

41ST PARLIAMENT



Report 141

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

Teacher Registration Amendment Bill 2022

Presented by
Hon Donna Faragher MLC (Chair)
February 2023

Standing Committee on Uniform Legislation and Statutes Review

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EXECUTIVE SUMMARY

- 1 The Teacher Registration Amendment Bill 2022 (Bill) proposes to amend the *Teacher Registration Act 2012* (Act) to improve the regulation of teaching in Western Australia by:
 - strengthening the disciplinary powers of the Teacher Registration Board of Western Australia (Board) to deal with matters of child safety involving teachers
 - ensuring an effective registration system that allows teachers to move between registration categories
 - improving fairness for teachers returning after an absence
 - enabling Western Australia to participate in the Australian Teacher Workforce Data Initiative (Initiative)
 - promoting a skilled teaching workforce.
- 2 The Act provides for the regulation of the teaching profession in Western Australia by a registration scheme overseen by the Board. This includes the accreditation of teacher education programs and oversight of disciplinary matters.
- 3 The Bill is uniform legislation by enabling Western Australia's participation in the Initiative.
- 4 The Bill impacts upon the Parliamentary sovereignty and law-making powers of the Western Australian Parliament by:
 - the commencement clause providing that the majority of the Bill comes into operation on a day fixed by proclamation
 - a clause enabling regulations to prescribe offences.
- 5 The Standing Committee on Uniform Legislation and Statutes Review has made a number of findings regarding these sovereignty issues for the Legislative Council's consideration during debate on the Bill.

Findings

Findings are grouped as they appear in the text at the page number indicated:

FINDING 1

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The lack of an express commencement date in clause 2(b) of the Teacher Registration Amendment Bill 2022 is an erosion of the Parliament's sovereignty and law-making powers.

FINDING 2

Page 7

The definition of 'actionable offence' in clause 4, amended section 3 is broader than the definitions of 'sexual offence' and 'sexual offence involving a child' in section 46 of the *Teacher Registration Act 2012*.

FINDING 3

Page 8

Subsection (e) of the proposed definition of 'actionable offence' in Clause 4, amended section 3 of the Teacher Registration Amendment Bill 2022 erodes the Western Australian Parliament's sovereignty and law-making powers.

FINDING 4

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The prescription of offences under subsection (e) of the proposed definition of 'actionable offence' in Clause 4, amended section 3 of the Teacher Registration Amendment Bill 2022 is justified.

1 Introduction

- 1.1 On 27 October 2022 the Teacher Registration Amendment Bill 2022 (Bill) was introduced into the Legislative Council and referred to the Standing Committee on Uniform Legislation and Statutes Review (Committee) under Standing Order 126.
- 1.2 The Committee is required to report by 14 February 2023, being the first Legislative Council sitting day following expiry of the 45 day reporting period.
- 1.3 The Bill's purpose is to improve the regulation of teaching in Western Australia by amending the *Teacher Registration Act 2012* (Act) to:
 - strengthen the powers of the Teacher Registration Board (Board) to deal with disciplinary matters, including teachers posing a risk of harm to students
 - ensure an effective registration system that allows teachers to move between registration categories and improve fairness for teachers returning after an absence
 - enable Western Australia to fully participate in the Australian Teacher Workforce Data Initiative (Initiative)
 - promote a skilled teaching workforce.¹

2 Inquiry procedure

- 2.1 The Committee posted the inquiry on its webpage.² The general public was notified of the referral via social media.³
- 2.2 Under its terms of reference, the Committee is confined to investigating whether a Bill may impact upon the sovereignty and law-making powers of the Parliament of Western Australia. The Committee is not able to consider any other matter, including the policy of the Bill.
- 2.3 Given the Committee's terms of reference, further submissions were not sought.

3 Supporting documents

- 3.1 The Committee received copies of the Bill, its second reading speech and Explanatory Memorandum when the Bill was introduced into the Legislative Council.
- 3.2 Standing Order 126(5) states:

The Member in charge of a Bill referred to the Committee shall ensure that all documentation required by the Committee is provided to the Committee within 3 business days after referral...
- 3.3 The Committee thanks the then Minister for Education for providing the information required by Ministerial Office Memorandum 2022/01⁴ within this timeframe.

