

# TEACHER REGISTRATION AMENDMENT BILL 2022

## EXPLANATORY MEMORANDUM

### Outline

The *Teacher Registration Amendment Bill 2022* has been drafted in line with recommendations from the 2018 statutory review to improve the regulation of the practice of teaching in Western Australia (WA) by:

- strengthening the powers of the Teacher Registration Board of WA (Board) to deal with disciplinary matters, including teachers posing a risk of harm;
- ensuring an effective registration system that allows teachers to move between registration categories and improve fairness for teachers returning after an absence;
- allowing WA to fully participate in the Australian Teacher Workforce Data Strategy; and
- promoting a skilled teaching workforce.

This Bill incorporates the following key reforms:

### Terms

- *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'.
- *Educational venue* has been amended to *educational institution* to ensure that the place of teaching is not tied to a geographical location. This is important as teaching may take place off-site or in an online environment.
- *Teach* has been amended to mean delivery and assessment of educational programs, including leading that delivery and assessment (including managing others undertaking the delivery and assessment). This definition more clearly covers the work of principals, deputy principals and heads of learning areas.
- *Impairment* has been defined in alignment with the *Equal Opportunity Act 1984* with the exception that the term will not cover a condition imputed to a teacher.
- *Serious misconduct* has been defined and covers improper conduct, or wrong behaviour, of a weighty or important kind, or which is not trifling. It captures anything that constitutes a departure of behaviour reasonably expected of a teacher where that departure is serious. Although the definition is stated in general terms, it would also capture the types of behaviour covered by the definition of serious misconduct for the purposes of s 3(1) of the Corruption, Crime and Misconduct Act 2003.
- *Serious incompetence* has been defined. A teacher will be considered to have taught with serious incompetence if they have taught at a standard substantially below that which is reasonably expected of a registered teacher. Considerations that must be taken into account in making a determination as to whether someone has taught with serious incompetence have been provided (including the frequency and extent of the incompetence and the level of the teacher's training or experience).

## Disciplinary scheme

- The ability for the Board to deal with disciplinary matters has been enhanced through the ability to make an interim order suspending a teacher's registration in circumstances where they may pose a risk of harm to a student and it is necessary to protect a student (rather than the current circumstance where such an order cannot be imposed until there is an imminent risk).
- The Bill further provides that employers must give notice to the Board within 7 days if they reasonably suspect that a teacher has engaged in serious misconduct or taught with serious incompetence and has been dismissed or suspended from teaching or has resigned or ceased teaching at the institution. Employers must no longer wait for the result of an investigation to provide this notice. The time to notify has been reduced from 30 days to 7 days to reduce the scope for the teacher to engage, unchecked, with another employer. These amendments have been made to better protect the safety and wellbeing of children.
- Inclusion of the definitions of *serious incompetence* and *serious misconduct* will assist teachers to understand how their competence and conduct will be judged by the Board in relation to disciplinary matters and assist employers to understand when they are required to notify the Board under section 42 of the Act.
- Requirements placed on the Commissioner of Police and the Director of Public Prosecutions to notify the Board in relation to prosecutions of registered teachers have been updated.
- Provision has been made for the WA Police Commissioner to consider and grant a request from the Board to provide victim or witness identifying information in certain, narrow circumstances and only where the Commissioner considers that providing the information will not prejudice an investigation or prosecution and it is in the best interests of the victim or witness.
- The Board's powers to investigate matters have been enhanced, including the creation of an offence for a person who fails to comply with a direction from the Board. A person who is given a direction by the Board has a reasonable excuse defence available to them and the information obtained is not admissible in evidence against the person except in limited circumstances.
- The way in which a teacher's suspension is to be handled under the Act has changed. Currently, if a teacher is suspended, their registration is treated as if it were cancelled. The amendments mean that a suspended teacher continues to be registered and can be subject to any disciplinary actions, or apply for renewal, when suspended. Registration cannot be granted, however, until suspension has ended, the suspended teacher's name can be removed from the register and it will be an offence to teach, or claim to be entitled to teach, while registration is suspended.
- The disqualification process has changed to apply procedural fairness such that a disqualified teacher will be able to re-apply for registration after five years of

disqualification to the State Administrative Tribunal in circumstances where the Tribunal has imposed no end date to the disqualification period.

