather than first. Without these functions there would have been no case for the introduction of the Bill in the first place.

As far as the drafting of law is concerned, the above list of functions is not an explicit expression of priorities. To consider whether it has been interpreted by the Board otherwise, reference was made to the College's strategic plan, which was taken to be the Board's translation of the Act's functions into a plan of action. The published plan¹⁴ sets out the College's objectives, key objectives and current-year performance indicators under the following five aspirational goals or expected outcomes:

- The status of teaching is enhanced through the promotion of professional standards and a code of ethics for teaching in Western Australia
- The status of the profession is enhanced through continued professional learning.
- Research is used to build on professional knowledge, enhancing teaching practice and strengthening professional commitment
- The College of Teaching is an organisation that contributes to the high status of the profession
- The status of the profession is enhanced through a system of self-regulation.

The evident emphasis on enhancing the status of teaching and the profession in this list is indicative of it being a high priority for the Board. The reference to "self-regulation" is puzzling, given the term normally refers to a system of regulation exercised independently of governmental supervision, laws, or the like. In fact, the Board's responsibility is to manage a system of statutory regulation enshrined in legislation by the Parliament for the public benefit; the antithesis of self-regulation.

An indication of what the Government of the day saw as the priorities was given in the second reading speech when the Bill was introduced in the Legislative Assembly.

The main emphasis in the Western Australian College of Teaching Bill 2003 is on its advocacy role on behalf of all teachers and the teaching profession. The existence of the college will raise community awareness of the important role teachers play in building an educated and skilled nation. There is an Australia-wide movement to raise the status of the teaching profession by setting quality standards in teaching, requiring the ongoing professional development of teachers and regulating entry into the profession.¹⁵

The findings of the review's survey show that teachers are of the opinion that the College has been, at least to date, singularly unsuccessful in realising these ambitions.

¹⁴ <http://www.wacot.wa.edu.au/index.php?section=104>

¹⁵ Western Australia, *Parliamentary Debates*, Legislative Assembly, 13th August 2003, 9858 (A. Carpenter, Minister for Education)

In its submission to this review, the College argued that, despite the second reading speech, advocacy is not in fact a College function. The word itself does not appear in the Act. On the other hand, it acknowledged promotion of the profession of teaching as its responsibility and argued that this is achieved by regulation.

[Regulation] assures the public that those who teach are fit and proper persons to do so, are appropriately skilled and have a body of knowledge specific to the profession. When the qualifications and work of teachers are widely known and acknowledged, the status of teachers improves. (WACOT, submission 28)

Others agreed that the core function of the College is registration of teachers (Professor Jennifer Nicol, submission 5; Anthony Acciano, submission 7; John Calvin Schools, submission 17; WA Council of State School Organisations, submission 20; Deans and Heads of Schools of Education, submission 33).

... 5 years of experience tells us that the dominant feature of WACOT is its regulatory function, and this is the function which teachers know and understand, and expect to be carried out efficiently and effectively. ... The IEU believes that the regulatory functions of registration to teach should be pre-eminent in the functions of WACOT. (Independent Education Union WA, submission 19)

As to the clarity and explicitness of functions, the drafting in sections 230 – 232 of the *Education (Queensland College of Teachers) Act 2005* is impressive and its functions are listed here in their entirety for the purpose of comparisons with the WA College's functions.

230 College's functions about registration and permission to teach

The college has the following functions about registration of, and permission to teach for, teachers in Queensland—

- (a) to be responsible to the Minister for granting registration or permission to teach to persons under this Act;
- (b) deciding how a person must satisfy initial and ongoing eligibility requirements for registration and permission to teach;
- (c) deciding applications for registration or permission to teach and applications for renewal of registration or permission to teach;
- (d) ensuring approved teachers continue to meet the eligibility requirements mentioned in paragraph (b), including, for example, monitoring the compliance of approved teachers with conditions of registration or permission to teach;
- (e) arranging checks of the criminal history of approved teachers and applicants for registration or permission to teach;
- (f) reviewing registration of teachers, and the granting of permission to teach to teachers;
- (g) reporting, and making recommendations, to the Minister about the matters mentioned in paragraph (f);
- (h) approving and monitoring preservice teacher education programs for provisional registration;
- (i) developing and applying professional standards for entry to, and continuing membership of, the teaching profession;
- (j) keeping a register of, and records relating to, approved teachers.

231 College's discipline and enforcement functions

The college has the following functions about disciplining approved teachers and former approved teachers and enforcing this Act—

- (a) monitoring compliance with this Act and prosecuting persons who fail to comply with it;
- (b) receiving and assessing complaints;
- (c) conducting investigations, in relation to a complaint or on the college's own initiative, about—
 - (i) the professional conduct or competence of an approved teacher or former approved teacher; or
 - (ii) a contravention of this Act;
- (d) referring disciplinary matters to a disciplinary committee;
- (e) giving effect to and monitoring compliance with disciplinary orders;
- (f) developing and applying codes of practice about the professional conduct or practice of approved teachers.

232 College's other functions

The college's functions also include the following—

- (a) undertaking or supporting reviews and research relevant to the regulation of the teaching profession, including reviews and research commissioned and funded by the Minister;
- (b) collecting data about approved teachers, and providing the data to other persons, as required or permitted under this Act;
- (c) promoting the teaching profession to the public;
- (d) advising relevant entities in Queensland and interstate regulatory authorities about the operation of this Act, as required or permitted under this Act;
- (e) informing approved teachers and the public about the operation of this Act;
- (f) reviewing the operation of this Act and reporting to the Minister about its operation;
- (g) performing other functions conferred on the college under this or another Act.

The handling of functions in the Queensland Act has a number of appealing features.

Firstly, they are grouped and ordered in a manner that reflects the *raison d'être* of any Act to regulate any profession: registration, discipline and enforcement of standards.

Secondly, as a statement of expectations the functions are explicit and should leave little doubt in the minds of Board members, even inexperienced Board members. This, as Uhrig¹⁶ points out, is an important consideration in establishing a statutory authority with a considerable degree of independence from the Minister (the degree of the Queensland College's independence from its Minister is codified at functions 230(a), 230(g) 232(a) and 232(f)).

Thirdly, section 233, which is to be read in conjunction with the functions, serves to remove doubt as to what is to be the primary consideration of the Board in performing its functions:

233 Primary considerations of college in performing its functions

In performing its functions under this Act, the welfare and best interests of children are to be the primary considerations of the college.

¹⁶ Uhrig, J., *Review of the Corporate Governance of Statutory Authorities and Office Holders*, Commonwealth of Australia, Canberra, June 2003.

In reviewing the College's functions there were two basic questions: Should the function be retained? If yes, could it be better formulated? The College submitted that "the manner in which the functions are described in the Act is confusing and it would be beneficial to rewrite and reorder the functions" (submission 28). There was no consensus among submissions generally on the ideal scope of College functions beyond that of registration (supported by discipline powers) although there was considerable opposition to the involvement of the College in providing professional development (Anthony Acciano, submission 7; John Allen-Williams, submission 10; Learning Conversations, submission 12; Jacqueline Wright, submission 13; John Calvin Schools, submission 17; Independent Education Union WA, submission 19; Catholic Education Office of WA, submission 24).

4.2 The College's Registration, Disciplinary and Related Functions

The College's registration and disciplinary functions at sections 16(i) and 16(j)(i) obviously need to be retained in some form. Both require an Act of Parliament for their operation, primarily because they are linked to offence provisions. While each is elaborated extensively in subsequent sections of Act - the registration function in sections 30–48 and the disciplinary function in sections 60–80 – it would nevertheless be useful to amplify them in section 16 in a manner similar to sections 230 and 231 of the Queensland Act.

The kernels of the functions at sections 16(b) and 16(f), which relate directly to sections 16 (i) and (j), should be retained and grouped with the other registration functions.

Section 16(b), which is "to establish and promote professional standards and values relating to teaching in schools", should be reformulated to closely resemble section 230(i) in the Queensland Act. It is axiomatic that College decisions made in relation to who may be registered or given permission to teach and its determinations of "unprofessional conduct" must be based on standards. Consideration should be given to including in the College Act an elaboration of the function similar to that at section 235 of the Queensland Act. Consideration should also be given to the extent to which the College's standards are different from those adopted by employers in Western Australia for their selection and performance management processes and from those adopted by registration bodies in other States and Territories. A proliferation of different standards among various bodies has nothing to recommend it.

The function at section 16(f) relates to the College's power elsewhere in the Act to set requirements for ongoing professional development. Under section 41(3)(c) renewal of registration or provisional registration is conditional on the person meeting "any prescribed further professional education or development requirements". Under section 56(1)(ii) membership of the College may be cancelled if the person has not complied with these requirements. The function at section 16(f) should be reformulated to reflect the consequences of non compliance with those sections. A

formulation similar to that at sections 230(b) and (d) of the Queensland Act should be considered.

4.3 Functions Related to the Adequacy of Teachers' Qualifications

The function at section 16(e) is “to confer and collaborate with persons who employ or engage teachers, teacher education institutions, the teaching profession, teacher organisations and the general community in relation to standards of courses of teacher education acceptable for the purpose of teacher registration and to provide advice on this to the Minister”. A related function is at section 16(g) which provides for the College “to encourage and facilitate diversity, flexibility and responsiveness in the education of teachers”. Both have some bearing – albeit vague and indeterminate – on the basic regulatory function in as much as elsewhere in the Act (sections 33 and 35) it is specified that the first requirement for provisional and full registration is that the applicant “holds a qualification in teaching approved by the College for registration”.

The two activities at section 16(e) – “confer, collaborate and advise”- and 16(g) – “encourage and facilitate” - clearly contemplate the College exercising some role in the preparation of teachers by Western Australian institutions. But, what exactly is this role?

Section 16(e) provides for the College to give advice to the Minister on acceptable standards for teacher education courses. The question is: What is the Minister to do with such advice? Most teacher education is carried out by universities and their self-accreditation of courses and issuance of qualifications is authorised under their own Acts of establishment. They are not subject to direction from the Minister.¹⁷ A small amount of teacher education is conducted by authorised non self-accrediting institutions (NSAIs). In Western Australia these have to be authorised – and their courses accredited – by the Minister under the *Higher Education Act 2004*. Advice provided by the College under section 16(e) could be heeded by the Minister provided it were available when applications for authorisation and accreditation are being considered. To date there has been only one non-university provider based in Western Australia authorised to deliver teacher education – Montessori Education International. The authorisation and course accreditation were granted by the Minister on the recommendation of a panel that included the then Director of the College of Teaching. Subsequently, the Board of the College declined to “accredit” the course already accredited by the Minister and requested that additional elements be included before the College would be prepared to approve the qualification.

Sections 33 and 35 both confer discretion on the College: the discretion either to approve – or not approve - a qualification held by an applicant for registration. Generally speaking, this scheme would not be expected to extend beyond ensuring that the qualification is genuine (not a fake) and is from a reputable institution. A

¹⁷ Put bluntly, a university is under no obligation to heed advice from a State Minister on courses and qualifications.

qualification issued by an Australian university or an Australian institution authorised under an Act equivalent to WA's Higher Education Act would be regarded as a "reputable institution" for this purpose. For overseas qualifications, advice would need to be taken from, for example, the National Office of Overseas Skills Recognition (NOOSR). In Australasia some approvals are automatic through the operation of mutual recognition legislation.¹⁸

The legislation governing registration of other professions in Western Australia, including that for psychologists, physiotherapists and nurses and midwives, prescribe the qualifications for registration in regulations (see for example, Regulation 5 of the *Psychologists Regulations 2007*). Consideration should be given to adopting this approach in any future revision of the College of Teaching legislation.

As alluded to above, the College Board has interpreted its Act as giving the College a power to *accredit programs* as distinct from *approving qualifications*. The College has a "Preservice Accreditation Committee"¹⁹ whose stated purposes are to ensure:

that preservice teacher education programs enable graduates to meet the Western Australian Professional Standards for Teaching. Its roles are to:

- make recommendations to the Board on the approval of preservice teacher education programs;
- confer and collaborate with stakeholders on accreditation policies and procedures;
- work in partnership with tertiary institutions in establishing an accreditation framework;
- ensure linkage between the accreditation framework and the College's professional learning framework;
- consider consistency between the accreditation framework and the Australasian Forum of Teacher Registration and Accredited Authorities Framework for the National Recognition of Approved Preservice Teacher Education Programs;
- develop policy advice on the approval of teacher education programs; and
- ensure consistency and reliability in the process for the approval of preservice teacher education programs.

Submissions were critical of both the College's role in accrediting teaching qualifications and of its approach to this function. The Department of Education

¹⁸ See, for example, Section 17(1) of the *Mutual Recognition (Western Australia) Act 2001*:

17 Entitlement to carry on occupation

(1) The mutual recognition principle is that, subject to this Part, a person who is registered in the first State for an occupation is, by this Act, entitled after notifying the local registration authority of the second State for the equivalent occupation:

- (a) to be registered in the second State for the equivalent occupation; and
- (b) pending such registration, to carry on the equivalent occupation in the second State.

Also relevant is the *Trans-Tasman Mutual Recognition (Western Australia) Act 2007* which enables mutual recognition of teachers registered with the Western Australian College of Teaching and the New Zealand Teachers Council.

¹⁹ <http://www.wacot.wa.edu.au/index.php?section=18#7>

(submission 26) pointed out that universities in WA are self-accrediting and have authority to award qualifications. The accreditation role of the College is therefore duplication. On the other hand, the Deans and Heads of Schools of Education pointed out that a national teacher education accreditation mechanism is being developed which will relieve the College of this responsibility (submission 33).

The review has concluded that the stated roles of this committee are not sustained by the provisions of the Act. To sustain them the Act would need provisions similar to those at sections 230(h) and 236 ("Approval of preservice teacher education programs") of the Queensland legislation, which clearly provide for approval of programs. The Victorian and New South Wales Acts have similar provisions to Queensland's. Whether such provision should be included in the WA legislation and in what form are questions that should await the outcome of national discussions among Ministers regarding the adoption (or otherwise) of a national framework for the recognition of teacher education programs and what role State and Territory teacher registration bodies would play in the implementation of such a framework.

Regardless of the outcome of these considerations, the functions at sections 16(e) and (g) of the WA legislation should be repealed and replaced by a new provision – or provisions – which is quite explicit in intent as regards approval of qualifications and accreditation of programs leading to the issuance of qualifications.

4.4 The Research Function

The function at section 16(d) is "to identify areas of priority for research in relation to teaching and education in schools and the education of teachers and, where appropriate, to promote, subsidise or conduct such research". Research is not included as a function in the South Australian and New South Wales Acts. Where research is included as a function, there are differences in the general nature and permissible focus of the research contemplated. In Victoria the function is "to undertake and promote research about teaching and learning practices". In Queensland it is "undertaking or supporting reviews and research relevant to the regulation of the teaching profession, including reviews and research commissioned and funded by the Minister". In Tasmania it is simply "to undertake relevant reviews and research projects" and in the Northern Territory it is "to research and promote best practice in teaching in the Territory". In New Zealand it is "to identify research priorities and, where appropriate, to promote and sponsor research according to those priorities".

As a summary statement across jurisdictions, "research" can variously mean conducting it, supporting it, promoting it, sponsoring it, subsidising it and identifying priorities for it. As to the contemplated focus, the Tasmanian and New Zealand Acts are open-ended, whereas the Victorian, Northern Territory, Queensland and Western Australian Acts contain some specification. This ranges from "best practice in teaching" (NT), "teaching and learning practices" (Vic), "regulation of the teaching profession" (Qld) and "teaching and education in schools and the education of teachers" (WA), the latter being the broadest of all.