¹ Teacher Registration Amendment Bill 2022, [Explanatory Memorandum](#), Legislative Council, p 1.

² Legislative Council, [Standing Committee on Uniform Legislation and Statutes Review](#), Parliament of Western Australia, 2022, accessed 14 November 2022.

³ Legislative Council (LC), ['The Teacher Registration Amendment Bill 2022'](#) [Facebook post], LC, accessed 23 November 2022.

⁴ M McGowan, [Ministerial Office Memorandum, Uniform Legislation and Statutes Review Committee](#), Executive Government Services, 3 August 2022, accessed 9 November 2022.

4 Background

Western Australian College of Teaching Act 2004

- 4.1 The *Western Australian College of Teaching Act 2004* (WAC Act) introduced a scheme to regulate the teaching profession in Western Australia. The scheme's purpose is to ensure school children are taught by suitably qualified people who teach competently, professionally and safely.
- 4.2 The scheme has the following central features:
- Registration with the Board to:
 - ensure only fit and proper persons teach children
 - ensure quality of teacher education
 - formulate and maintain professional standards for teachers.⁵
 - Accreditation of initial teacher education programs.
 - Management by the Board of the professional conduct of teachers, including receiving and assessing complaints and undertaking disciplinary investigations and proceedings.

Teacher Registration Act 2012

- 4.3 The WAC Act was repealed by the Act following the findings of the statutory review of the WAC Act.⁶
- 4.4 The Act introduced a number of changes to the scheme. These included replacing the Western Australian College of Teaching with the Board and requiring it to consider the best interests of children as its paramount consideration. The Act also gave the Board power to suspend a teacher's registration for a limited period where it believes there is a potential risk of harm or injury to another. This suspension is considered by the State Administrative Tribunal (SAT).⁷
- 4.5 A statutory review of the Act was completed in March 2018. The second reading speech stated the review:

found that a statutory scheme has been adopted in all Australian states and territories, and that the public interest is generally served in maintaining the scheme of teacher registration in this state through a board with the core functions of registering teachers, administering disciplinary and impairment review processes, and accrediting initial teacher education programs. Further, the act has delivered a fair and efficient registration system for most applicants and employers. It was also found, however, that adjustments are necessary in some key areas that this bill is designed to address.⁸

The Bill

- 4.6 The Bill is based on the findings of the statutory review of the Act.

⁵ Registration requirements are set out on the Board's website. See Government of Western Australia, Teacher Registration Board of Western Australia, [Teacher Registration](#), accessed 17 January 2023.

⁶ [Tabled Paper 2369](#), Legislative Council, 23 September 2010.

⁷ [Teacher Registration Act 2012](#), s 61.

⁸ Legislative Council, [Debates](#), 27 October 2022, p 5164.

- 4.7 The Department of Education has prepared an overview of the Bill which summarises the various reforms.⁹ They include:
- Strengthening the power of the Board to respond to matters of child safety involving teachers, consistent with the intent of the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. This includes the Board making interim orders if it believes, on reasonable grounds, that a registered teacher poses a risk of harm to a student (replacing the 'imminent risk' criterion).¹⁰
 - If employers have a reasonable suspicion a teacher has engaged in serious misconduct or taught with serious incompetence, they must notify the Board within 7 days instead of 30 days.¹¹
 - Updated notification requirements of the Commissioner of Police and the Director of Public Prosecutions regarding prosecutions of registered teachers (for example police giving the Board notice as soon as practicable after a registered teacher has been charged with certain offences).¹²
 - The Commissioner of Police considering and granting the Board access to victim or witness identifying information in certain circumstances.¹³
 - An offence for failure to comply with a Board direction.¹⁴
 - Introduction of provisional returning teacher and graduate teacher¹⁵ registrations replacing the single provisional registration to facilitate different entry level requirements.
 - A person cannot teach if they hold a non-practising registration.¹⁶
 - Registered teachers can apply to the Board to change their registration category to enable flexibility.¹⁷
 - Certain regulations in the *Teacher Registration (General) Regulations 2012* and *Teacher Registration (Accreditation of Initial Teacher Education Programmes) Regulations 2012* being moved to the Bill to ensure the Act works seamlessly. These include regulations requiring a professional learning activities policy and the accreditation standards provision.¹⁸
 - Increasing Board membership from 7 to 9 members.¹⁹

⁹ Department of Education, [*Overview of the Teacher Registration Amendment Bill 2022*](#), 2022, accessed 22 November 2022.