### **Registration scheme**

- Provisional (returning teacher) registration and provisional (graduate teacher) registration categories have been introduced to replace the single provisional registration category to enable differentiation of experienced teachers returning to teaching after a break and graduate teachers, and therefore to facilitate different entry level requirements for the two types of provisional registration.
- Non-practising registration will remain as a category of registration but eligibility will be constrained to those who already hold provisional or full registration. Teachers who hold non- practising registration will not be entitled to teach.
- Registered teachers will be able to apply to the Board to change the category of their registration in certain circumstances to allow teachers more flexibility.

### **Provision of information**

- The Board has been empowered to provide information about the teaching workforce to the Australian Teacher Workforce Data Initiative, an initiative that allows for the national collection, analysis and reporting of data in relation to the teaching workforce in Australia.

### **General**

- Some regulations in the *Teacher Registration (General) Regulations 2012* (the General Regulations) and the *Teacher Registration (Accreditation of Initial Teacher Education Programmes) Regulations 2012* (the Accreditation Regulations) have been lifted into the primary legislation to ensure that the Act works seamlessly. For example, the requirement for a professional learning activities policy has been moved from regulation 9 of the General Regulations to section 20A of the Act. In addition, the accreditation standards provision has been moved from regulation 9 of the Accreditation Regulations to section 118B of the Act.
- Board membership has been increased from seven to nine members. The current requirement for the Board to be made up of one lawyer and three registered teachers remains in place. All Board appointments will continue to be made by the responsible Minister.

## Provisions of the Bill

### Part 1 – Preliminary

This Part of the Bill sets out the short title and commencement provision.

#### Clause 1 Short title

When enacted, this legislation will be named the *Teacher Registration Amendment Act 2022*.

#### Clause 2 Commencement

This clause provides that Part 1 will come into operation on the day on which the Act receives Royal Assent. 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.

### Part 2 – *Teacher Registration Act 2012* amended

#### Clause 3 Act amended

This clause provides that this Part amends the *Teacher Registration Act 2012*.

#### Clause 4 Section 3 amended

This clause provides for the deletion of a number of terms and the insertion of a number of terms, including the following key terms:

*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.

*complaint* means either of the following —

- (a) a public complaint;
- (b) a board-formulated complaint;

*educational institution* means any of the following —

- (a) a school as defined in the School Education Act 1999 section 4;
- (b) a kindergarten registered under the School Education Act 1999 Part 5;
- (c) a child care service;
- (d) a detention centre;
- (e) a centre-based service;

(f) any other prescribed institution for the purposes of this definition;

*harm*, in relation to a person, includes harm to the mental health of the person;

*health assessment* —

(a) means an assessment of a person to determine whether the person has an impairment; and

(b) includes a medical, physical, psychiatric or psychological examination or test of the person;

*impairment, in relation to a person* —

(a) means 1 or more of the following conditions, whether arising from a condition subsisting at birth or from an illness or injury —

(i) any defect or disturbance in the normal structure or functioning of a person's body;

(ii) any defect or disturbance in the normal structure or functioning of a person's brain;

(iii) any illness or condition which impairs a person's thought processes, perception of reality, emotions or judgment or which results in disturbed behaviour; and

(b) includes an impairment which presently exists or existed in the past but has now ceased to exist;

*interim order* replaces *interim disciplinary order*

*serious incompetence* has the meaning given in section 48A (clause 35);

*serious misconduct* has the meaning given in section 48B (clause 35);

*teach*, at an educational institution —

(a) means to undertake duties at the institution that include any of the following —

(i) the delivery of an educational program and the assessment of student participation in an educational program;

(ii) leading the delivery and assessment referred to in subparagraph (i), including managing others undertaking the delivery and assessment;

but

(b) does not include to undertake the following duties in the following circumstances —

(i) assistance with the delivery and assessment referred to in paragraph (a)(i) at an educational institution by a teacher's aide or a teacher's assistant at the institution;

(ii) the delivery and assessment referred to in paragraph (a)(i) at an educational institution by a student teacher on practicum placement at the institution;