The WA College's research function also needs to be read in conjunction with the College's powers at section 17 – in particular section 17(3)(b) - which says in effect that for the purpose of performing *any* of its functions the College may “conduct research and produce and publish information”. This power, read in conjunction with the College's functions, considerably expands the College's potential research activities. None of the other relevant Acts includes “research” as one of the registration body's powers (as distinct from functions).

If research is retained as a function it needs to be reformulated to give the activity a clear focus. The Queensland formulation at section 232(a), where research is to be directed to regulation (the body's “core business”), including research commissioned and funded by the Minister, is favoured for this purpose.

On the question of possible research commissioned by the Minister, it is noted that the College holds the only comprehensive data base on the teaching work force in Western Australia. This is an exceptionally valuable source of information for research on the future supply of and demand for teachers.

4.5 Advising the Minister

The function at section 16(h) is “to advise the Minister on matters to which this Act relates”. This is an open-ended statement that mirrors an earlier section of the Act – section 14 – which provides that the Minister may give advice to the College. In effect, the Act contemplates two-way provision of advice between the College and the Minister with neither party bound to accept the advice of the other.

It is concluded elsewhere in this report that the Minister needs to be connected more closely and explicitly to the deliberations of the Board. Rather than the generality of section 16(h) as it stands, specific reference should be made to the Minister in some of the functions.

For example, the College's standards could either be “recommended” to the Minister or “endorsed” by the Minister. The College's policies on the ongoing requirements for registration and limited authority to teach could also be subject to “endorsement” by the Minister. Provision similar to those at sections 230(f) and (g) of the Queensland Act could also be included in the WA legislation.

4.6 Promotion of the Profession

The function at section 16(c) is “to provide and foster professional leadership within the teaching profession”. There are two main issues with this. Firstly, there is uncertainty as to how the architects of the Bill envisaged the “fostering” was going to be achieved through the means at the College's disposal. The second issue is that the results of the review's survey indicate that teachers seem not to rate this function any higher than ‘somewhat important’ and, in any case, their net satisfaction rating of the College's performance of the function is a low 25%.

To some extent at least, the intent of the function at section 16(c) can be served through the College's ability to set standards and to specify requirements for ongoing professional development. As such, this function – if it is to be retained – should be reformulated with greater specificity and incorporated in the standards-setting and ongoing professional development functions.

The function at section 16(a) is expressed as a cause-effect relationship. The cause (facilitating the professional growth and development of teachers throughout their careers) is to give rise to the effect of enhancing the status of the teaching profession.

It is evident from the College's Strategic Plan that the Board regards enhancing the status of the profession as a (or perhaps the) primary goal. Whether this goal can realistically be achieved through "facilitating the professional growth and development of teachers throughout their careers" is moot. There are many other factors at play in the determination of status.

It is argued elsewhere in this report that the overriding objective governments and parliaments have in establishing bodies to regulate professions is the protection of the public interest and, in the case of teacher registration bodies, the protection of the interests of children. Bodies that do this well and earn the respect of teachers and the general public through good open communication may well enhance the status of the profession.

The findings of the review's survey show that 87% of teachers rate promoting the importance of teachers amongst the broader community as either important or very important. At the same time, the satisfaction rating for the College's achievement of this is 13%.

Broadly speaking, two conclusions may be drawn. The first is that the College should abandon its status-raising objectives and leave them to others to pursue and the second is that the College needs to reassess its strategies and redouble its efforts.

A frank assessment of the findings of the review's survey suggests that by far the biggest 'status problem' faced by the College is its own status with teachers, which emerges over and over in teachers' comments as being exceptionally low.

At the outset the College promoted itself as an advocate for the profession. Teachers expected the College to take a stand on issues and now feel that it has let them down on important issues such as the introduction of so-called outcomes based education (OBE) and matters related to salary and conditions. The College itself

feels that (a) industrial matters are out of bounds²⁰ – the College is a compulsory registration body, not a union – and (b), because there is no unanimity among members on issues like OBE it cannot speak on behalf of all members and therefore should remain essentially silent.

It is clear that the College needs to reassess its communication strategy.

4.7 The Powers of the College

The powers of the College are set out in section 17 of the Act:

17 Powers

- (1) The College may do all things that are necessary or convenient to be done for, or in connection with, its functions.
- (2) The College may not acquire, hold or dispose of real property other than premises used, or to be used, by it as office premises.
- (3) Without limiting subsection (1), the College may, for the purpose of performing a function:
 - (a) conduct courses for the professional education and development of teachers;
 - (b) conduct research and produce and publish information; and
 - (c) develop and turn to account any technology, software or other intellectual property that relates to the function, and, for that purpose, apply for, hold, exploit and dispose of any patent, patent rights, copyright or similar rights.

Section 17(1) is a standard provision in the legislation of statutory bodies such as the College and does not give the Board a power to “do as it likes”. It is, generally speaking, a power that would only be invoked in exceptional circumstances and after advice were taken.

Sub-sections 17(2) and 17(3)(b) and (c) are typically included in the powers of statutory bodies generally, although section 17(3)(b) may need to be reassessed in light of this report’s commentary on research above.

The power at 17(3)(a) is worthy of closer consideration to the extent that it creates the possibility of conflict of interest. This is because renewal of registration is conditional upon the meeting of ongoing professional development requirements prescribed under section 41(3)(c) of the Act. As things stand, the College is in a position not only to set the requirements, but also then to conduct the courses – perhaps on a commercial basis – that enable teachers to satisfy the requirements.

That said, the survey found that three out of four respondents believe it is important that the College provides professional development, with only 13% rating this as unimportant. In addition, the survey found that the “new and returning teachers’ seminar” appears to be a successful annual event, with only 15% of those for whom it had been applicable reporting that they were dissatisfied.

²⁰ In fact, section 7(5) of the NSW Act expressly rules out industrial matters: “The functions of the Institute do not extend to industrial matters concerning teachers (such as the salaries of teachers or their conditions of employment).”

Generally speaking, it is evident that teachers are very supportive of the proposition that the College should be providing professional development. There is also very strong support for the “new and returning teachers’ seminar” and the question must be asked: If the College did not provide this seminar, would it still be available?

The issue is whether the College, as the regulator of a prescribed professional development requirement under the Act, should also be a provider of professional development for the purpose of meeting that requirement. This issue, which is one of a conflict of interest, is not trivial.

In any case, the survey findings can be interpreted to mean that teachers’ prime concern is the need for quality professional development and that there is an unmet demand for it. It is in all likelihood the case that teachers are less concerned as to who provides professional development than they are as to its quality.

These lines of reasoning may be pursued to the conclusion that the College ought not be a provider of professional development, but rather have a function to assure the quality of the professional development being provided by others to teachers in relation to the College’s power to set requirements for ongoing professional development.

The College’s counterparts in Victoria and New South Wales have both adopted this approach.

5 Term of Reference 3: the objects of the Act, in particular the question of recognising and promoting the profession

This term of reference directs the review to the issue of overarching purpose: Why would a government – any government – present a bill to Parliament to regulate a profession?

Generally, governments regulate professions to serve and protect the public interest by ensuring high standards of professional practice thereby engendering public confidence in the profession.

The role of a regulatory body is therefore to protect the public interest by administering a system of compulsory registration that ensures that those who are registered are fit and proper persons who adhere to high professional standards and that those who fall short of the standards become subject to disciplinary procedures, which in the case of professional misconduct and incompetence can result in de-registration.

Any regime involving compulsory registration of practitioners and disciplinary measures for those who transgress standards requires the backing of an Act of Parliament.

An Act's "objects" are a succinct statement found near its beginning which sum up the Act's purpose and provisions. A statement of objects is akin to the abstract of an academic paper in so far as it is formulated after the body of the work has been completed. Objects assist in communicating the spirit and scope of the Act and may be used for the purpose of interpreting the Act as a whole. Vagueness and looseness of expression are avoided so far as is compatible with the need to generalise. An object should not be confused with a function or read as though it were a function or a power.

In some Acts the objects are listed under their own heading as in, for example, the objects listed in section 4 of Western Australia's *Curriculum Council Act 1997*. In other cases, including the College Act, the object is incorporated in the long title of the Act.

In view of what has been said above, when considering the objects of teacher registration bodies generally, particular attention was given to the presence – or absence – of references to "public interest" and "standards" and, in particular, the "interests of children".

The Victorian and Tasmanian Acts do not have express objects.

The objects of the *Education (Queensland College of Teachers) Act 2005 (QLD)* are:

- to uphold the standards of the teaching profession; and
- to maintain public confidence in the teaching profession; and
- to protect the public by ensuring education in schools is provided in a professional and competent way by approved teachers.

The object of the *Teachers Registration and Standards Act 2004* (SA) 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”.

The *Institute of Teachers Act 2004* (NSW) is an Act “to make provision for professional teaching standards and the accreditation of school teachers in relation to those standards”.

The object of the *Teacher Registration (Northern Territory) Act 2007* is “to ensure that only persons who are fit and proper, and who are appropriately qualified, are employed as teachers in the Territory”.

The two States with the longest history of teacher registration, Queensland and South Australia, both refer to the public interest in the objects of their Acts. Queensland’s refers to public confidence and protecting the public and South Australia’s to safeguarding the public interest as purposes for their teacher registration legislation.

The objects of the South Australian and Northern Territory Acts both refer to “fit and proper”, a concept which is also used in the majority of Western Australian Acts for the registration of professions.

“Standards” are explicitly mentioned in the objects of Queensland, New South Wales and South Australia (indeed in South Australia the term is included in the name of the legislation).

The long title of the College Act tells us that it is an Act to establish the College and set the College’s membership rules and “to recognise, promote and regulate the teaching profession in Western Australia”.

In introducing the College of Teaching Bill in 2003, the then Minister, Hon Alan Carpenter, said that: “The main emphasis in the Western Australian College of Teaching Bill 2003 is on its advocacy role on behalf of all teachers and the teaching profession”.²¹

The legislation in South Australia, Tasmania, and Queensland includes reference to the “promotion of the profession” either as an object or as a function. The Northern Territory’s Act has the narrower function, “to promote best practice in teaching”. The

²¹ Western Australia, *Parliamentary Debates*, Legislative Assembly, 13th August 2003, 9858 (A. Carpenter, Minister for Education)

New South Wales and New Zealand legislation does not include “promotion” either in objects or functions.

Victoria’s legislation is of interest because following a review of that Act the Victorian Parliament has recently passed a Bill which removes the responsibility of the Institute to promote the profession. The Bill gave effect to three recommendations of the Victorian review, which were:

- That “regulation” and “promotion” be separated in the Act into two distinct functions. Promotion be defined and limited to the promotion of the role and activities of the Institute.
- That VIT no longer have a role to advocate on behalf of the profession. This function should be performed by other organisations.
- That VIT promote its revised core roles, responsibilities and activities and continue to communicate regularly with registered teachers about matters of mutual interest which relate to its objectives and functions but discontinue its broader promotion of the profession.²²

The Victorian review further recommended that the object of the Institute should be: “to effectively regulate the teaching profession in Victoria and *maintain professional standards* to ensure the quality of teaching and thereby contribute to *public confidence in the profession*” (emphasis added).

It is noted that this recommendation includes two of the normal touchstones for a regulatory authority: the maintenance of professional standards and public confidence.

The presence of the following touchstones ‘up-front’ in the objects of regulatory legislation is indicative that the legislation’s primary purpose is to protect the public interest: “standards”, “fit and proper”, “competence”, “public confidence” and the term “the public interest” itself.

The absence of these touchstones and the presence of other less common and narrower emphases which focus on promotion give rise to the question as to whether the (usual) primary purpose of regulatory legislation has been subsumed by other somewhat peripheral purposes.

It is debatable whether the current formulation of the College’s objects is indeed an appropriate or ideal summary of the overall intent of the Act’s functions and powers as they stand. The reference to “promotion of the profession” as an object seems to go further than the intent of the functions at sections 16(a), (b) and (f), which are directed to the profession itself rather than the broader audience implied in that object.

²² FJ and JM King and Associates, March 2008, *Review of the Victorian Institute of Teaching*, Victorian Department of Education and Early Childhood Services, p.171.

In any case, if the functions and powers of the Act are reformulated in accordance with the findings of this review, the objects – as a summary statement – will need to be reformulated. Needless to say, it would be expected that any new statement of the functions would lead to appropriate emphasis being placed on standards, the concept of “fit and proper”, “competence”, “the public interest”, and the protection of the interests of children.

6 Terms of Reference 4 & 5: the relationship of the College with the Minister, having regard to the Minister's accountability to Parliament and the appropriateness of the organisation's governance arrangements, having regard to similar legislative registration schemes for teachers and other professions

6.1 Preliminary Considerations

Having decided the preliminary question of whether to regulate a profession, why would a government then choose to do that through a statutory authority rather than a government department?

Government departments have direct relationships with their respective Ministers whereas statutory authorities operate with a degree of separation from their Ministers. Why might there be a need for a degree of separation with respect to teacher registration? And, how large should be this degree of separation?

Some submissions argued for continued independence from government.

Education must be delivered in the best way possible, regardless of government changes and should not be linked with any political party of any type. That is not to say that the college should disregard the minister's opinions, only that they should be just that. (Nadine Woodley-Smith, submission 15; see also Professional Teaching Council of WA, submission 12; Learning Conversations, submission 11; Peter Scharf, submission 14)

Another, however, argued that the Board should take direction from the Minister (Professor Jennifer Nicol, submission 5).

In relation to the issues of department versus statutory authority and, in the case of the latter, the correct degree of separation, the review has drawn on the Uhrig Report²³ and Webbe and Weller's two-stage review of Queensland's Government boards, committees and statutory authorities.²⁴ Each is instructive.

Uhrig concludes that statutory authorities should be created only where there is sufficient need for:

- Efficiency: that is, *a clear purpose is required* to achieve objectives and it is considered beneficial to undertake functions outside the portfolio department, or

²³ Uhrig, J., *Review of the Corporate Governance of Statutory Authorities and Office Holders*, Commonwealth of Australia, Canberra, June 2003.

²⁴ Webbe, S. and Weller, P., *A Public Interest Map: An Independent Review of Queensland Government Boards, Committees and Statutory Authorities, Part A Report*, December 2008. Webbe, S. and Weller, P., *Brokering Balance: A Public Interest Map for Queensland Government Bodies. An Independent Review of Queensland Government Boards, Committees and Statutory Authorities, Part B Report*, March 2009.

- Independence: when functions require a level of separation from government to ensure objectivity (emphasis added).²⁵

Webbe and Weller's review was commissioned by the Queensland Premier "to reduce bureaucracy and red tape, whilst improving efficiency and maintaining regulatory integrity". Their Part A report developed a model, termed 'a Public Interest Map for Government Bodies', under which 459 non-departmental government bodies were considered for continuation or abolition in their Part B report.

Webbe and Weller's Public Interest Map is derived from posing the following three questions²⁶:

1. Why have a (non-departmental) government body?
2. If justified, what form should it take?
3. How should it govern and be governed?

From their approach to these three questions they derived the three corresponding components of the Public Interest Map. Respectively these are: a Threshold Test, an Organisational Form Guide and a Good Governance Framework.

The Threshold Test consists of three further questions:

1. Does the activity need to be done?
2. Should the State Government undertake the activity?
3. Is there any compelling reason why a department cannot, or should not, undertake the activity?