¹⁰ Teacher Registration Amendment Bill 2022, cl 45, proposed section 59.

¹¹ Teacher Registration Amendment Bill 2022, cl 30, proposed section 42(2).

¹² Teacher Registration Amendment Bill 2022, cl 30, proposed sections 41 and 41B.

¹³ Teacher Registration Amendment Bill 2022, cl 30, proposed section 41A.

¹⁴ Teacher Registration Amendment Bill 2022, cl 35, proposed section 48C(3).

¹⁵ Teacher Registration Amendment Bill 2022, cl 9, proposed sections 10, 16 and 16A.

¹⁶ Teacher Registration Amendment Bill 2022, cl 18, proposed section 26A.

¹⁷ Teacher Registration Amendment Bill 2022, cl 9, proposed section 12A.

¹⁸ Teacher Registration Amendment Bill 2022, cl 14, proposed section 20A.

¹⁹ Teacher Registration Amendment Bill 2022, cl 56, proposed amended section 87.

Australian Teacher Workforce Data Initiative

- 4.8 On 16 December 2016 the Education Council, which was part of the former Council of Australian Governments²⁰ agreed to develop the first phase of the Initiative.²¹ The then Minister for Education advised the Committee [Email, 28 October 2022]:

The State will benefit from the inclusion of section 118A in the Bill, which allows WA to fully participate in the Australian Teacher Workforce Data Strategy, an initiative of the Education Council. This will promote a skilled teacher workforce by enabling the identification of long-term workforce and teacher education trends, teacher supply and informing national policy on how to better support the profession.

Structure of uniform legislation

- 4.9 The Bill adopts the Complementary Commonwealth-State or Co-operative form of uniform legislation. This approach involves all jurisdictions passing legislation falling within their respective constitutional powers. It ensures flexibility by each jurisdiction drafting its own legislation to suit local conditions, while still carrying into effect any nationally agreed policy.
- 4.10 In this case, the Government is proposing Western Australia join the Initiative at the same time as reforms arising from the statutory review of the Act.

5 Committee scrutiny of the Bill

- 5.1 The Committee considers that, subject to the exceptions outlined below, the Bill respects parliamentary sovereignty and law-making powers.
- 5.2 Most of the significant number of regulation-making powers replicate existing provisions in the Act or are, in the Committee's view, appropriate for subsidiary legislation.
- 5.3 Further, the Henry VIII clause in clause 86, proposed section 149ZC(3), which governs the making of transitional regulations, is similarly worded to section 149(3) of the Act.
- 5.4 The Committee is also pleased that clause 84, proposed section 130 provides for a ministerial review of the operation and effectiveness of the clauses proposed by the Bill:

as soon as practicable after the 4th anniversary of the day on which the *Teacher Registration Amendment Act 2022* section 84 comes into operation.

Clause 16, proposed new section 24(2)(a)

- 5.5 Clause 16 proposes a new section 24(2)(a), which allows regulations to set out requirements to be considered a fit and proper person for teacher registration. It states:
- (2) Despite subsection (1), a person is taken to be a fit and proper person to be registered in relation to a registration application if the person —
- (a) meets any prescribed requirements within 5 years before the day on which the Board receives the registration application for the person and no further information has become available to the Board about the person's fitness or propriety, including from a criminal history check, since the person met the prescribed requirements

²⁰ Dissolved on 29 May 2020 and replaced by the National Cabinet.

²¹ Australian Institute for Teaching and School Leadership, [Australian Teacher Workforce Data](#), accessed 18 January 2023.

5.6 Section 24 of the Act lists matters the Board must have regard to when determining whether someone is a fit and proper person to be registered. These include:

- their criminal history
- any behaviour that does not satisfy a standard of behaviour generally expected of a teacher
- whether the person has contravened an order of the Board, a disciplinary committee or the SAT
- any other matters relating to the person that the Board considers are appropriate.