(iii) duties undertaken by a person employed or engaged to provide care at a child care service but who is not employed or engaged to undertake the delivery, assessment or leadership referred to in paragraph (a) at the service;

(iv) the delivery and assessment referred to in paragraph (a)(i) at an educational institution by an unpaid volunteer at the institution unless the volunteer is undertaking duties of a kind, or to an extent, prescribed for the purposes of this subparagraph;

(v) duties undertaken by prescribed persons or in other prescribed circumstances;

**Clause 5      Section 6 amended**

It is an offence to teach in an educational institution without being registered, subject to a maximum fine of \$5,000 for a first offence or \$10,000 for a second or subsequent offence. This clause replaces “in an educational venue” with “at an educational institution.” The offence applies to any unregistered person whether the person is teaching in person or via remote learning in connection with the educational institution.

**Clause 6      Section 7 amended**

The clause adds an offence for appointing, employing, engaging, or giving permission to, a registered teacher whose registration has been suspended to teach at an educational institution subject to a maximum fine of \$5,000 for a first offence or \$10,000 for a second or subsequent offence.

This clause replaces “in an educational venue” with “at an educational institution.”

The clause updates the penalties for the offences in section 7 to be in accordance with current drafting practice.

The offences in section 7 apply in circumstances where a person is appointed, employed, engaged or given permission to teach in person or via remote learning in connection with the educational institution.

The heading to amended section 7 is amended to read: “Requirements in relation to appointing, employing or engaging registered teachers or by giving permission to teach.”

**Clause 7      Section 8 amended**

It is an offence for a registered teacher to contravene a condition to which their registration is subject. This clause inserts a further offence, providing that a registered teacher whose registration is suspended must not teach at an educational institution subject to a maximum fine of \$5,000 for a first offence or \$10,000 for a second or subsequent offence.

The clause updates the penalties for offences in section 8 to be in accordance with current drafting practice.

The offences in section 8 apply whether a person is teaching in person or via remote learning in connection with the educational institution.

The heading to amended section 8 is amended to read: “Registered teachers must comply with suspension and conditions of registration.”

**Clause 8      Section 9 amended**

It is an offence for a person to claim to be a registered teacher or claim to be qualified or entitled to teach at an educational institution. This clause proposes a further circumstance that constitutes an offence, providing that a registered teacher whose registration is suspended must not claim to be qualified or entitled to teach at an educational institution, subject to a

maximum fine of \$5,000 for a first offence or \$10,000 for a second or subsequent offence.

This clause replaces “in an educational venue” with “at an educational institution.”

The clause updates the penalties for offences in section 8 to be in accordance with current drafting practice.

#### **Clause 9      Part 3 Division 1 Subdivision 1 replaced**

This clause provides the scheme for the making of registration applications.

This clause provides for a new heading: Subdivision 1 — Registration applications and that this subdivision includes provisions in relation to applications for registration:

#### **Subdivision 1 – Registration applications**

A person may apply for teacher registration in WA in one of four listed categories in a written form approved by the Board and accompanied by evidence that the applicant meets the requirements for the relevant category, has consented to a criminal history check and paid any applicable registration fee.

The category of provision registration is divided into two new categories of registration: *provisional (returning teacher) registration* and *provisional (graduate teacher) registration*. The category of non-practising registration will be a transitional category contemplated in Clause 21 and a registered teacher will only be eligible for non-practising registration if they already hold provisional registration or full registration.

The requirements for an application for renewal of registration and the categories of registration that may be renewed are set out. A non-refundable renewal fee may be prescribed.

The clause inserts new section 12A, which introduces the ability to change from one registration category to another and lists the eligible categories. It provides that a non-refundable fee may be prescribed.

The clause also enables the Board to request additional information in support of an application and refuse an application if the information is not provided.

The clause provides for those situations in which the Board may refuse to deal with an application, specifically where an application is not made in accordance with the Act, where a complaint against the relevant applicant has been made but is not finally dealt with, the relevant applicant’s registration is suspended or the relevant applicant is disqualified from having registration granted.

**Clause 10    Sections 15 and 16 replaced**

This clause provides that a person is eligible for full registration as a teacher if they meet the teaching qualification requirements, the necessary professional standards for the registration category, are a fit and proper person and have suitable written and oral English language skills.