To "pass" the Threshold Test, Webbe and Weller took the position that at least one of the following criteria must be satisfied to override the default assumption that a government department should be the agency of choice:

1. Organisational capability – there is no existing department that has the organisational capability to achieve the expected results.
2. Independence – the required degree of actual and/or perceived independence cannot be achieved within possible departmental arrangements. They note that "activity of a regulatory nature ... does not necessarily preclude a contemporary departmental structure and governance arrangements".²⁷
3. Public Interest Risk – the State would incur unacceptable risk if the activity were assigned to a department. Risk assessment should consider at least issues of accountability, economy, efficiency, effectiveness and responsiveness.
4. Essential public participation and consultation – would housing the activity in a department prevent adequate and appropriate public and stakeholder participation and engagement?

²⁵ *Ibid*, p. 7 (emphasis added).

²⁶ *Ibid*, Part B Report, p.16.

²⁷ *Ibid*, Part B report, p. 208

Applying Uhrig's analysis, the choice of form comes down to three possibilities: an advisory council/committee to a minister or government department, a statutory body with executive management; or a statutory body with board management.

Advisory councils/committees meet the threshold criterion of public participation and consultation. As their role is advisory rather than decision-making they are at the lower end of a spectrum of independence. Nevertheless, they are used in some regulatory legislation in Western Australia.

One example is the advisory committee established the *Education Service Providers (Full Fee Overseas Students) Registration Act 1991* (section 43). Another example are the advisory committees which are appointed by the Minister to consider applications for authorisation of non-university institutions to deliver higher education and to accredit the institution's courses (*Higher Education Act 2004*, section 20).

In principle a basic teacher registration scheme could operate under similar provisions, provided the department assisting the Minister in the administration of the legislation did not have a direct stake in the outcomes; the advisory committee comprised of an appropriate mix of expertise and experience; and there was an independent body to hear appeals. There might be difficulties, however, with the administration of disciplinary provisions. While major disciplinary matters might appropriately be made the original jurisdiction of the State Administrative Tribunal, minor matters could not and there is then the question of who would handle them (this issue is discussed in greater detail elsewhere in this report).

In applying their Threshold Test to Queensland's teacher registration body, the Queensland College of Teachers, Webbe and Weller accepted the need for the continuation of teacher registration under a State Act and concluded that:

... there are compelling reasons for regulatory, disciplinary and compliance functions to be performed by an entity with a degree of independence from a department, especially when the department that participates in the field is a stakeholder and/or has an interest in the decisions made and outcomes achieved.²⁸

The Western Australian College of Teaching arguably passes the Threshold Test for essentially the same reasons. As the activity must be underpinned by an Act of Parliament, the State needs to undertake the activity through Western Australian legislation, unless a national scheme is adopted under Commonwealth legislation. As to why the activity should not be undertaken by one of the portfolio departments, there is no obvious reason why Webbe and Weller's conclusion for the Queensland body is not equally applicable in Western Australia.

²⁸ Ibid, Part B Report, p. 172

Accepting there is a need for non-departmental government body 'with a degree of independence', the next question is: What form should the body take? And, what degree of independence should it have?

There is no hard and fast way to categorise the forms of statutory bodies. For Queensland's, Webbé and Weller distinguish between commercial trading; governing; policy/review/specialist; regulatory/registration/appeal; trustee; and advisory/consultative. New Zealand's *Crown Entities Act 2004* distinguishes between Crown Agents, Autonomous Crown Entities and Independent Crown Entities.

Crown Agents are non-company Crown entities that can have a close working relationship with government. They must give effect to government policy when directed by their Minister.

Autonomous Crown Entities must have regard to government policy when directed by their Minister.

Independent Crown Entities are generally of a quasi-judicial nature and are generally independent of government policy.

New Zealand's teacher registration body, the Teachers Council, is an autonomous Crown entity.

Uhrig, for the purposes of his review of Commonwealth statutory authorities, used two categories: those with executive management and those with board management. Boards, according to Uhrig, should be used only when they can be given full power to act. Webbé and Weller take a similar position: "Adoption of a board model within the organisational form is not to be presumed, but is to be contested and justified. Can a board add value?"²⁹

The choice of form comes down to the choice between executive management and board management. The latter is to be preferred not only on the grounds of independence, but also on the grounds that the decisions required of a teacher registration body need to be taken by a body that is able to draw upon a cross-section of people directly and indirectly affected by those decisions.

Bodies of the preferred type in Western Australia are generally stand-alone organisations, including the College of Teaching. There are, however, some that are housed in and draw their corporate services from government departments. Two such examples are the State Training Board, housed in the Department of Training and Workforce Development, and the Training Accreditation Council, housed in the Department of Education Services. The Board's decision making in each case is independent of the chief executive of the host Department and the Chairs report directly to their respective Ministers. An arrangement akin to this would be feasible for a teacher registration body.

²⁹ Ibid, Part B Report p 214

Applied to this review, the third of Webbe and Weller's questions is: How should the College of Teaching with board management govern and be governed?

In New Zealand and Victoria these questions are largely answered through the existence of a generic legislative framework for the hundreds of bodies that exist outside portfolio departments. Respectively, these Acts are the *Crown Entities Act 2004* (NZ) and the *Public Administration Act 2004* (Vic).

In their Part A report Webbe and Weller recommended that a similar Act – a 'Government Bodies Act' – be established in Queensland.

A common and certain set of *minimum* standards, processes and responsibilities for the external and internal governance of [statutory] bodies would be a critical first step in assuring government, ministers and the public of their value and accountability.³⁰

As Western Australia does not have generic legislation of this kind, Uhrig's "template"³¹ for statutory authorities with board management, supplemented by observations of the Victorian and NZ Acts, has been chosen as a reference point for this review when considering the current external and internal governance arrangements for the College.

The following is a point by point comparison of Uhrig's template with relevant aspects of the College's external and internal governance arrangements. Where appropriate, observations on aspects of the College's arrangements are supplemented by observations on arrangements pertaining to teacher registration in other jurisdictions and other regulated professions in Western Australia.

The external governance arrangements are dealt with first, followed by the internal arrangements. It should be noted that the Uhrig template was not developed with any particular reference to professional registration bodies.

6.2 External Governance Arrangements

6.2.1 Accountability relationships between the Parliament, the Minister and the College

1 Uhrig's position

The Parliament's decision to allocate a function to a statutory body indicates that the function warrants being performed outside of the control of a government department. This does not mean, however, that the Minister is not accountable to the Parliament for the performance of the body. The Board is accountable to the Minister for performance because it has been given the necessary power to approve plans, budgets and strategies for the body, and has as oversight of the management of the body.

³⁰ Part A Report, p. 61.

³¹ Ibid, pp. 79-85

Under Victoria's *Public Administration Act 2004* a Board is accountable to the relevant Minister for the exercise of the body's functions and the Minister is responsible to the Parliament for:

- the public entity's exercise of its functions; and
- exercising the Minister's powers relating to the public entity including:
 - the power to appoint and remove directors;
 - the power to give directions and request information;
 - the power to control its operations;
 - the power to initiate a review of the public entity's management systems, structures or processes.

2 College of Teaching

Under section 29 of its Act the College is required to submit an Annual Report and audited financial statements to the Minister and the Minister is required to table these in the Parliament within 14 days. The College is also required to operate in accordance with provisions of the *Public Sector Management Act 1994*, the *Working with Children (Criminal Record Checking) Act 2004* and other Acts including the *Occupational Health and Safety Act 1984*, *Equal Employment Opportunity Act 1987* and the *Industrial Relations Act 1979*.

The College's accountability relationship with the Minister is not strong. Unlike other statutory bodies (e.g. the Curriculum Council), the Minister has no power to direct the governing body of the College. The Minister may only give (under section 14) "advice" to the College and, while the College is "to give due regard" to such advice, it is not bound to accept it. Under section 15 the Minister is entitled to request information (with some exceptions related to the privacy of individuals) in possession of the College.

A greater degree of accountability to the Minister can only be achieved by incorporating additional roles for the Minister in the provisions of the Act. A power to direct the Board is one obvious example.

Other Western Australian Acts regulating occupations and professions generally give the Minister a power to direct. The Acts regulating nurses and midwives, builders, occupational therapists, physiotherapists and psychologists are five such examples. The typical scheme for this purpose is that the Minister may direct the Board in writing with respect to the performance of its functions except in relation to a particular person, a particular qualification, or a particular application, complaint or proceeding. In all relevant Acts, the text of any ministerial direction must be included in the agency's annual report and in some cases the Act requires that it also be laid before each House of Parliament within a specified period (typically 14 days).

Other roles for the Minister can be incorporated in legislation through provisions such as "endorsed by the Minister", "recommend to the Minister", and "subject to the Minister's approval".

In Victoria and the Northern Territory the Minister is explicitly charged with the approval of certain settings with respect to teacher registration. The Victorian Institute of Teaching recommends “for the approval of the Minister, qualifications, criteria and standards for the registration and renewal of registration of teachers in schools in Victoria”. The Northern Territory’s Registration Board makes “recommendations to the Minister in relation to the minimum qualifications and other requirements for registration”.

In Queensland, South Australia, New Zealand and New South Wales³² the Boards are subject to Ministerial direction within certain limits.

Under section 272 of Queensland’s Act the Minister may give the College there a written direction about a matter relevant to its functions if the Minister is satisfied it is necessary to give the direction in the public interest.

Similarly, under section 8(1) of South Australia’s Act, the Minister may give directions to the Registration Board when it appears to the Minister to be necessary in the public interest. The Queensland and South Australian provisions both preclude a direction that relates to: (i) a particular person; or (ii) a particular application or inquiry; or (iii) the performance by the Board of its function of determining qualifications or experience for registration. In South Australia the Minister must consult with the Teachers Registration Board before giving it a direction and must cause a copy of the direction to be laid before each House of Parliament (within 3 sitting days after giving it).

6.2.2 Clarity of government expectations

1 Uhrig

The Minister sets broad strategic directions for the body by communicating the government’s expectations, which must be consistent with the powers provided under the body’s legislation. This communication could be by way of a “Statement of Expectations”; a letter of appointment to directors; endorsement of the body’s corporate plan; or consideration of its “Statement of Intent”. The Minister should minimise his or her influence in areas of decision making delegated to the board by the Parliament. Any communication of expectations regarding performance, objectives, values and government policies should not be at odds with the body’s legislative powers and functions and should not impinge on areas of legislated independence.

In New Zealand, under statute - the *Public Finance Act 1989* - all government departments and agencies are required to produce a Statement of Intent, which is a

³² Under section 8 of the NSW Act “the Institute is subject to the direction and control of the Minister (except in relation to the preparation and content of any report or recommendation made by the Institute to the Minister).

medium-term strategic document produced annually and tabled in the House of Representatives on Budget Day (normally late May) every year. Essentially, as the title suggests, an SOI is a summary of what the agency intends to achieve and how it intends to do this. All Crown entities (including NZ's teacher registration body) are required to have an SOI. The SOI's purpose as set out in section 138 of the Act is to "promote the public accountability of a Crown entity by:

- enabling the Crown to participate in the process of setting the Crown entity's medium-term intentions and undertakings;
- setting out for the House of Representatives those intentions and undertakings;
- providing a base against which the Crown entity's actual performance can be assessed."

The primary role of the SOI is to act as a vehicle through which accountability information is provided to Parliament, Ministers and the public. It enables Ministers and Members of Parliament to scrutinise the performance of agencies and sectors and to hold them to account for the use of resources and powers, as well as their delivery of outputs and contribution to outcomes.

2 College of Teaching

There is no provision in the Act, barring section 14, under which the Minister may give advice, which explicitly points to the Minister establishing government's expectations of the College.

6.2.3 Overseeing performance

1 Uhrig

The Minister needs to be kept informed to ensure performance is acceptable. Performance indicators and reporting arrangements need to be agreed to ensure the Minister is adequately informed. Non-performance issues may be discussed with the chair or the board and the Minister may seek a submission from the board setting out proposed remedial action.

2 College of Teaching

Apart from the requirement for an Annual Report, there is no provision in the Act of the kind envisaged by Uhrig that enables, requires or creates an expectation that the board is accountable to the Minister for its performance and no requirement to agree performance indicators and reporting arrangements.

6.2.4 Appointments and terminations

1 Uhrig

Uhrig's template assumes appointments will be made by the Minister or the Governor on the recommendation of the Minister and as the board has a significant influence

on the performance of a body, the Minister needs to be well advised when making appointments. The expectation is that the Minister would be briefed by the chair on the characteristics, attributes, qualifications and experience needed. In cases of reappointment, the Minister and the chair would discuss the current performance of the board and individual directors. When circumstances warrant, the Minister may not renew appointments or remove the chair, directors or the entire board.

2 *College of Teaching*

The College Board has 19 members. Under section 9(1) nine of these are appointed by the Minister, each for a term of office of up to three years, on the nomination of eight organisations: one each from the Department of Education, the Catholic Education Commission, the Association of Independent Schools, the Independent Education Union, the State School Teachers' Union, the WA Council of State School Organisations and the Parents and Friends' Federation of WA, and two from WA's five universities.

The remaining 10 members are elected under section 9(2) of the Act. They must all be registered, practising classroom teachers: seven from government schools, two from Catholic schools and one from independent schools. The "electorate" in each case is registered, practising classroom teachers from the respective school system or sector. The term of office for an elected member is normally three years after the occurrence of the vacancy (Schedule 1 of the Act sets out details for the filling of casual vacancies among the elected members).

The chairperson and deputy chairperson of the Board are elected from the 19 members of the Board, by the Board members.

The Minister may remove a board member from office, but only on the recommendation of the Board and only for reasons set out in clause 4 Schedule 1 of the Act.³³

The role of the Minister contemplated by Uhrig in appointments and terminations of board members is not evident in the College of Teaching Act. The Minister does not appoint the chairperson and deputy chairperson of the Board and has no discretion in relation to the appointment and reappointment of the elected and non-elected members of the Board. The Act does not seem to contemplate the Minister declining to appoint the nominations received from the named bodies. The Minister has some discretion in the filling of casual vacancies among elected members when the vacancy is for less than one year (longer vacancies are filled through by-elections).

³³ The Minister, on the recommendation of the Board, may remove a member from office for —
(a) misconduct or incompetence;
(b) mental or physical incapacity, other than temporary illness, impairing the performance of his or her functions;
(c) in the case of an elected member, if the person ceases to be a registered teacher; or
(d) absence without leave, from 3 consecutive meetings of the Board of which the member has had notice.

6.2.5 Communication

1 Uhrig

The Minister communicates primarily with the chair, both formally and informally. Any communication with the chief executive office should be done in conjunction with the chair because otherwise the board's oversight of management can be impaired. If the body is not meeting the performance expectations of government, specific clarification of those expectations should be given (see 6.2.2 above).

2 College of Teaching

There is no barrier in the Act to the manner of communication envisaged by Uhrig between the Minister and the Board chair and the College Director.

6.3 Internal Governance Arrangements

6.3.1 Is the Board responsible for success?

1 Uhrig

The board is responsible for ensuring the success of the authority through the staff of the body and within the broad strategic directions set through its governance framework.

2 College of Teaching

The Board is responsible for ensuring the success of the College. Section 8 of the Act provides:

8. Functions of Board

- (1) The Board is the governing body of the College.
- (2) The Board, in the name of the College, is to perform the functions, determine the policies and control the affairs of the College.

6.3.2 Strategy and policy direction

1 Uhrig

Within the broad strategic direction set by the Minister, the board independently approves strategy developed by management, oversees its implementation and ensures risk is adequately managed.