5.7 The Committee asked the Minister for Education:

- why these requirements are left to be prescribed in regulations rather than included in the Bill (such as in the existing list in section 24)
- what requirements are intended to be prescribed.

5.8 The Minister for Education advised [Letter, 11 January 2023 – see Appendix 1] the prescribed requirements:

are intended to substantially mirror the scheme enabling an applicant to seek advice from the Board about their fitness to be a registered teacher that is currently contemplated in r 19 of the *Teacher Registration (General) Regulations 2012*.

5.9 Regulation 19(2) states:

(2) The Board may provide written advice on the following matters to a person who is considering making an application for registration —

(a) advice regarding —

- (i) whether or not a qualification held by the person would meet the requirement to hold a teaching qualification for registration in a particular category; and
- (ii) any additional qualifications required so that a person would meet the requirement to hold a teaching qualification for full or provisional registration;

(b) advice regarding whether or not, taking into account the relevant information provided to the Board, a person would be a fit and proper person to be registered.

5.10 A person is taken to be a fit and proper person if the Board provides such advice under regulation 19(2)(b).²²

Committee comment

5.11 The Minister for Education's response suggests, in effect, proposed new section 24(2)(a) is being introduced to provide for a specific regulation-making power authorising regulation 19.²³ It also suggests the re-drafted regulations will simply re-state regulation 19.

5.12 Despite this, the wording of the section authorises a broader range of matters beyond which is stated in regulation 19. These include those of the type listed in existing section 24, which

²² *Teacher Registration (General) Regulations 2012*, r 19(5).

²³ Section 128 of the *Teacher Registration Act 2012* contains a general regulation-making power.

don't require a request for advice from an applicant for registration. The Committee draws this to the attention of the Legislative Council.

Clauses that may impact upon Parliamentary sovereignty and law-making powers

Clause 2 – Commencement

5.13 Clause 2 states:

Commencement

This Act comes into operation as follows —

(a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;

(b) the rest of the Act — on a day fixed by proclamation.

5.14 Clause 2(b) provides that the entirety of the Act apart from sections 1 and 2 will come into operation on a day fixed by proclamation.

5.15 The Committee's well-established position is that this is an erosion of parliamentary sovereignty because the Executive controls the commencement date, not Parliament. The Committee has previously stated there should be sound reasons for Parliament to permit commencement by proclamation.²⁴

5.16 The Explanatory Memorandum states:

The rest of the Act will commence on a day fixed by proclamation, on the basis that the *Teacher Registration (General) Regulations 2012* and the *Teacher Registration (Accreditation of Initial Teacher Education Programmes) Regulations 2012* will need to be revised before the substantive provisions commence.²⁵

5.17 The Government has also stated that it intends the Bill to commence on 1 July 2023.²⁶ This provides some clarification about when the Bill will become operational. This is not, however, an adequate substitute for providing for a specific commencement date in the Bill from a parliamentary sovereignty perspective.

5.18 The Committee draws the lack of an express commencement date to the attention of the Legislative Council for consideration during debate on the Bill.

FINDING 1

The lack of an express commencement date in clause 2(b) of the Teacher Registration Amendment Bill 2022 is an erosion of the Parliament's sovereignty and law-making powers.

²⁴ Standing Committee on Uniform Legislation and Statutes Review, report 129, [Legal Profession Uniform Law Application Bill 2020 and Legal Profession Uniform Law Application \(Levy\) Bill 2020](#), Western Australia, Legislative Council, 15 September 2020, accessed 14 November 2022, p 12; Standing Committee on Uniform Legislation and Statutes Review, report 136, [Legal Profession Uniform Law Application Bill 2021 and Legal Profession Uniform Law Application \(Levy\) Bill 2021](#), Western Australia, Legislative Council, 12 October 2021, accessed 14 November 2022, p 6; Standing Committee on Uniform Legislation and Statutes Review, report 137, [Mutual Recognition \(Western Australia\) Amendment Bill 2021](#), Western Australia, Legislative Council, 15 February 2022, accessed 14 November 2022, p 4.