This clause provides for the eligibility requirements for the two new categories of provisional registration. A person is eligible for provisional (returning teacher) registration if they hold a qualification from an accredited initial teacher education program more than five years before the application is received, or a qualification that Board recognises as equivalent, or has a teaching qualification and teaching experience that the Board considers is sufficient for teacher registration and are a fit and proper person and have the suitable written and oral English language skills.

A person is eligible for provisional (graduate teacher) registration if they meet the teaching qualification requirements, the necessary professional standards for the registration category, are a fit and proper person and have suitable written and oral English language skills.

**Clause 11    Section 17 amended**

This clause makes minor terminology changes to the section on the requirements for limited registration, in particular, replacement of the term *educational venue* with *educational institution* and *employer* with *nominee employer*.

The heading to amended section 17 is amended to read: "Limited registration: requirements."

**Clause 12    Section 18 replaced**

The eligibility requirements for non-practising registration are set out, being that a person does not intend to teach at an educational institution for a period of time and holds full or provisional registration.

The clause inserts new section 18A, which provides the criteria for meeting the teaching qualification requirement, being that a person has a teaching qualification from an accredited initial teacher program or that the Board recognises as equivalent to such a program or alternatively, has a teaching qualification and teaching experience that the Board considers is sufficient to enable the person to hold registration as a teacher.

**Clause 13    Section 20 replaced**

Section 20 of the Act provides for the Minister to approve standards developed by the Board detailing the abilities, experience, knowledge or skills expected of registered teachers, which must be made available on a website maintained by the Board.



This clause facilitates minor amendments to the section to align with current drafting practice and the inclusion of a commencement date. It further provides that the standards are not subsidiary legislation for the purposes of the *Interpretation Act 1984* (Interpretation Act) but that sections 43 (other than subsection (6)) and 44 and Part VIII of the Interpretation Act apply to the standards as if they were subsidiary legislation.

**Clause 14 Section 20A inserted**

This clause inserts the requirements for a professional learning activities policy, which are currently set out in regulation 9 of the *Teacher Registration (General) Regulations 2012*. It provides that the Board must make the policy available for inspection on a website maintained by the Board.

This clause includes a commencement date provision for the policy. It further provides that the policy is not subsidiary legislation for the purposes of the *Interpretation Act 1984* (Interpretation Act) but that sections 43 (other than subsection (6)) and 44 and Part VIII of the Interpretation Act apply to the policy as if it was subsidiary legislation.

**Clause 15 Sections 21 to 23 replaced**

This clause deals generally with the requirements for the grant of registration, renewal of registration, change of category of registration and duration of registration.

A person may be granted registration as a WA teacher in the relevant category if the Board is satisfied that the applicant meets the requirements for registration in that category. This clause inserts a new provision at section 21(2), providing that the Board cannot grant registration to a person whose registration has been indefinitely disqualified by an order of the State Administrative Tribunal unless the order was more than 5 years before the day the registration was granted and the Board has obtained the approval of the Tribunal. It also provides that such approval must be granted on the basis that the person is a fit and proper person to be registered and sets out the matters that must be considered in the Tribunal's assessment. Section 21 further provides that non-practising registration cannot be granted under the section nor can the registration of a teacher whose registration has been suspended.

Section 22 sets out eligibility criteria for renewal of registration, with minor amendments made to the section in line with current drafting practice. An amendment has been made to provide that provisional registration can only be renewed "if the Board is satisfied that there are sufficient reasons for doing so", rather than only in "exceptional circumstances", increasing the scope for extensions in that category so that provisionally registered teachers have more time to meet the requirements for full registration. It further provides that non-practising registration cannot be renewed nor can the registration of a teacher whose registration has been suspended.

A new section 22A has been inserted, which provides for a change of category of registration. This enables teachers to move between listed teacher registration categories, provided they meet the eligibility criteria, and be afforded the same benefits as teachers renewing their registration in the same category. In particular, being subject to the 28-day rule, which means that if the teacher applies for a change of category at least 28 days before the expiry of their current registration period, registration will continue until the Board determines the application. Changing registration categories is not permitted if a teacher's registration has been suspended.