2 College of Teaching

The Minister does not set broad strategic direction for the College. The College Board has independently published a three-year strategic plan (2008-2010) which sets out the College's objectives, key objectives and current-year performance indicators under five aspirational goals (these are considered in greater detail elsewhere in this report):

6.3.3 Oversight of performance

1 *Uhrig*

The board is responsible for the performance of the body's functions. The powers that may be exercised by the board are determined by the enabling and other relevant legislation.

2 *College of Teaching*

Under section 8 of the Act the Board is responsible for the performance of the College's functions. Under section 18 the College may delegate to the Director any power or duty of the College other than the conduct of an inquiry. Other relevant legislation is mentioned at 6.2.1 above.

6.3.4 Annual corporate plan

1 *Uhrig*

The board is responsible for approving an annual corporate plan for ministerial endorsement. Where required, the chair should be available to discuss the plan with the Minister.

2 *College of Teaching*

The College's *Strategic Plan 2008-2010* sets out College objectives, key strategies and performance indicators for 2009 under five overarching goals. There is no requirement under the Act for ministerial endorsement of such a plan. The College's Annual Report includes a report of its operations under the College objectives listed in the published plan.

6.3.5 Performance indicators

1 *Uhrig*

The board is responsible for ensuring that relevant performance indicators are developed that accurately measure performance and can be independently verified. Indicators and targets are endorsed by the Minister as part of the corporate plan.

2 *College of Teaching*

The College's strategic plan includes performance indicators. They are susceptible to independent verification and could serve as a measure of the performance of the College. They are, however, unlike the performance indicators of agencies subject to audit by the Auditor General, not subject to independent external audit and verification. The Act does not require the College's performance indicators and targets to be endorsed by the Minister.

6.3.6 Appointment and termination of the chief executive officer

1 Uhrig

The board is responsible for supervising the chief executive office and has the power of appointment and termination. A board cannot be effective without the power to appoint and terminate.

2 College of Teaching

Under section 19 of the College Act the Board has the power to appoint, remove and fix and alter the terms and conditions of service of the Director of the College.

6.3.7 Communication

1 Uhrig

The board is responsible for informing the Minister in a timely manner of significant issues impacting on the authority, including risks and associated mitigation strategies. The board should operate on a 'no surprises' basis in relation to informing the Minister. The chair should meet with the Minister at least annually and as required on matters related to progress against agreed performance indicators and relevant matters.

2 College of Teaching

The board informs the Minister by letter of significant issues affecting the College and there may be follow-up meetings with the Chair. The Chair meets with the Minister at least annually.

6.4 The composition and size of Boards

Uhrig does not support representational appointments to governing boards of statutory authorities because:

Representational appointments can fail to produce independent and objective views. There is the potential for these appointments to be primarily concerned with the interests of those they represent, rather than the success of the entity they are responsible for governing. While it is possible to manage conflicts of interest, the preferred position is to not create circumstances where they arise.³⁴

Uhrig proceeds on the assumption that, for Ministers to be accountable to Parliament for meeting their responsibilities, board members will either be appointed directly or by the Governor on the recommendation of Ministers. In making appointments the skills, experience and characteristics necessary to ensure success of the body are paramount. Careful attention needs to be given to potential appointees' "ability for critical thought, objectivity, wisdom gained through experience, authority and the ability to exercise judgement".³⁵

³⁴ Ibid, p 99.

³⁵ Ibid, p 98.

Uhrig concluded that it was not possible or appropriate to recommend a one-size-fits-all approach to board size in the public sector. He notes that in the private sector a board of between six and nine (including a managing director) is regarded as reasonable. He argues that board size should be decided after taking into consideration factors such as the size of the entity, the complexity of its operation, the risks to those operations being undertaken effectively and the consequent experience and expertise requirements. In other words, the decision on size should turn on the consideration of what is needed, at least minimally, to get the job done.

Considered from the perspective of this review, the expertise and experience required among the members of any board appointed to perform the functions, determine the policies and control the affairs of teacher registration body would include:

- Classroom teaching at all levels of schooling and in different geographical locations of the State
- The judgement of competence – and incompetence – in teaching
- The judgement of acceptable and unacceptable behaviour among teachers
- The preparation of competent teachers
- The professional needs of teachers as they progress through their careers following graduation
- The contemporary staffing needs of schools on a day to day operational basis
- The interpretation of the enabling legislation and any related legislation that has a bearing on the operation of the body
- Management experience, especially prior experience of board management
- Risk management
- Financial management, including accounting and commercial expertise
- Effective communication strategies with teachers.

Uhrig advises that when considering appointments the Minister should discuss the board's performance in terms of its current and projected obligations with the chair. The chair should give consideration to the appointment of a nominations committee of board members to assist in the preparation of a list of candidates for consideration.

Uhrig advises caution in relation to the appointment of public servants to boards. He argues that where they are appointed to represent the government's interests "conflicts of interest may arise and poor governance is likely."³⁶ He readily acknowledges, however, that this should not bar public servants attending specific parts of board meetings to discuss or clarify issues before the board.

The chairperson plays important roles in ensuring good governance in accord with the functions and powers of the Board and in being the official spokesperson for the organisation to the public and the Minister. Of all the appointments made by the

³⁶ Ibid, p 99.

Minister, Uhrig considers the appointment of the chair requires the most careful consideration.

Uhrig advises Ministers to provide letters of appointment to board members detailing at least:

- the government's expectations, including compliance with legislative requirements
- the term of appointment, noting that this is on the basis of acceptable performance and that performance assessments will occur
- the government's general philosophy on board tenure, indicating the likely maximum consecutive terms
- the basis for remuneration and review (the latter generally being a matter for the chair).³⁷

Virtually none of Uhrig's views on board size and composition seems to have been incorporated in the College of Teaching legislation:

- The College Board is entirely representational: nine are appointed on the nomination of designated bodies and 10 through election
- Neither the Minister nor the Chair has any say in appointments and there is no provision for a considered assessment of the balance of skills and experience that is needed for effective governance
- There are public servants on the Board
- Letters of appointment do not cover off the points recommended by Uhrig.

The primary consideration in the composition of a representational board is the identification of the 'stakeholders', with the assumption that each will have at least one member. Large numbers of stakeholders necessitate large boards. There is then a further consideration related to "balance of power", which is apparent in two features of the composition of the College Board. Firstly, as a 'stakeholder group', teachers are in the majority. Secondly, their number is decided on a proportional basis across the three types of school: independent, Catholic and government. This has given rise to 10 teachers as Board members and to balance that number, nine other stakeholders have been appointed (it is not clear, however, why two teacher educators are included rather than one).

The question is: Can the required spread of expertise and experience to 'get the job done' be reliably achieved through the current appointment provisions of the College of Teaching legislation?

Consideration of submissions to the review and the findings of the review's survey of teachers suggest quite strongly that the answer to this question is "No" and that government and the Parliament should re-assess the Act's provisions.

³⁷ Ibid, p 100

In undertaking this re-assessment consideration of the composition and size of comparable bodies elsewhere in Australasia is warranted. There is no evidence of a 'pure model' having been adopted; most seem to embody some sort of balance or compromise between ministerial appointment and stakeholder representation, with some stakeholder representation being achieved through elections in some cases.

The sizes of the governing bodies of comparable bodies elsewhere in Australasia is summarised at Table 1.

Table 1: Sizes of Governing bodies and Numbers Elected, Teacher Registration Bodies

	Number of members	Number elected
NSW	5 members on the board of governance and 21 members on the advisory Quality Teaching Council.	Board of Governance – 0 Quality Teaching Council – 10
VIC	Victoria has amended its Act to reduce the Board from 20 to 12.	Reduced from 10 to 6
QLD	17 members	3
WA	19 members	10
SA	16 members	0
TAS	10 members	0
NT	12 members	0
NZ	11 members	4

The size of these governing bodies ranges from 5 (NSW) to 19 (WA) with an average of about 12 members.

Table 2 summarises the positions of other jurisdictions on the balance of elected to appointed members; the appointment of the chair; and whether the Minister has a power to direct the governing body.

Tables 3 and 4 summarise the sizes and basic governance arrangements for a selection of registration bodies for other professions in Western Australia.

Table 2: Governance of Teacher Registration Bodies

	NSW	VIC	QLD	WA	SA	TAS	NT	NZ
Board has more appointed members than elected members?	Yes	50:50	Yes	No	Yes	Yes	Yes	Yes
Governor/Minister appoints the Board's chairperson?	Yes	Yes	Yes	No	Yes	Yes	No	Yes
Minister has a power to direct the Board?	Yes	No	Yes	No	Yes	Yes	No	Yes

Table 3: Sizes of Governing Bodies and Numbers Elected, Other Professional Registration Bodies in Western Australia

Professional governing body	Date of legislation	No. of members	Number elected
Architects Board of WA	2004	10	4 (60%)
Chiropractors Registration Board	2005	8	0
Medical Board of Western Australia	2008	12	0
Nurses and Midwives Board of WA	2006	13	0
Occupational Therapists Registration Board	2005	8	0
Osteopaths Registration Board	2005	6	0
Pharmaceutical Council of WA	2004	7	7 (100%)
Physiotherapists Registration Board	2005	8	0
Podiatrists Registration Board	2005	8	0
Psychologists Board of WA	2005	8	0

The College Board's current make-up was broadly supported by submissions to this review. The Deans and Heads of Schools of Education supported a reduction in the size of the College's Board (submission 34; see also Professor Jennifer Nicol, submission 5; Catholic Education Office, submission 24) while the Independent Education Union WA contemplated that an expanded Board could include elected Indigenous and rural/remote teachers (submission 19; see also Jacqueline Wright, submission 13). The Western Australian Council of State School Organisations (submission 20) pointed out that a large Board provides the College with a sufficient pool of potential committee members and that much of the policy work of the College is undertaken by committees.

Table 4: Governance of Professional Registration Bodies, Other Professional Registration Bodies in Western Australia

Professional governing body	Chair	Can Minister direct the Board?
Architects Board of WA	Board elects	Yes, but not re individual matters
Chiropractors Registration Board	Board elects	Yes, but not re individual matters
Medical Board of Western Australia	Board elects	Yes, but not re individual matters
Nurses and Midwives Board of WA	Board elects	Yes, but not re individual matters
Occupational Therapists Registration Board	Board elects	Yes, but not re individual matters
Osteopaths Registration Board	Board elects	Yes, but not re individual matters
Pharmaceutical Council of WA	Board elects	Only when an aggrieved pharmacist or pharmacy appeals to the Minister about a Council limitation on trading
Physiotherapists Registration Board	Board elects	Yes, but not re individual matters
Podiatrists Registration Board	Board elects	Yes, but not re individual matters
Psychologists Board of WA	Board elects	Yes, but not re individual matters

The Deans (submission 33), Catholic Secondary Principals Association of WA (submission 25) and the Professional Teaching Council of WA (submission 11) were in favour of the Chair and Deputy Chair being elected by the Board itself from among its members while the Catholic Education Office favoured Cabinet appointment of a high profile educator to the post (submission 24). Several submissions strongly supported retention of the current balance between elected and appointed Board members with members elected by practising teachers in the majority (Professional Teaching Council of WA, submission 12; Peter Scharf, submission 14; Independent Education Union WA, submission 19; WA Council of State School Organisations, submission 20; Catholic Secondary Principals Association of WA, submission 25; Deans and Heads of Schools of Education, submission 33; see also Learning Conversations, submission 12, which supported handing more control to teachers).

The rationale behind this observation is that teachers have an inherent interest in protecting the status of their profession and that their voices should dominate in balancing the interests of the profession against those of other stakeholders.
(Independent Education Union WA, submission 19)

Professor Jennifer Nicol, Head of Education at Curtin University, criticised the current Board as “too large and too partisan” to be truly effective (submission 5).

This review has concluded that in any re-assessment of the size and composition of the governing body for the College of Teaching, the starting point should be the

principle of ministerial accountability, which is that all members, including the chair, should be appointed by the Minister to perform the functions of the Act. Under this principle, the Minister can justifiably be called to account by the Parliament (and others) for why particular appointments have been made and for any shortcomings in the performance of the College.

Adherence to this principle would require the Act to specify in an appropriate manner the requisite expertise and experience that needs to be covered through ministerial appointment.

Any deviation from this principle accountability would need to be argued on other grounds, presumably related to the likelihood that essential experience or expertise would not otherwise be reliably included through ministerial appointment alone.

On Uhrig's analysis, the principle of stakeholder representation, which places the Parliament in the position of having to justify the statutory inclusion or non-inclusion of particular stakeholders, is not recommended because it is not founded in the basic principle of ministerial accountability.

7 Term of Reference 6: the scheme of registration and information required to operate the scheme, including the criminal record checking provisions of the Act, having regard to relevant provisions in other legislation

7.1 Overview of the Scheme

The scheme of registration in the College of Teaching Act is typical of registration schemes the world over. The foundation of these schemes is to (a) make it unlawful for a person to practise the regulated occupation or profession unless he or she is registered and (b), to make it unlawful to employ a person who is not registered.

For the College of Teaching the foundation is laid down in sections 30 and 31 of the Act, which deal respectively with “persons who may teach in schools” and “persons who may be employed, engaged or given permission to teach in schools”. A breach of either provision incurs a penalty of \$5 000 for a first offence and \$10 000 for second and subsequent offences.

7.1.1 Approval to teach

Section 3 of the Act defines “teaching” to mean:

undertaking duties in a school that include —

- (a) the delivery of an educational programme designed to implement the curriculum framework approved under the *Curriculum Council Act 1997* and the assessment of student participation in such an educational programme; or
- (b) the administration of any such educational programme, but does not include duties of the kind undertaken by —
- (c) a teacher’s aide, a teacher’s assistant or a student teacher; or
- (d) an unpaid volunteer, unless the volunteer is undertaking duties in a school of a kind, or to an extent, prescribed by the regulations for the purposes of this paragraph

Section 3, defines “school” as having the same meaning as that word has in the *School Education Act 1999*: “a government or a non-government school”.³⁸

The superstructure constructed on the foundations of registration schemes relates to the requirements a person must satisfy to obtain registration and has two components: “capability” and “character”.

Capability is related to a person’s qualifications and in the College Act this is basically satisfied by a qualification in teaching approved by the Board and proficiency in the English language (see sections 33(a) and (c) and sections 35(a) and (e)).

³⁸ Taken together, these sections of the College Act and the *School Education Act 1997* can mean that a TAFE lecturer delivering a VET in schools course at a TAFE College would not be subject to the requirements of the College Act. However, if the delivery takes place at a school, the lecturer would be subject to the Act. Note that in both situations, the lecturer would be subject to the requirements of the *Working with Children (Criminal Record Checking) Act 2004*.

Character relates to a person's behaviour. For the College of Teaching the basic requirement is that the person "has not been convicted of an offence the nature of which renders the person unfit to be a teacher" (see sections 33(b), 35(b) and 37(d)).

7.1.2 Categories of approval/registration

Like teacher registration schemes generally, the Act's stipulations in sections 30 and 31 are satisfied by two categories of registration – provisional and full – and a third category, called "limited authority to teach". There is also a fourth category – associate membership of the College – but such membership does not meet the requirements of sections 30 and 31 (that is, an associate member is not "licensed" to teach in a school).

Applicants for provisional and full registration must meet the same basic capability and character requirements. The essential difference between the two categories is the amount of recent teaching experience: full registration requires at least one year's teaching experience (not necessarily full-time) within the past five. Applicants for full registration must also satisfy the College that they have not breached any of the College's approved standards of professional practice.

A provisionally registered teacher is typically a recent graduate, but the category also includes people returning to teaching after quite a long break because of the College's requirement for recent teaching experience.