²⁵ Teacher Registration Amendment Bill 2022, [Explanatory Memorandum](#), Legislative Council, p 3.

²⁶ Legislative Assembly, [Debates](#), 27 October 2022, p 5183; Hon Sue Ellery MLC, Minister for Education, letter, 28 October 2022.

Clause 4, amended section 3 – Definition of actionable offence

5.19 Clause 4, amended section 3 proposes a new definition of ‘actionable offence’. It is defined as:

actionable offence means —

- (a) an offence that, on conviction, would result in the person charged being a child sex offender; or
- (b) a sexual offence committed against or in respect of a child; or
- (c) a sexual offence committed when a child was present, or within sight of a child; or
- (d) an offence the commission of which used or involved material the production of which involved a sexual offence against or in respect of a child; or
- (e) an offence prescribed for the purposes of this definition;

5.20 Under the Bill, a teacher charged with an ‘actionable offence’ is subject to a number of sanctions, including the Board making an interim order suspending their registration.²⁷ Teachers are also not entitled to be registered if convicted or found guilty of an ‘actionable offence’.²⁸

5.21 The Committee notes subsections (a) to (d) replicate the definition of ‘sexual offence involving a child’ in the Act, which clause 4 proposes to delete from section 3. Further, subsection (e) contains the same regulation-making power as in subsection (b) of the definition of ‘sexual offence’.

5.22 However, ‘actionable offence’ is, in its ordinary meaning, broader than these definitions. It is not limited to sexual offences. This is recognised in the Explanatory Memorandum:

Actionable offence has been inserted to replace *sexual offence involving a child* to accommodate the fact that the offences in Schedules 1 and 2 of the *Working with Children (Criminal Record Checking) Act 2004* are not all ‘sexual offences’.²⁹

5.23 The Committee understands that broadening the type of offences that can be prescribed under subsection (e) to include non-sexual offences will align with the broad range of offences in Schedules 1 and 2 of the *Working with Children (Criminal Record Checking) Act 2004* (WWC Act).

5.24 However, these offences are not limited to those in the WWC Act. This is significant when considering the potential consequences for teachers when charged with and found guilty of a potentially wide range of offences that may be prescribed by regulation. The Committee draws this to the attention of the Legislative Council for consideration during debate on the Bill.

FINDING 2

The definition of ‘actionable offence’ in clause 4, amended section 3 is broader than the definitions of ‘sexual offence’ and ‘sexual offence involving a child’ in section 46 of the *Teacher Registration Act 2012*.

²⁷ [Teacher Registration Amendment Bill 2022](#), cl 45, proposed section 60.

²⁸ [Teacher Registration Amendment Bill 2022](#), cl 19, proposed amended section 27.

²⁹ [Teacher Registration Amendment Bill 2022](#), [Explanatory Memorandum](#), Legislative Council, p 1. Regulation 22 of the [Teacher Registration \(General\) Regulations 2012](#) prescribes the offences in Schedules 1 and 2 of the [Working with Children \(Criminal Record Checking\) Act 2004](#) for the purposes of section 46.

- 5.25 The Committee considers that regulations which prescribe offences erode Parliament's sovereignty and law-making powers. Prescription of serious offences should be contained in primary legislation so that the House can scrutinise those provisions.³⁰

FINDING 3

Subsection (e) of the proposed definition of 'actionable offence' in Clause 4, amended section 3 of the Teacher Registration Amendment Bill 2022 erodes the Western Australian Parliament's sovereignty and law-making powers.

- 5.26 The Committee asked the Minister for Education:
- the rationale for the regulation-making power in subsection (e) of the definition of 'actionable offence' and why these offences cannot be included in the Bill
 - what type of offences come within the scope of subsection (e), including whether they are broader than those contained in Schedules 1 and 2 of the WWC Act
 - whether the offences would be existing as well as new offences
 - if there is any criteria in the Bill governing the type of offences contemplated by subsection (e).
- 5.27 The Committee thanks the Minister for Education for his response, attached as Appendix 1, which assisted its scrutiny of the definition of 'actionable offence'.