Provisional registration is granted for three years and is renewable, but normally after the first three years (or sooner) the person would make the transition to full registration provided he or she has satisfied College professional development requirements.

Full registration is for a period of five years and is renewable provided the applicant for re-registration has met the College's professional development requirements and undergone a further criminal record check.

A limited authority to teach may be granted to a person with specialist knowledge, training or skills (e.g. a music specialist) who has been offered a position (or positions) at a school (or schools) for which a suitable registered teacher (or teachers) is not available. It may be granted for a period of up to two years and is renewable.

An associate member is a person who has a teaching qualification or who has made a significant contribution to education, has a clear criminal record, but does not wish to work as a teacher in a school. Associate membership is granted for a period of one year and is renewable.

It is noted that the Act does not have separate sections for the renewal of membership in any of the four categories – renewals are treated in effect as *de novo* applications for membership.

Regulations may be made under the Act prescribing application requirements in addition to those mentioned above (see sections 33(d), 35(g), 37(1)(e) and 39(c)). Under the current regulations there is no further requirement for associate members.

Under section 43 of the Act the College, in granting an application, may attach conditions “relating to the practice of teaching by that person”. Conditions may not be imposed when granting an application for associate membership.

Taken altogether, persons who have current provisional or full registration or a limited authority to teach or who are associate members make up the “membership of the College”.

7.1.3 Information required

The College is given a broad discretion under section 42 of the Act in relation to the information it may request applicants to provide. The way in which the College has implemented this section is evidenced in its application forms³⁹ to be completed for various purposes, whether they be for an initial application, a renewal of membership, or a transition from provisional to full registration. The basic information requirements for an application relate to:

- Australian Citizenship / Residency / Visa Requirement
- Personal details
- 100 Point ID Check
- Teaching and other qualifications
- English language proficiency
- Teaching experience
- Criminal record check (see also sections 53 and 54 of the Act)
- Statutory declaration (regarding criminal history and disciplinary procedures).

Part 5 of the Act makes provision for the College to be notified of matters relating to members during the course of their membership.

- Under section 49 the Director of Public Prosecutions or the Commissioner of Police is to give information related to criminal proceedings involving teachers (charges, committals, convictions, discontinuations of proceedings, mistrials or acquittals).

³⁹ These may be viewed at <http://www.wacot.wa.edu.au/index.php?section=24>.

- Under section 50 employers must notify the College if they have suspended or dismissed a teacher and for what reasons in relation to serious incompetence or serious misconduct.
- Under section 51 members must notify the College if they have either been ordered to pay damages or compensation as a result of civil proceedings arising from their work or been convicted of an offence where the statutory penalty includes imprisonment.
- Under section 52 members must notify the College if an essential qualification is withdrawn or cancelled by the conferring institution.

Under the Act and Regulations all applicants for College membership or renewal of membership (except associate membership in the latter case) must either tender a current (less than 12 months old) criminal record check or consent to having one carried out.

7.2 Commentary

7.2.1 The implications of legislation passed subsequent to the College Act

Architects of legislation to regulate school teachers have to balance the protection of the interests of the profession (which can include industrial issues) with the protection of the interests of school-aged children.

The balance struck in the College Act needs to be reconsidered in the light of legislation passed subsequent to its commencement in 2004 and also legislation in the offing.

The College Act's provisions to prevent people of unsavoury character (including people with criminal records) from working in schools have been overtaken to some extent by the passage of the *Working With Children (Criminal Record Checking) Act 2004* ("the WWC Act") shortly after the passage of the College Act. The implications of this are discussed in detail below.

Another relevant piece of legislation is the *Acts Amendment (Higher School Leaving Age and Related Provisions) Act 2005* which raised the school leaving age and made available to students in their 11th and 12th years of education options outside the "school", as defined in the College Act. These options include courses at a university or vocational education and training provider, part-time work and combinations of any of these with orthodox school courses.

It is the case that under these provisions the teacher of a course may or may not need to be registered, depending on where an option is undertaken. For example, a VET training package delivered in a school requires a registered teacher whereas the

same package delivered to a school-aged child in a TAFE College does not require a registered teacher.

The implementation of the *National Partnership Agreement on Early Childhood Education and Care* struck by the Council of Australian Governments (COAG) in 2009, *inter alia*, requires providers of long day care to employ a certain ratio of qualified early childhood teachers. It would be regrettable if the implementation of this requirement made it legislatively and/or bureaucratically difficult for early childhood teachers to move freely between the two sectors. A rational approach would be to have early childhood teachers working in child care settings registered by the College of Teaching. The current provisions of the College Act do not require such teachers to be registered although there is nothing to prevent them from obtaining College registration. It should be noted, however, that child care settings do not satisfy the Act's definition of "school", making it difficult for teachers in those settings to obtain and/or hold full registration because of the Act's requirement for recent teaching experience in a "school".

Early Childhood Australia Inc (WA) (submission 18; see also Dr Anna Targowaska, submission 22) drew attention to the anomaly of early childhood teachers in non-school settings being left out of the registration process.

It is essential that those working with the state's youngest children are not only appropriately qualified but that their qualification is recognised. ... This is integral to breaking down false barriers that exist between the education and care of our youngest children.

The Department for Communities (submission 29) was also critical of this situation, describing it as a disincentive to teachers working in child care settings.

DfC believes it is essential that WA legislation is able to accommodate changes aimed at improving the quality of early education and care services for young children.

7.2.2 The definition of teaching

The Act's definition of "teaching" determines who among teachers generally are subject to statutory registration under the Act and needs to be reconsidered in light of other legislation that has been passed since the Act's commencement and some that is in the offing.

Even as passed, the College Act's definition of "teaching" seems not to have contemplated the possibility of a school's curriculum being exempted, under section 11 of the *Curriculum Council Act 1997*, from the requirement to implement the curriculum framework. It appears that teachers of a curriculum so exempted would not be "teaching" under the College Act and therefore would not need to be registered. This issue could become quite problematic if the recommendation of a

recent review⁴⁰ of the curriculum framework by Professor David Andrich to remove the requirement for all schools to implement the curriculum framework were to be adopted.

There is also the question of whether the definition, as it stands, contemplates the introduction of national curriculum, which can hardly be said to have been “designed to implement the curriculum framework approved under the *Curriculum Council Act 1997*”.

7.2.3 The Question of Character

A well designed registration scheme should have at least two “lines of defence” against people of poor character. The first is at the point of initial registration and a second which applies once a person has become registered and is practising (or is eligible to practise).

The most common formulation of these lines of defence in registration Acts is the requirement that the person is, at the point of admission and thereafter, a person who “is a fit and proper person to be registered as a [name of profession]”.⁴¹ “Fit and proper” covers questions of capability as well as character, but it is the latter which is of main interest here.

There is a widely accepted view that it is virtually impossible to prescribe in a piece of legislation each and every circumstance that would render a person’s character not fit and proper.

The leading case on “fit and proper” is *Australian Broadcasting Tribunal v Bond* (1990) in which the High Court considered whether Mr Bond was a ‘fit and proper’ person to hold a licence under the *Broadcasting Act 1942* (Cth). In that case, Justices Toohey and Gaudron said that: *The expression fit and proper person, standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities... depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have the confidence that it will not occur.*⁴²

At the same time, there is an equally accepted view that while each and every circumstance might not be able to be prescribed, a person’s criminal record (if any) is definitely something that needs to be considered. The typical formulation of this is the provision that the person “has not been convicted of an offence the nature of

⁴⁰ Andrich, D. (2009). *Review of the Curriculum Framework for curriculum, assessment and reporting purposes in Western Australian schools, with particular reference to years Kindergarten to Year 10*. Perth, Western Australia.

⁴¹ See for example the Western Australian Acts covering the registration of medical practitioners, physiotherapists, speech therapists, occupational therapists, nurses and midwives and psychologists.

⁴² [1990] HCA 33; (1990) 170 CLR 321.

which renders the person unfit to practise as a [name of profession].”⁴³ This provision is then supported by a further provision that enables the governing body to obtain details of a person’s criminal record. Regulation 4 of the *Physiotherapists Regulations 2006* is a typical example of such a provision:

The Board may require a person who applies to the Board for registration under the Act section 27 or 29 to give the Board authority to obtain details of any record of criminal convictions of that person.

The scheme of the College Act does not include the “fit and proper” formulation that is included in virtually all the other relevant Western Australian Acts. Rather, it uses a combination of the “no criminal convictions” provision, the “written consent to undertake a criminal record check” provision (section 40(2)(c)) and a regulation-making power: “meets any other requirements prescribed by the regulations for the purposes of this section”. Other requirements are prescribed for each registration category, except associate membership, under regulations 7, 11 and 13 and are the same in each case: “An applicant for [category of registration] meets the requirements referred to in [the relevant section] of the Act if the applicant is **not prohibited** under a law of the Commonwealth, a State or a Territory from engaging in paid work as a teacher in Australia” (emphasis added).

The scheme for full registration and re-registration as a teacher has two additional elements. The first is that the applicant must satisfy section 35(d), which is that he or she “has achieved the standards of professional practice approved by the College”. In practice, this provision can be satisfied by a referee declaration⁴⁴ from the applicant’s current (or most recent) principal/deputy principal/head of learning area.

The second additional element for full registration is the provision at section 35(c) for “successful completion of a prescribed criminal record check”. This was inserted by way of an amendment during the passage of the Bill through the Legislative Council.⁴⁵ While the arguments advanced in support of this amendment would be equally applicable to applicants for provisional registration and for limited authority to teach – and to a lesser extent to associate membership – the corresponding amendments to sections 33, 37 and 39 were not made.

Regulation 4(2) sets out what constitutes “successful completion” for the purposes of 35(c):

For the purposes of section 35(c) of the Act, a person has successfully completed a prescribed police criminal record check if the Board has obtained a criminal record check that indicates that there is no record showing that the person has

⁴³ See for example section 27(2)(b) of the *Physiotherapists Act 2005*.

⁴⁴ <http://membership.wacot.wa.edu.au/AppForm.pdf>

⁴⁵ See the Hansard of proceedings in Legislative Council, Thursday, 6 May 2004

been **convicted or found guilty** of —

- (a) an offence described in Schedule 2 of the Act;
- (b) an offence under a law of the Commonwealth or of another State or a Territory that corresponds to an offence described in Schedule 2 of the Act; or
- (c) any other offence under a law of the Commonwealth, a State or a Territory, the nature of which renders the person unfit to be a teacher (emphasis added).

Since the College Act was passed a separate “first line of defence” against people of poor character has been opened up by the WWC Act.

Under this Act all people working with children, including teachers of school-aged children, have to obtain an “assessment notice” (generally referred to as a “Working with Children Card”). The effect of this is that in order to obtain – and then retain – registration as a teacher, a person must also have a Working with Children Card.

The two Acts have the same basic intent: – preventing people of poor character from working with children. Both schemes are based on the checking of applicants’ criminal histories. In the implementation of the schemes the College and the Department for Child Protection separately obtain criminal history from the same source (the Commonwealth’s CrimTrac Agency).

Both Acts have two kinds of provisions that form a second “line of defence”. The first is a regular renewal requirement. The WWC card must be renewed following a fresh criminal record check every three years. Under the College Act, fresh criminal record checks are required for re-registration which, for full registration, is every five years; for provisional registration every three years; and for limited authority to teach, every two years.

The second “second-line” provision in common is the requirement that the Director of Public Prosecutions and the Police Commissioner are to give written notice of any legal action (regardless of the outcome). The aim of these provisions is to ensure that the two agencies are informed of any actual or possible concerns immediately rather than having to wait for the next compulsory check.

As things stand the joint operation of the College Act and the WWC Act makes teachers the most frequently checked profession in Western Australia. To illustrate the point, over the period 2010-2016 fully registered teachers will have to undergo at least five separate criminal record checks.

The Catholic Secondary Principals Association of WA (submission 25) described the dual check as “unnecessary duplication” and recommended removing the criminal record check requirement from the College Act (see also John Allen-Williams, submission 10; State School Teachers’ Union of WA, submission 30).

The Department for Communities summarised the significant differences between the two checking processes in the form of Table 5 (submission 29).

Table 5: Summary of Key Differences between the Criminal Record Checking Schemes of the Working with Children and College of Teaching Acts

	WWC Act	College of Teaching Act
Frequency of criminal record check	Every 3 years and the check is "live"	Every 5 years
Purpose of criminal record check	<ul style="list-style-type: none"> • Criminal record check to prohibit certain people charged with or convicted of certain offences from carrying out child-related work in any of the 19 categories • Part of a community-wide responsibility to assess suitability to work with children • Only one aspect of the screening an employer should undertake when employing persons carrying out child-related work 	Part of the requirements for assessment of whether a person is "fit and proper", taking account of matters that are broader than sexual offences (It is noted that there are anomalies in the different types of membership of WACOT and the requirement for a criminal record check)
Portability	WWC card is portable across all categories of child-related work, in Western Australia only.	Registration with WACOT is for teachers only and is portable across Australia.
Information used in assessment	<p>Accesses juvenile and adult convictions, non-conviction charges and pending charges.</p> <p>May also access:</p> <ul style="list-style-type: none"> • Anything else that the CEO reasonably considers relevant to the decision when conducting an assessment under the Act (see section 12(8)(f)). • Information about the context of the offences including from police, the Office of the Director of Public Prosecutions, court records, medical and treatment reports 	Accesses national adult convictions, Western Australian spent convictions, pending charges and disciplinary actions.
Schedule of offences	<p>Schedule 1 and 2 offences:</p> <ul style="list-style-type: none"> • Convictions for Schedule 1 offences (sexual penetration of a child under 13) as an adult result in automatic bar • Schedule 2 offences are serious sexual and violent offences where a negative notice is to issue unless there are exceptional circumstances <p>Non-scheduled convictions are also considered:</p> <ul style="list-style-type: none"> • They will result in the issue of an assessment notice unless the assessment indicates there are particular circumstances that demonstrate that the person should be prohibited from child-related work 	Schedule 2 includes all WWC Schedule 1 offences, and most Schedule 2 offences of a sexual nature, but none of the violent offences. There is scope for Commonwealth or other State or Territories offences to be considered within section 55. However, this is limited to sexual offences and would not appear to include child pornography for example.

The College itself argues for retention of its own criminal record check on the ground that the criminal history screening involved is different from that conducted for a Working with Children Check.

The Working with Children Check seeks to reduce the risk to children of a person who has committed an offence against a child and therefore might be a danger to children, from being employed in child-related work. The screening completed for College membership seeks to establish a person's fitness to teach. (WACOT, submission 28)

This duplication of criminal record checks, the amount of associated "red tape" and the cost (to teachers) has not been well received by teachers. The question is: Is it all really necessary? The answer appears to be "No" for the following reasons.

Under College Act Regulations 7, 11 and 13 applicants cannot get "to first base" with College registration if they do not have a current WWC card.

It is known that the vast majority of people who obtain WWC cards have clear criminal records and as such any teachers among them would appear to clear the character requirements of the College except section 35(d), which in any case is to be satisfied by a referee declaration, not a criminal record check.

If this is so, and provided the Department for Child Protection were able to inform the College as to which of the College's applicants has a clear record, by a process of subtraction the College would then be able to draw up the list of applicants who, while holding a WWC card, nevertheless have criminal records.

This would remove the need for the vast majority of College applicants to pay for two separate criminal record checks. It further follows that the only applicants for whom the College would require a criminal record check are people on the "subtracted" list and the question becomes: Do any people on this list have a conviction of any offence "the nature of which renders the person unfit to practise as a teacher"?

How can this question be answered? Under section 40(2)(c) the College already obtains an applicant's consent to undertake a criminal record check and so the issue comes down to whether the College can have access to up to date criminal record information held by the Department for Child Protection. The current situation is such that the College must obtain the information independently via a second check. If the way could be cleared to alter this the need for **all** College applicants to undergo separate checks could conceivably disappear.

Every effort should be made to achieve this outcome.

Either way, there remains the issue of how the College is to draw its conclusions from available criminal record information. While it might be possible to draw up an additional schedule of offences to the Act that render a person who holds a WWC card nevertheless unfit to practise as a teacher, a better approach would be to replace the fundamentals of the College Act's current scheme with the scheme used in most other Acts.

Essentially, this would involve, for all categories of registration, the inclusion of the “fit and proper” provision (which covers *inter alia* the current provision that there be no convictions that render the person unfit to be a teacher), an explicit new requirement to have a WWC card and, probably, a provision for an applicant to give permission to the College to conduct a criminal record check (to enable access to information held by the Department for Child Protection).

Adoption of the “fit and proper” scheme would also serve to simplify the provisions of the Act and its regulations in relation to what constitutes “unprofessional conduct” and the disciplinary procedures currently in place to deal with any such allegations. This is a matter that is discussed in greater detail under the next term of reference.

7.2.4 The Question of Capability

The “flip side” of a registration scheme’s character requirements is its capability requirements: in this case, the qualifications and abilities a person needs to be registered as a teacher.

As mentioned above, the College Act has three categories of registration for teachers: full, provisional and limited authority (associate members are not registered to teach). In other Australasian Acts the third category has a number of different names, including “permission to teach” (e.g. QLD) and “special authority to teach” (SA).

The capability requirements for full registration invariably include that the applicant has a genuine (i.e. not fake) approved higher education qualification that includes a component of teacher education and proficiency in the use of the English language. The College’s capability requirements for full registration are set out in section 33 of the Act.

There is no requirement for an applicant in any category to have sufficient physical capacity, mental capacity and skill to practise teaching as in section 27(2)(d)⁴⁶ of the Nurses and Midwives Act. Consideration should be given to the inclusion of a similar requirement in the College Act. The Victorian Government’s Education and Training Reform Amendment Bill, passed on 23 March 2010, includes a provision to give the Victorian Institute of Teaching:

The power to convene medical panels in cases where a teacher’s ability to practise is seriously detrimentally affected or is likely to be seriously detrimentally affected by a physical or mental impairment. This will prevent teachers who may be unfit to continue to teach for health reasons being subject to a discipline hearing process to determine their fitness to teach.⁴⁷

⁴⁶ “has sufficient physical capacity, mental capacity and skill to practise nursing or midwifery, as the case may be”

⁴⁷ Victoria, *Parliamentary Debates*, Legislative Assembly, 10 December 2009, 4611 (b Pike, Minister for Education).

Under the College's membership policy, the minimum approved qualification for the purposes of section 33 is "four years of completed higher education programs with at least one year being an initial teacher education program covering K-12 in early childhood, primary, middle or secondary education".⁴⁸

Submissions questioned why the College has failed to recognise qualifications from reputable institutions (Carmel School, submission 2) and why it has emphasised the duration of a degree over the quality of its content (John Calvin Schools, submission 17; Department of Education, submission 26). The Department of Education argued that approval of "teacher training qualifications needs to allow for flexibility of course design and delivery that maintains teacher education standards, but allows for some contemporising; for example, compressed courses". Such "compression" is not possible when the requirement is for a four-year qualification. Yet despite setting a very high bar for approval of qualifications, the College does not require a secondary teacher to be qualified in his or her teaching area (Patrick F. Whalen, submission 3; Professional Teaching Council, submission 12).

Under the transitional provisions of Schedule 4 of the Act persons who had been employed as teachers prior to the commencement of the Act could successfully apply to be registered as teachers or issued with a limited authority without necessarily having to satisfy the capability requirements of section 33. Many did so under clauses 2 (for teachers currently teaching) and 3 (for teachers not currently teaching) of Schedule 4 which provide that the applications were to be made within (a) 18 months (for teachers teaching) or 24 months (for teachers not currently teaching) after the commencement date; or (b) such further time as the College allows, if the College decides there are special circumstances to do so.

In addition to the College's qualification requirement, and notwithstanding the "special circumstances" provision of the transitional clauses, persons making applications for full registration after the 18 months mentioned in clause 2(a) of Schedule 4 had elapsed have been generally required to satisfy all the capability requirements. Apart from the "character" requirements discussed above, these are a four year qualification; been teaching within the past five years for a period of one year, whether or not on a full time basis; and any requirements as to professional involvement prescribed under section 35(f) (see regulation 18 for details of these).

It should be noted, however, that teachers who obtained full registration under the transitional provisions of Schedule 4 will still not have to comply, by virtue of clause 5 of the Schedule, with the four-year academic qualification requirement when they apply to be re-registered in 2010-2011.

It is also to be noted that some teachers fully registered under the "teachers not currently teaching" provision of clause 3 of the Schedule may not be able to satisfy the "been teaching for one year in the past five" provision when they apply to be re-

⁴⁸ <http://www.wacot.wa.edu.au/index.php?section=112>

registered. It is not known how the College will treat such applications for full re-registration.

Submissions were critical of the minimum one-year of teaching in the past five rule because of its discriminatory impact on teachers who take leave from teaching due to illness, parenting, travel or for other reasons (Tony London, submission 9; State School Teachers' Union of WA, submission 31; Professional Teaching Council of WA, submission 12).

The requirement for formerly registered teachers being unable to re-register as a full member and, instead, having to fall into provisional registration as a consequence having had a break from teaching is unnecessarily restrictive, thereby preventing some very experienced teachers coming back into teaching. (State School Teachers' Union of WA, submission 30)

... there ought to be a facility for teachers to maintain registration but have it suspended for a period of time in which they might be employed overseas, be ill, be on worker's compensation or be on extended leave. (Professional Teaching Council of WA, submission 11)

Another requirement for re-registration is fulfilment of professional development obligations. Some submissions opposed this requirement (Professional Teaching Council of WA, submission 11; Department of Education, submission 26). The Department commented that the professional learning requirements prescribed for re-registration:

- could cause confusion as teachers in the public system use a [different] set of competency-based standards as a basis for determining their professional learning and development programs;
- could significantly impact on teacher staffing in schools from late 2010 when re-registration for large numbers of employed teachers falls due;
- will be costly and time-consuming to administer and audit, especially after October 2010; and
- should be removed, specifically from Regulation 18(2) and (3).

Jacqueline Wright canvassed opinion among teachers in the north-west of the State and submitted that the lack of professional development opportunities there seriously disadvantages that section of the College membership (submission 13; see also Nadine Woodley-Smith, submission 15).

At the bottom of these concerns is the concept of "re-registration", which essentially involves treating members of the College who have been registered for a specified period (1, 2, 3 or 5 years, depending on the category of membership) in the same manner as applicants for initial registration. Apart from concerns expressed in the submissions, re-registration is a costly and cumbersome process.

There is no separate “renewal of registration” provision in the Act. There is provision, however, under section 46 for the College to require registrants to renew their *membership* annually. It is evident from consultations and submissions that the concept of “membership” has not found great favour among teachers and many fail to see what purpose it serves. They would prefer an arrangement akin to the holding of a driver’s licence – once you have one you hold it indefinitely, provided you renew it when due and you do not “lose” it through traffic infringements. On this analogy, the concept of “membership” would be related to voluntary membership of an automobile club, such as the RAC.

On this line of argument, it would appear sensible to abandon the concept of “College membership” and replace it with straightforward annual renewal of registration. Assuming the Working with Children Act’s requirements remain applicable to registered teachers, regular criminal record checks of them under that Act would serve to allay any public concern about possible failure to detect behaviour that would render a teacher no longer fit to work with children.

As mentioned above, applicants may be provisionally registered if they meet some, but not all, of the requirements for full registration as set out in section 35. The common requirements relate to qualifications, criminal record and English language competence. The requirements that do not apply relate to the College’s standards of professional practice (s.35(d)); having taught for one year in the past five (s.35(f)(i)); and prescribed professional involvement.

Normally, the term “provisional” means “for the time being” until some outstanding matter is settled. This could mean the production of certain evidence, possibly a certificate of some kind. An example is in section 28 of the *Physiotherapists Act 2005*:

28. Provisional registration

- (1) The Board may provisionally register an applicant if satisfied that —
 - (a) the applicant has applied to be registered under section 27;
 - (b) the requisite evidence is likely to be produced to enable the Board to be satisfied as to the matters set out in section 27(2); and
 - (c) the applicant has paid the registration fee, if any, prescribed by the regulations.
- (2) Provisional registration has effect for a period of 3 months beginning on the day on which it is granted unless earlier cancelled.

Section 29 of the *Nurses and Midwives Act 2006* and section 32 of the *Medical Practitioners Act 2008* contain essentially the same provision.

“Provisionally” in the College Act inheres in being able to meet the academic qualification and English language requirements for full registration, but not the other capability requirements. Of these the College policy singles out the lack of prior experience as a teacher:

A Provisionally Registered Teacher is a person who has met all requirements for registration, including the qualification requirements of the College, but who has not been employed as a teacher for at least one year in the past five years

It follows that for recent Western Australian university graduates, “for the time being” means until they have completed one year of employment.

In some other Acts that allow provisional registration a requirement for a period of employment prior to full registration is linked to the concept of “internship”. An example is section 31 of the *Medical Practitioners Act 2008* which permits “supervised” practice so that the requirement for full registration in section 30 can be met. The College Act’s one year employment requirement is not linked to the concept of “internship” or “supervised practice”, although it is known from the survey results that a good number of beginning teachers are “mentored” by experienced teachers and that there is a good deal of support for this. Whether the College Act should formally include an internship requirement is a matter that needs careful consideration from a range of perspectives, including the industrial perspective.

7.3 Issues of specific concern arising from the scheme

For some people being provisionally registered by the College hardly means anything like “for the time being”, but rather something more akin to “*ad infinitum*”. This is because of the Act’s provision at section 32(2) to the effect that provisional registration is for a renewable period of up to three years, coupled with the College’s policy on “approved qualification in teaching”, in particular the non-acceptance (or otherwise) of a less than four-year teaching qualification for the purposes of full registration.

The issue turns on when and where the three-year qualification was obtained. Under published College policy, in “some circumstances” experienced teachers with three year teaching qualifications may be eligible for full registration. The College’s website indicates that it does not accept a three-year qualification of a New South Wales teacher; but will accept a three year qualification of a Western Australian teacher acquired before 15 September 2004 for either full or provisional registration. Why the College has chosen the date of commencement of the Act for the latter is not clear – it is certainly not part of the transitional provisions of the Act.

The College will not accept for full registration an applicant who has a teaching qualification awarded in Australia, Canada, Ireland, New Zealand or the United Kingdom prior to 2000 though it will accept them for provisional registration if the applicant can prove recent employment history.

A question can be raised about this use of the discretion conferred on the College by the formula “a qualification in teaching approved by the College for registration”. Normally, a body on which a discretion is conferred cannot fetter the exercise of that discretion by making a fixed rule in relation to that matter. The policy document on the College website indicates that the College has a fixed policy as to the term of a teaching qualification: either four years or in some circumstances three years “with at least one year being completed in an initial teacher education programme” in various periods of school education.

College policy on provisional registration also sits uneasily with the transitional provisions of Schedule 4 which, as outlined above, enable the full registration and subsequent re-registration of teachers who do not have a four-year qualification; indeed some may hold only a two-year qualification.

The review has received advice that teachers may still apply for registration as a teacher or for a limited authority to teach under the transitional provisions of clause 2(2)(b) of Schedule 4 of the Act. Clause (2)(2) provides that:

An application under this clause is to be made within –

- (a) 18 months after the commencement day; or
- (b) Such further time as the College allows, if the College decides there are special circumstances to do so

As the commencement day for the College Act was 15 September 2004, it is clear that an application can now only be made if the College decides that there are “special circumstances” to warrant further time.

It is clear that at least some provisionally registered teachers who do not have an “approved” three-year qualification can apply under the “special circumstances” provision of clause 2(2)(b) to be fully registered. Upon receipt of such applications the College must decide whether there are grounds to allow the further time than the 18 months specified in clause 2(2)(a). If it refuses the application the College must give written reasons as to why so as to enable the applicant to understand the decision and to assist the applicant in considering whether to pursue a review of the decision in the District Court under section 81 of the College Act.

The Act’s scheme for the issuing of a limited authority to teach, coupled with the College’s policy on this category has proven problematic for schools. The process is regarded as excessively bureaucratic and not in tune with the day-to-day realities faced by schools that need to employ people in this category at short notice.

One of the biggest practical problems faced by schools appears to be that the College process does not move fast enough, and a person cannot commence work in the school until after the LAT has been issued. In reality, a school might urgently need a person “now”, but unless the person already has a LAT it takes some weeks for an application to be processed.

Based on submissions received, it appears that streamlining of the Act's LAT provisions need to be seriously considered. This could be achieved to some extent by including in the College Act a provision similar to the scheme of the WWC Act where a person may commence child-related work prior to an application for assessment being decided, provided an application for a WWC has been lodged within a specified period.

Another issue relates to schools, such as the Agricultural Colleges, which are extensively involved in the on-site provision of stand-alone VET courses. They have argued that the best people to teach these courses are people with trade qualifications (and not necessarily four-year teaching qualifications), but they are finding it difficult to attract and retain such people through two-year LAT appointments which cannot underwrite an offer of permanent employment with the Department of Education.

Professor Jennifer Nicol of Curtin University criticised the LAT provisions from the perspective of teacher education (submission 5). Final year students cannot obtain a LAT registration at the present time, a situation Professor Nicol argues should be changed.

When the three-year teaching degree was expanded to four years ... a prime driver was the declared need for a fourth 'traineeship' year which would allow for students in the final year of teacher education to assume – on a progressive basis and under agreed mentoring/supervision arrangements – autonomous teaching responsibilities. Such an arrangement can be captured by registration of final year Education students with a 'limited authority to teach' – an outcome which would provide indemnity to both the student and the 'employer'. ... Given the international and national interest in flexible pathways into teaching, inability to obtain 'limited authority to teach' is a significant obstacle to innovative arrangements which could assist the building of partnerships between schools and universities and which, through acknowledgement of a 'trainee year' could support final year teaching students to transition to full time work in ways that have been identified by employers as critical.

Another example related to teacher education relates to the innovative "Teach for Australia" teacher training program, which has commenced in Victoria, but which would not be able to get started in Western Australia under the College's current legislative provisions and policies.

Carmel School urged recognition of a third category of membership for staff trained in delivering the religious or traditional cultural components of an independent school's curriculum (submission 2; see also John Allen-Williams, submission 10).

The Act's provisions for a third category (beyond full and provisional) need to be amended in the light of the realities of school operations and teacher education programs that have become apparent. A new "permission to teach" category needs to be developed - to replace the limited authority to teach category - which can deal

reasonably and flexibly with the concerns of the College and the schools that have emerged since the Act's commencement.

8 Term of Reference 7: disciplinary provisions and whether the State Administrative Tribunal (SAT) should have a role in relation to appeals from decisions of the College

8.1 Overview

As discussed earlier, a registration scheme for a profession needs two “lines of defence” against people who are not fit and proper to be practising the profession. The first applies at the point of entry and the second once a person has been admitted to practise the profession. The College’s second “line of defence” is its disciplinary powers and are of keen interest not only to teachers, but also the broader public, particularly in relation to matters of serious misconduct which are a threat to the safety of children.