Committee comment

- 5.28 The Committee regards the regulation-making power in subsection (e) of the definition of 'actionable offence' as justified for the following reasons:
- The regulation-making power enables a quick regulatory response where it is necessary to protect student safety by prescribing any relevant offences created after the passing of the Bill.
 - Any Western Australian offences (and any conditions they must comply with) that may be added to Schedules 1 and 2 of the WWC Act will be by amendment bill; subject to parliamentary debate and must threaten child safety.³¹
 - The assurance by the Minister for Education [Letter, 11 January 2023] that:
 - The type of offences contemplated by subsection (e) would not be broader than those in Schedules 1 and 2 as well as section 7 of the WWC Act

³⁰ Standing Committee on Uniform Legislation and Statutes Review, report 69, [*Criminal Investigation \(Covert Powers\) Bill 2011*](#), Western Australia, Legislative Council, 6 March 2012, pp 22-29; Standing Committee on Uniform Legislation and Statutes Review, report 96, [*Co-operatives Amendment Bill 2015*](#), Western Australia, Legislative Council, 25 February 2016, p 11; Standing Committee on Uniform Legislation and Statutes Review, report 138, [*Health and Disability Services \(Complaints\) Amendment Bill 2021*](#), Western Australia, Legislative Council, 9 August 2022, p 5.

³¹ The Government agreed to delete the Henry VIII clauses in clause 7, proposed sections 7(1)(b) and 7(2)(b) of the [*Working With Children \(Criminal Record Checking\) Amendment Bill 2022*](#) following commentary in the Committee's Report 139. These Henry VIII clauses would have enabled the prescription by regulation of Western Australian offences as Class 1 and Class 2 offences. See Standing Committee on Uniform Legislation and Statutes Review, report 139, [*Working with Children \(Criminal Record Checking\) Amendment Bill 2022*](#), Western Australia, Legislative Council, 15 November 2022, p 14 and Legislative Council, [*Debates*](#), 16 November 2022, p 5370.

- Criteria governing the type of offences are those the commission of which would make undertaking the duties of a registered teacher not in the best interests of children, as consistent with section 5 of the Act.³²
- The words 'for the purposes of this definition' in subsection (e) could encompass offences the commission of which would make a teacher unfit for registration. This would be in the best interests of children and therefore within the scope of section 5 of the Act.
- Any regulations will be subject to scrutiny by the Joint Standing Committee on Delegated Legislation to ensure any prescribed offences are of the type that are within the scope of the Act.

FINDING 4

The prescription of offences under subsection (e) of the proposed definition of 'actionable offence' in Clause 4, amended section 3 of the Teacher Registration Amendment Bill 2022 is justified.



Hon Donna Faragher MLC
Chair

³² Section 5 of the [Teacher Registration Act 2012](#) states:

Best interests of children paramount

A person or body with functions under this Act must, in the performance of those functions, regard the best interests of children as the paramount consideration.

APPENDIX 1

MINISTER'S RESPONSE TO COMMITTEE QUESTIONS ON THE BILL



Hon Dr Tony Buti MLA
Minister for Education; Aboriginal Affairs;
Citizenship and Multicultural Interests

Your Ref: TRA
Our Ref: 80-07160

Hon Donna Faragher MLC
Chair
Standing Committee on Uniform Legislation and Statutes Review
Legislative Council Committee Office
Parliament House
4 Harvest Terrace
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Dear Ms Faragher *Donna*

TEACHER REGISTRATION AMENDMENT BILL 2022

Thank you for your letter dated 19 December 2022 seeking advice on behalf of the Standing Committee on Uniform Legislation and Statutes Review regarding certain proposed amendments contemplated in the Teacher Registration Amendment Bill 2022.

I will address each of the matters you raise in turn and have laid out the questions contained in your letter below with the corresponding response:

Clause 4, amended section 3- definition of actionable offence

- 1.1 The rationale for the regulation-making power in subsection (e) of the definition of actionable offence and why these offences cannot be included in the Bill.