The provisions of Part 7 of the Act enable the College not only to decline an application, but also to cancel, suspend or place conditions on memberships. Under section 62 the College may order that disciplinary action be taken if a College inquiry has found that the member has engaged in unprofessional conduct. Under section 63 a member has engaged in unprofessional conduct if that person has:

- been convicted of an offence the nature of which renders the person unfit to be a teacher;
- engaged in serious misconduct the nature of which renders her/him unfit to be a teacher;
- been seriously incompetent as a teacher;
- contravened the Act; or
- contravened a membership condition relating to the way he/she practises teaching.

Under section 64 the following disciplinary actions may be taken by the College:

- imposition of a condition relating to the way the member practises teaching;
- suspension of membership for a period not exceeding 2 years;
- imposition of a penalty not exceeding \$5 000; or
- cancellation of membership.

8.2 College Powers in Relation to Criminal Matters

Under the Act the College receives notices from employers regarding allegations of gross misconduct and may conduct an inquiry to determine if a teacher’s registration should be affected.

The College also receives notices under section 49(1) of the College Act from the Director of Public Prosecutions and the Commissioner of Police when a teacher is charged or found guilty of Schedule 2 and other indictable offences. A teacher charged with a child pornography offence would be a case in point. On receiving a

notice under 49(1) the College then has an obligation under section 49(4)(b) to advise the teacher's employer of the content of the notice.

In the case of a conviction of a Schedule 2 offence, the College must cancel the teacher's registration or, in other cases, conduct an inquiry to determine if the teacher's registration should be affected.

The normal disciplinary procedures apply in most cases. Part 7 Division 3 of the College Act sets out the procedure and it starts with giving notice of at least 21 days before an inquiry commences. The conduct is to be unprofessional conduct and serious misconduct the nature of which renders the person unfit to be a teacher.

The College's powers in relation to criminal matters need to be understood in relation to the powers of police, powers available under the Working with Children Act and those available to employers.

From the public interest perspective, an issue of considerable concern is how quickly a teacher charged with or convicted of a sexual offence involving a child can be removed from a school.

The Working with Children Act, section 16(3), enables the CEO under that Act (on a report of an employer), if satisfied on reasonable grounds that there has been a Class 2 offence under that Act, to require an employee who has been charged with, or convicted of, an offence that makes it inappropriate for the employee to continue to carry out child related work to apply for an assessment notice whether or not the person has a current assessment notice and the employee must comply with the notice within 10 days after the date of the notice. A negative assessment for a teacher subject to the Working with Children Act (and not all are as yet) effectively prevents that teacher from working with children.

The College Act's provisions enable cancellation of membership, following a hearing, of teachers charged with or convicted of sexual offences involving children. If the College receives notice of such a charge, the Act enables it to proceed, giving 28 days notice, to a hearing under section 56(3).

As things stand, the fastest response comes from the employer who may immediately suspend a teacher from classroom duties upon being informed (say by the College under section 49(4)) of a charge or conviction. The next fastest response is that under the Working with Children Act – around 10 days – provided the teacher is subject to that Act (note that at the present time most of the teachers granted registration under the transitional provisions of the College Act are not yet subject to the requirements of the Working with Children Act). The third fastest response is that under the College Act – around 28 days. The final outcome of a charge brought before the Courts takes considerably longer than any of these three processes.

In the particular case of a charge of child pornography there is doubt about the College's ability to act because, as noted in Table 5 above, child pornography is not a listed Schedule 2 offence, and as such is an offence that falls outside the notification requirements of section 49(1).

It is nevertheless the case, however, that the College reports that it has received around 12 notifications over the past year of teachers being charged with, or convicted of, child pornography offences.

Cancellation of membership on the basis of a charge – as distinct from a conviction – of a criminal offence is a serious step for the College to take. If the person is subsequently acquitted, however, section 55 provides for membership to be reinstated.

This raises the question of whether the College should have a power to immediately suspend (as well as or instead of cancellation) the membership of a teacher charged with Schedule 2 offences. There is no suspension provision in the Act as it stands.

Cancellation and suspension pending conviction or acquittal both raise complex issues. There are issues about the presumption of innocence. There are issues about three separate inquiries on identical subject matter proceeding simultaneously (though at different speeds): the police inquiry, the Working with Children inquiry and the College inquiry. And, there are concerns about how easy it is to make unfounded allegations against teachers.

On balance, a power to suspend would seem more appropriate than cancellation in relation to charges related to Schedule 2 offences.

This review has not drawn any definitive conclusion from the above considerations. It has concluded, however, that the disciplinary provisions of the College Act do need attention. Exactly what needs to be done depends on how other matters canvassed in this report are resolved, particularly on whether it is decided to adopt the "fit and proper" formulation for the scheme of registration and to involve the State Administrative Tribunal in the manner proposed in section 8.4 of this report (below). Apart from that, there are issues arising from the fact that a teacher can be barred from practising under two Acts – the College Act and the Working with Children Act – which need to be better aligned in terms of their scheduled offences and disciplinary procedures.

8.3 Comments from Submissions

Submissions to this review were particularly critical of the College's practice of cancelling a teacher's registration for non-payment of membership fees (Learning Conversations, submission 12; Catholic Secondary Principals Association of WA, submission 26). This inconveniences both the member and his or her employer. The latter usually receives no notice of the intention to de-register. The College proposed inserting a requirement for a seven day period of notice to the member's employer

(submission 28) whereas the Catholic Secondary Principals Association called for a minimum of five to six weeks' notice or to the end of semester, whichever is greater.

8.4 The Possible Role of the State Administrative Tribunal

Section 81 provides that a person aggrieved by a College decision may appeal to the District Court for a review of the decision.

81 Review

A person who is aggrieved by:

- (a) the refusal of an application under Part 4;
- (b) the granting of an application subject to a condition under section 43(1);
- (c) an order under section 62; or
- (d) the cancellation of membership under section 46(2), 55, 56 or 57, may apply to the District Court for a review of the decision.

Legislation establishing the State Administrative Tribunal ("SAT") had not been passed by the time the College Act was passed and the question has arisen as to whether SAT should now replace the District Court as the avenue for appeals from decisions of the College.

The SAT was established by the *State Administrative Tribunal Act 2004* ("the SAT Act") and the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* (the "Conferral Act"). Under its legislation the SAT may review decisions made under more than 130 other WA Acts but, as mentioned above, the College Act is not one of them.

The question of whether the SAT should replace the District Court in this process arose in the context of a review of the SAT Act under section 173 of that Act:

As soon as practicable after the end of the period of 2 years after the day on which section 7 comes into operation [that period ended on 1 January 2007] an inquiry into the jurisdiction and operation of the Tribunal is to be conducted ...

On 7 June 2007, the Legislative Council agreed that this inquiry would be undertaken by the Parliament's Standing Committee on Legislation.

On 23 May 2008, the Chair of the Standing Committee wrote to the then Minister for Education and Training seeking his views on whether SAT should conduct merits reviews of College decisions. In his reply the Minister undertook to consider the matter in the context of the section 90 review of the College Act.

In the event the government changed following the general election in 2008 and the commencement of the review of the College Act was delayed until the first quarter of 2009.

The review's discussion paper, published in February 2009, noted that the advantages that could flow from the College's review jurisdiction being transferred to the SAT include:

- the removal of confusion in the public mind because one overarching tribunal is identified as the place where people can seek redress;
- less formal, less expensive and more flexible procedures than used in traditional courts by using a more inquisitorial and less adversarial approach;
- the development of best tribunal practices - both procedural and in terms of common decision-making principles across various jurisdictions; and
- improved quality and consistency in decision making.

Meanwhile, Parliament's Standing Committee on Legislation ("the Committee") completed its deliberations and tabled its report in June 2009.⁴⁹ The Committee concluded that the College's review jurisdiction should be transferred from the District Court to SAT and made a recommendation (Recommendation 58) in its report to that effect. Its reasoning and the large amount of support for it from those who made submissions to the Committee, including from the College itself, are advanced on pages 416-421 of the report and are not rehearsed here. It is a finding of the present review that the Committee's recommendation should be implemented through amendment to the College Act.

The Committee also recommended (Recommendation 59) that the SAT should assume original jurisdiction in relation to serious disciplinary proceedings against teachers with the College retaining original jurisdiction only for minor disciplinary proceedings.

The Committee pointed out, and the President of the SAT confirmed, that this recommendation is consistent with the situation with many other regulated professions and occupations (it is understood that the SAT has original jurisdiction for 37 such professions).

The President of the SAT has indicated to the present review that it is supportive of the Committee's Recommendation 59, subject to adequate funding being available to implement it.

The Committee's arguments for the transfer of original jurisdiction are advanced on pages 399-408 of its report.

The College has written to this review indicating that the Board does not support the recommendation primarily because it wishes to retain the principle of self-regulation.

⁴⁹ Standing Committee on Legislation (Chairman: Hon Ken Baston) 2009. *Inquiry into the Jurisdiction and Operation of the State Administrative Tribunal*, Western Australian Parliament.

However, as pointed out elsewhere in this report, the Board's "principle of self-regulation" is not one that may be legitimately drawn from the College legislation.

As a consequence it has been concluded that there are no sound and compelling reasons against accepting Recommendation 59 of the Parliamentary Committee's report,

9 Term of Reference 8: whether the College's resources are appropriate in light of its statutory functions

9.1 Overview of the College's Work

The first function of the Act to be implemented by the College was the scheme of registration and this continues to account for the greater part of the College's work. The College provided the following overview of its work and the resources available to it.

- All teachers employed in Western Australian schools at the time of commencement were entitled to apply for registration under the transitional provisions of Schedule 4 of the Act and the handling of these applications was completed in 2007.
- The College processes an average of 730 new applications each month. They are assessed for suitability, comparability and validity of qualifications, evidence of English language competence, probity and suitability for employment as a teacher, and evidence of having met professional standards.
- Teachers are registered for either a three or five year period, at the end of which they are required to renew their registration. The College processes an average of 134 applications for renewal each month and this will rise to 3,000 a month in October 2010 due to the "bulge" of five-yearly renewals arising from the original application of the transitional provisions of Schedule 4.
- The College liaises with employers to assist with compliance with the Act and conducts audits of teachers employed to ensure compliance.
- The College operates a CrimTrac Agency with an average of 570 criminal records being requested and screened monthly.
- The College has around 80 open files on disciplinary matters with an average of five new cases reported each month. The College expects that the rate of reporting and the completion of files will remain at current levels, leaving the College with an on-going case load of between 70 – 90 open files.

The College promotes the professional growth of teachers throughout their careers.

- The College provides workshops for teacher mentors who are working with graduate teachers.
- One-day workshops are provided for relief teachers to ensure that they maintain currency in curriculum developments and behaviour management skills.
- A quarterly research digest, summarising the most recent and influential research on a particular aspect of teaching and learning, is distributed to all registered teachers.
- Teachers are required to complete professional learning as a condition of renewing their registration and the College collects and records comprehensive data on teachers' professional learning activities.

The College, in consultation with registered teachers, has prepared, distributed and promoted *Western Australian Professional Standards for Teachers and the Code of Ethics*.

- The Professional Standards for Teachers are used to assess teachers' eligibility for Registered Teacher status, whether they are new applicants or seeking a change in status from provisional registration to full registration.
- The Professional Standards for Teachers are the standards against which alleged misconduct is measured to determine if a person is entitled to registration or if their current status as a registered teacher should be affected.
- Future development of this area of the College's functions will be in assisting with the development and implementation of national professional standards for teaching. This work is being considered by the Ministerial Council for Education, Early Childhood Development and Youth Affairs.

The College has identified areas of priority for research and has completed a number of research projects. Research projects have concentrated on matters that affect the profession.

- In 2007 the College, in conjunction with other Australasian Teacher Registration Authority (ATRA) members, commissioned research into the professional learning experiences of teachers. The research investigated successful delivery methods, employer support for professional learning, teachers' professional learning needs and access to professional learning programs.
- Research into 'teaching-out-of-field' was commissioned in 2008. This project investigated employer demands for teaching-out-of-field, support provided to teachers teaching-out-of-field and the impact of teaching-out-of-field on professional standards and student outcomes.
- In 2006, the College conducted a survey of relief teachers to investigate their access to professional learning, their employment experiences and their knowledge of recent developments in curriculum. The survey revealed that, as a group, relief teachers were not being supported in their professional learning and were experiencing difficulty in keeping abreast of curriculum developments. The College now provides professional learning opportunities for relief teachers.

The last function to be commenced by the College was to enhance the standards of courses of teacher education acceptable for the purpose of registration.

- All new Initial Teacher Education programs delivered in Western Australia are assessed by the College to determine the capacity of the program to produce graduates suitable for teacher registration.
- The College plans to review all programs currently recognised for teacher registration over the next three years.

- The College is involved in work being undertaken by the Ministerial Council for Education, Early Childhood Development and Youth Affairs to develop processes and standards for national accreditation of initial teacher education programs.

9.2 Resources Available to the College

The funds available to the College to carry out its functions are derived from fees prescribed under various sections of the Act in the *Western Australian College of Teaching Regulations 2004*. Table 6 summarises the fees that were prescribed in 2004 (and which have not been changed since then).

Table 6: Summary of Prescribed College Fees

Regulation	Description	Fee
8	Fee for provisional registration (section 32(1)(b))	\$50
12	Registration Fee (section 34(1)(b))	\$70
14	Limited Authority to Teach Fee (section 36(1)(b))	\$50
15	Associate Membership Fee (section 38(1)(b))	\$20
16	Membership Application Fee (section 40(2)(d))	\$50
17(1)	Annual Fees (section 46(1))	\$70
17(2)	Annual Fee (Associate Member)	\$20

The annual membership fee is the principal source of recurrent funding. It is understood that the figure of \$70 for teachers was based on an estimate of what they would be prepared to pay, with an eye to the fees that applied in other jurisdictions for teacher registration and the registration fees paid in other regulated professions in Western Australia.

The annual fee was effective immediately for teachers new to teaching, but did not apply to those registered under the transitional provisions of Schedule 4 until 2006.

Revenue available to the College since 2006, summarised from the audited accounts as reported in its Annual Reports, is shown in Table 7.

Table 7: College Revenue over the period 2006-2009

Annual Revenue	March 2006	March 2007	March 2008	March 2009
Membership Fees	\$487,420	\$2,912,060	\$3,363,827	\$3,555,279
Seminars	\$140,120	\$179,333	\$132,891	\$134,838
Operating Grant	\$860,000	\$91,425	\$-	\$-
Other Revenue	\$1,809	\$3,505	\$123,594	\$257,345
Interest Received	\$19,474	\$126,972	\$213,767	\$199,763
TOTAL REVENUE:	\$1,508,823	\$3,313,295	\$3,834,079	\$4,147,224

The “operating grant” which cut out in 2007 refers to the one-off grant of \$1.45 million from government to tide the College over until the full annual membership fee scheme commenced in March 2006.

The marked increase in revenue from annual membership fees over 2006/07 was due to the first collections of that fee from the teachers registered under the transitional provisions.

At the present time the membership base is approximately 46,000, many of whom are not teaching (the total number of teaching positions requiring membership is approximately 30,000).

The College estimates that population growth will lead to a small growth in the number of teaching positions, but there is no reason to believe that there will be any significant growth in the number of members. The College believes that it is more likely that there will be a decline. The age profile of registered teachers shows 37% to be over the age of fifty, many of whom are employed as relief teachers or in part-time positions. It can be expected that as the “bulge” of teachers aged over fifty moves through to retirement, many will cease their College membership.