The definition of 'sexual offence' found in s 46 of the current *Teacher Registration Act 2012* provides, amongst other things, for it to include 'any other offence prescribed for the purposes of this definition'. In this regard, the definition of actionable offence contained in the bill, which, as you have pointed out, includes a similar regulation-making power, substantially follows this model and, on this point, therefore follows the status quo. As you have identified in your letter, the intention is to provide for a scheme that enables quick and efficient regulatory action. The general rationale is to provide for a mechanism that allows for a more timely scheme that is responsive to a potentially changing landscape and particularly, should an offence that is not contemplated in (a)-(d) of the definition of actionable offence be considered suitable to be brought in, in the best interests of children. The absence of a regulation-making power would, in this sense, not be in the best interests of children.

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- 1.2 What type of offences come within the scope of subsection (e), including whether they are broader than those contained in Schedules 1 and 2 of the *Working with Children (Criminal Record Checking) Act 2004*.

At this time, it is not contemplated that the type of offences to fall within the scope of subsection (e) would be broader than those contained in Schedules 1 and 2 of the *Working with Children (Criminal Record Checking) Act 2004* (currently referred to in s 7(1)(a) and (2)(a) of that Act), but would also potentially include offences referred to in the rest of s 7 of that Act.

- 1.3 Whether the offences would be existing as well as new offences.

It is unclear what this is a reference to, but it is not contemplated that the regulations would cover anything other than existing offences.

- 1.4 If there is any criteria in the Bill governing the type of offences contemplated by subsection (e).

Under the scheme of the Act as proposed to be amended, the offences would be of a kind that it would not be in the best interests of children for the person alleged to have committed an offence to undertake the duties of a registered teacher because of the risk they pose by undertaking those duties. Section 5 of the Act, which is maintained by the Bill, states that the best interests of children is the paramount consideration.

Clause 16, proposed new section 24(2)(a)

- 1.1 Why these requirements are left to be prescribed in regulations rather than included in the Bill (such as in the existing list in section 24).

The prescribed requirements contemplated in new s 24(2)(a) are intended to substantially mirror the scheme enabling an applicant to seek advice from the Board about their fitness to be a registered teacher that is currently contemplated in r 19 of the *Teacher Registration (General) Regulations 2012*. The scheme provides for an approach whereby the applicant can reasonably rely on advice received by the Board that they are deemed fit to be a teacher subject to no 'new' information coming to light. It provides for circumstances where an applicant may have doubts about their fitness and are seeking certainty as to whether an application for teacher registration would be successful against the criteria of fitness.

1.2 What requirements are intended to be prescribed.

At this time, consistent with the current approach in r 19 of the Teacher Registration (General) Regulations 2012, the proposed prescribed requirements are the written request of a person for advice, the payment of the relevant fee and that the Board deems them to be fit and proper, having regard to the matters listed in s 24(1) as amended by the Bill.

I trust that these responses satisfactorily address the questions you have raised.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'T Buti', with a stylized flourish at the end.

Dr Tony Buti MLA
MINISTER FOR EDUCATION

10 JAN 2023

GLOSSARY

Term	Definition
Act	<i>Teacher Registration Act 2012</i>
Bill	Teacher Registration Amendment Bill 2022
Board	Teacher Registration Board
Committee	Standing Committee on Uniform Legislation and Statutes Review
Initiative	Australian Teacher Workforce Data Initiative
SAT	State Administrative Tribunal
WAC Act	<i>Western Australian College of Teaching Act 2004</i>
WWC Act	<i>Working with Children (Criminal Record Checking) Act 2004</i>

Standing Committee on Uniform Legislation and Statutes Review

Date first appointed:

17 August 2005

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

'6. Uniform Legislation and Statutes Review Committee

- 6.1 *A Uniform Legislation and Statutes Review Committee is established.*
- 6.2 The Committee consists of 4 Members.
- 6.3 The functions of the Committee are –
 - (a) to consider and report on Bills referred under Standing Order 126;
 - (b) on reference from the Council, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to Standing Order 126;
 - (c) to review the form and content of the statute book; and
 - (d) to consider and report on any matter referred by the Council.
- 6.4 In relation to function 6.3(a) and (b), the Committee is to confine any inquiry and report to an investigation as to whether a Bill or proposal may impact upon the sovereignty and law-making powers of the Parliament of Western Australia.'



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