9.3 Comparisons with other Jurisdictions and Occupations

Table 8 compares the College’s annual fee and membership with its counterparts in other jurisdictions.

Table 8: Annual fees for Teacher Registration in Australian Jurisdictions

State	2007 fee	2008 fee	2009 fee	No. of members
New South Wales	N/A	N/A	\$96	32,000+
South Australia	\$60	\$60	\$90	36,430
Tasmania	\$65	\$65	\$83	9,700
Northern Territory	\$60	\$60	\$75	5,086
Western Australia	\$70	\$70	\$70	46,467
Victoria	\$64	\$66	\$68*	109,749
Queensland	\$64.50	\$64.50	\$64.50*	97,000

All states except Queensland have increased their fees in the past three years. The two states which have annual fees less than the College’s have more than double the number of teachers on the register, giving them economies of scale. New South Wales is only registering graduate teachers at the present time and estimates its total membership will ultimately reach approximately 100,000.

All teacher registration agencies established in recent years received - and in some cases continue to receive - government funds.

The Victorian Institute of Teaching has received approximately \$10m since its inception in 2002 in annual government grants of approximately \$1.2m per year. This annual funding is now being scaled back to the point where the VIT will become self funding. The VIT fees are increased each year in line with CPI.

The New South Wales Institute of Teaching received a commencement grant of \$20m.

The Teacher Registration Board of the Northern Territory receives the majority of its operating funds from the government.

The Tasmanian Teachers Registration Board obtains corporate services from the government at rates less than full cost.

Of the two long-established agencies, South Australia's receives no direct government funding to support ongoing operations but some services are funded by the government. Queensland's is fully funded through membership fees and utilises government facilities on a fee-for-service basis.

Table 9 shows annual fees for four other regulated occupations in Western Australia.

Table 9: Annual fees for Teaching and Four other Occupations in Western Australia

Occupation	Annual Fee
Nurses and Midwives	\$120.00
Physiotherapists	\$130.00
Painters	\$226.00
Psychologists	\$300.00
Teachers	\$70.00

9.4 Cost Pressures

Since its inception the cost of operations of the College has steadily increased.

Staff salaries and wages are set by the Government Officers Salaries, Allowances and Conditions (GOSAC) Award and Agreements and have, on average, increased by 23.5% over the past five years. The College is expecting salary and wage costs to continue to increase by approximately 4.5% per year for the foreseeable future, based upon the past 12 years of GOSAC figures. As a service based organisation, it can be expected that the College's wages and salaries will continue to constitute the major expense item each year.

The College commenced with a small staff of seven devoted entirely to the establishment of the registration data base. Staff numbers increased as other functions were commenced with the collection of fees in 2006 making this possible.

By the end of the 2008/9 financial year, the College was deemed to be adequately staffed to fulfil all functions, with the exception of the accreditation of teacher education programs and the renewal of the bulge of registrations that occurred in 2004. Staff numbers currently stand at 38 FTE and the College estimates that these are not expected to move above 42 FTE under the Act's current provisions. It is also expected that renewing the registration of the "bulge" of some 24,000 teachers in the period from October 2010 to October 2012 will require an additional 2 FTE.

The College estimates that its basic regulatory functions account for in excess of 90% of its annual budget. The extent to which the College has been able to provide services such as targeted research and professional learning has progressively declined as costs have risen and fees remained at original levels. The College believes there is minimal scope to reduce costs and still maintain regulatory functions at an acceptable level of efficiency and responsiveness.

The College's regulatory functions are becoming more expensive to administer as the means by which application documents can be falsified become more sophisticated. The technology and the staff training needed to detect fraud will continue to rise. Similarly, the College's disciplinary functions continue to expand as the number of cases reported to the College under sections 49 and 50 of the Act and awaiting processing increases. The number of disciplinary reports received by the College under sections 49, 50 and 51 of the College Act during the 2008 and 2009 reporting years is summarised in Table 10.

Table 10: Disciplinary Reports Received under Sections 49, 50 and 51

Year Ending	March 2008	March 2009	March 2010
section 49	33	15	22
section 50	40	20	28
Section 51	1	3	4
Total	74	38	54

The budget allocation for regulatory functions is comparable to that of other Australian regulatory authorities. Table 11 compares the wages costs of fulfilling the regulatory functions of the College with those of other Australian teacher regulation authorities which have a comparable scope of functions.

Table 11: Comparison of wages costs as a percentage of income

State	Report Date	Staff (FTE)	Income ('000)	Wages ('000)	Wages to Turnover	Members	Members to Staff
VIC	Jun 09	58.3	\$9,914	\$4,472	45%	109,749	1,882
QLD	Dec 08	36.7	\$7,078	\$3,583	51%	96,985	2,643
WA	Jan 10	36.7	\$4,174	\$2,295	55%	47,819	1,303
SA	Jun 08	19.0	\$2,198	\$1,328	60%	36,430	1,917

Table 12 shows the increase in membership fees and in College revenue that would have occurred had the fees regulations provided for annual CPI adjustment (Australian Bureau of Statistics, Perth only Annual CPI as at 30 September). In the five years to 2009 the College estimates it has fallen behind CPI by some \$600,000.

Table 12: College Estimates of Fee and Revenue Increases that would have occurred had fees kept pace with CPI

CPI Year Ending	CPI Perth Only	Annual Membership Fee	Annual Membership Revenue	Annual Year on Year increase
30-Sep 12	4.00%	\$93.57	\$4,303,990	\$165,538
30-Sep 11	4.00%	\$89.97	\$4,138,452	\$159,171
30-Sep 10	4.00%	\$86.51	\$3,979,281	\$153,049
30-Sep 09	1.20%	\$83.18	\$3,826,232	\$45,370
30-Sep 08	4.90%	\$82.19	\$3,780,861	\$176,608
30-Sep 07	2.60%	\$78.35	\$3,604,253	\$91,336
30-Sep 06	4.80%	\$76.37	\$3,512,917	\$160,897
30-Sep 05	4.10%	\$72.87	\$3,352,020	\$132,020
Initial Membership Fee:		\$70.00	\$3,220,000	

9.5 Submissions and Survey Findings

Submissions to this review questioned the capacity of the College's membership to support all ten of the College's current functions, arguing instead for a reduction in their scope (Anthony Acciano, submission 7; see also WA Council of State School Organisations, submission 20), the perceived unfairness of the obligation to pay full fees regardless of the work fraction (Peter Scharf, submission 14; Nadine Woodley-Smith, submission 15) and the cumbersome and costly annual fee cycle (Department of Education, submission 26; Catholic Education Office of WA, submission 24; WACOT, submission 28).

The survey showed that a clear and significant majority of teachers do not believe they receive "value for money" from the College at the existing levels of fees. It is difficult to imagine that an increase of over \$20.00 (the estimated amount needed to "catch up" to CPI increases since 2004) in the annual membership fee would be well received.

9.6 Commentary

On the basis of all current expenditure and revenue settings, the College estimates that its budget will be in deficit for 2011-12. If membership services were ceased the budget would still fall into deficit by that time, but by a lesser amount.

On the College's analysis of its financial position, fees need to rise to keep pace with the rising costs of administering the basic regulatory functions. It further follows that fees will have to rise very significantly if the College is to be in a position financially to

carry out other functions to the extent that teachers expect (as judged from the survey results).

The financial situation in which the College finds itself is not due to any shortcomings of the College Act, but rather to shortcomings in its administration. The College Act, like other Western Australian legislation that makes provision for the collection of fees, has standard provisions for the purpose. Fees are set by regulations made by the Governor in Executive Council on the recommendation of the responsible Minister. The regulations are then tabled in the Parliament and may be disallowed.

It is normal practice for fee-collecting agencies to review their fees annually and where it is judged to be warranted, to prepare a case for fee increases through amendments to regulations.

The fundamental reason the College fees have not kept pace with rising costs over the past years is that the Board has not sought to have its fees regulations amended annually.

10 Term of Reference 9: the appropriateness of the designation given by the Act to the College

The body established in Western Australia by the 1976 Act that was subsequently repealed was known as the “Teachers Registration Board”. The two other States that commenced regulation of the teaching profession in the 1970s – Queensland and South Australia – gave similar titles to the bodies they established.

For most of its life since, the Queensland body was known as the “Board of Teacher Registration”. However, following the passage of quite extensive amendments to its parent legislation in 2005, it is now known as the “College of Teachers”.

South Australia's body has retained the same name throughout subsequent legislative amendments: the “Teachers Registration Board”, which is the same name as the Tasmanian body. In the Northern Territory the agency is known as the “Teacher Registration Board”.

The New Zealand body is known as the “New Zealand Teachers Council”. In New South Wales the body is known as the “Institute of Teachers” and in Victoria it is the “Institute of Teaching”.

The names of similar bodies elsewhere include “General Teaching Council” (England, Scotland and Wales), Teaching Council (Ireland), College of Teachers (Ontario and British Columbia) and Council of Educators (South Africa).

One point of difference is the presence or absence of the word “registration”.

Another is whether the name picks out the people being regulated (teachers) or their profession (teaching).

Having considered all the material available during the course of the review, especially the submissions and the findings of the survey, this review has concluded that it would have been better if the chosen name had included the people being regulated to express the direct relationship that the College has with members of the profession. Its relationship with the activity of teaching itself is indirect and the regulation of that through performance management is directly and more appropriately located with the governing bodies that employ registered teachers.

Assuming teacher registration continues under a Western Australia Act which provides for a statutory body with board management, a case can be made for the inclusion of the term “Authority” in the title of the body.

As the primary function of the body is the regulation of teachers through a system of compulsory registration, a case can be made for the inclusion of the term “regulation” or “registration”

Putting the three considerations together leads to names such as “Teacher Registration Authority” and “Teacher Regulation Authority”.

In making these points, cognisance has been taken of the financial cost of changing the name of a body, which raises the issue of whether the money might be spent to better effect elsewhere. Most people now know the body as “WACOT” and probably spend little time unravelling the acronym and pondering its appropriateness in the manner outlined in the preceding paragraphs.

The question of College’s designation did not emerge with any prominence in the survey, the submissions or in meetings with interested parties.

Finding an acceptable balance of cost and precision of nomenclature is not easy. It would be unwise to change the name unless teachers were first consulted on the reasons and the costs. The source of the money to pay the costs would be an important consideration, especially if it were to be from registration fees.

11 Findings

The College of Teaching has not found great favour with teachers. Based on a the results of a reliable survey, the review found that:

1. The most telling finding is teachers' very low ratings of the performance of the College on 10 functions (derived from the Act, not including the handling of applications for membership) that they regard as being of high importance.
2. Three-quarters of respondents disagreed with the statement that the College represents good value for money.
3. Two-thirds of respondents, however, agreed that the College's management of membership applications is efficient.

The submissions included trenchant criticism of the performance of the College, although most supported the continuation of the College in some form, particularly the continuation of compulsory registration.

As to the question of the continuation of functions other than the basic one of registration, the major issue is the amount of money available to the College. The College estimates that its basic regulatory functions account for in excess of 90% of its annual revenue, leaving very little available for the carrying out of other functions. It follows therefore that:

4. If the College is to be able to carry out the Act's functions of highest importance to teachers there will have to be a significant increase in fees.
5. If fee rises are to be kept to a minimum, however, there will have to be a significant reduction in teachers' expectations of the College through the repeal of functions other than the basic ones of registration and discipline.

As to the governance of the College, and starting from the Westminster principle of Ministerial accountability for the performance a statutory body charged with the regulation of a profession, the College of Teaching Act:

6. Grants too much independence to the College by virtue of the way the governing body is composed of appointments in which the Minister has little or no say and the virtual exclusion of the Minister from having any say in the decision making of the Board.
7. As a consequence of this, there can be no guarantee that the Board appointed under the Act will have the requisite spread of expertise and experience required to administer the Act.
8. Has functions which do not appropriately concentrate the attention of the Board on the prime reason for establishing an Act of Parliament for the purpose, which is the protection of the public interest, especially in relation to the protection of the interests of children, which are served primarily by the exclusion from the profession of persons who are not fit and proper.
9. Has, as a consequence of 8 above, objects that indicate that the primary purpose of the Act is more to do with 'promoting the profession' than with protecting the public interest.

It follows that:

10. The Board should be composed of members, appointed by the Minister, in sufficient number (between 9 and 13) to ensure the requisite experience and expertise.
11. The Minister should have a power to direct (as against simply advise) the Board comparable to the power in other Western Australian Acts that regulate professions.
12. The retained functions of the College need to be reformulated in the interests of clarity of purpose and Ministerial accountability in areas where the Board's decision making needs to be tempered by policy of the government of the day.

The intended operation of the scheme of registration when the Act was commenced has been affected by the advent of subsequent legislation, in particular the passage of the Working with Children legislation and legislation to establish the State Administrative Tribunal. In addition, there is further legislation in the offing of which account needs to be taken. In particular:

13. There is a need to reconcile aspects of the College of Teaching legislation and the Working with Children legislation: the duplication of criminal record checking, differences between scheduled offences, and overlapping disciplinary procedures.
14. The College's registration scheme should be reformulated under the rubric of "fit and proper" in the interests of reducing complexity in the Act and Regulations and increasing comparability with the Acts for other professions.
15. The College Act should include a provision to suspend the registration of a teacher pending the outcome of a charge related to an offence, a conviction for which would render the teacher no longer fit and proper to be a teacher.
16. Recommendations 58 and 59 of the review of the jurisdiction of the State Administrative Tribunal (in respect to the College of Teaching) by Parliament's Standing Committee on Legislation should be accepted.
17. The scope of College Act, currently set by its definition of "teaching", needs to be widened to:
 - Ensure that early childhood teachers may gain and maintain registration as teachers when working in child care settings following the implementation of the National Partnership Agreement for Early Childhood Education and Care; and
 - Cover the registration of teachers of school aged children who may not be delivering "*an educational programme designed to implement the curriculum framework approved under the Curriculum Council Act 1997*", but rather a program to implement, for example, the national curriculum

Regardless of the considerations immediately above, there are shortcomings in the scheme of registration as it stands that need to be addressed, in particular those related to:

18. The absence of provisions for renewal of registration separate from the provisions for initial registration. The concepts of "College membership" and "re-registration" should be replaced with a simple scheme requiring regular renewal of registration.
19. The scheme's Limited Authority to Teach needs to be "revisited" in light of the realities that schools face in relation to their need from time to time to employ fit and proper persons who are not appropriately registered as either full or provisional members of the College.

Submissions

Submissions were received from the following individuals and organisations.

1. Lyndon Rice
2. Carmel School
3. Patrick Whalen
4. Bruce Filing
5. Jennifer Nicol
6. Dean Roepen
7. Anthony Acciacno
8. Tony Walker
9. Tony London
10. John Allen-Williams
11. Professional Teaching Council of Western Australia
12. Learning Conversations
13. Jacqueline Wright
14. Peter Scharf
15. Nadine Woodley-Smith
16. Confidential
17. John Calvin School
18. Early Childhood Australia
19. Independent Education Union
20. WA Council of State School Organisations
21. Confidential
22. Anna Targowaska
23. Graeme Johnson
24. Catholic Education Office of Western Australia
25. Catholic Secondary Principals Association of Western Australia
26. Department of Education and Training
27. Confidential
28. Board of the Western Australian College of Teachers
29. Department for Communities
30. State School Teachers' Union of Western Australia
31. Department of Child Protection
32. Sue Morgan
33. Deans and Heads of Schools of Education
34. Confidential