The clause also sets out the duration of registration for each category of registration, with full and provisional registration beginning on the grant or renewal of registration or when a change of category occurred or a later specified by the Board. Full or provisional registration is generally for a period of 5 years for full registration or up to 3 years for provisional registration. However, registration of a person may end earlier or later depending on whether the person applies to renew their registration or change the category of their registration to ensure continuity of registration in appropriate cases. For example, their registration may end immediately before the day on which their new registration begins or, if an application to renew or change category is refused, on the day on which notice of the decision is given to the applicant.

The clause also sets out the duration of limited registration which begins on the grant or renewal of the registration or a later day specified by the Board. In some cases, limited registration for a nominee may be taken to begin earlier if a pre-application notice is submitted by a nominee employer. Limited registration for person is for a maximum of 3 years may end later depending on whether the person applies to renew their registration to ensure continuity of registration in appropriate cases. In addition, limited registration might end earlier in cases where a pre-application notice has been submitted for a person and no application eventuates or the application is refused. Furthermore, a new section 23B provides that the duration of limited registration ends on the day that the teaching position finishes if the registration hasn't already ended on an earlier date. It is intended that those applicants who apply successfully to renew their registration will commence their new registration period only after they have received the full benefit of completing the 5 years of their full registration period or 3 years of their provisional registration period.

New section 23C provides that the period of non-practising registration of a person is indefinite, unless the Board has specified an expiry date or the person has applied to change the category of their registration.

#### **Clause 16 Section 24 amended**

The Board has regard to a number of matters in its determination of whether a person is fit and proper to be registered as a teacher. This clause inserts impairment as a factor in the Board's determination of the fitness and propriety of a person, specifically requiring regard to whether the person

because of an impairment would be unable to carry out the inherent requirements of the work of a registered teacher. It is intended that the *Teacher Registration Act 2012* will prevail to the extent of any inconsistency with the *Equal Opportunity Act 1984* as provided in new section 125 (see clause 81).

The clause further provides that a person is taken to be fit and proper if they meet the prescribed requirements within five years from the day the Board receives their application and no further information has become available to the Board about the person's fitness and propriety since they met the requirements. A person is also taken to be fit and proper if they have approval from the State Administrative Tribunal within five years of the Board receiving their application and no further information in relation to the approval has become available to the Board.

**Clause 17 Section 26 amended**

The Board may impose reasonable and relevant conditions on a teacher's registration when granting or renewing registration or during the currency of the registration. This clause provides that a condition may also be imposed when changing the category of registration and that conditions may be imposed, modified or cancelled if the teacher's ability to carry out the inherent requirements of the work of a registered teacher is affected, or is likely to be affected, because of an impairment.

It is intended that the *Teacher Registration Act 2012* will prevail to the extent of any inconsistency with the *Equal Opportunity Act 1984* as provided in new section 125 (see clause 81).

**Clause 18 Section 26A inserted**

This clause inserts a condition of non-practising registration that a person holding this category of registration must not teach at an educational institution.

**Clause 19 Section 27 amended**

The Board may cancel a teacher's registration at any time it becomes aware that the teacher is not entitled to be registered. This clause inserts an additional circumstance in which a teacher will become disentitled to be registered and therefore when the Board must cancel the teacher's registration, being where information in a registration application referring to teaching experience that enabled the teacher to gain registration is misleading in a material particular.

**Clause 20 Section 29 replaced**

The Board must give notice of its decision on an application for registration no later than 14 days after deciding the outcome. This clause provides for minor amendments in line with current drafting practice and updates the current

provision to allow for notice to be given about applications to change registration category.

**Clause 21 Section 30 amended**

The Board must give notice within 14 days after it decides to impose, modify or cancel a condition on a teacher's registration during the currency of that registration, together with reasons for the decision. This clause provides for minor amendments in line with current drafting practice.

The heading to amended section 30 is also amended to read: "Notice of decisions to impose, modify or cancel a condition made during currency of registration."

**Clause 22 Section 31 amended**

The Board must give notice if it decides to cancel or reinstate a teacher's registration. This clause inserts 31(3), which provides that a notice must not contain identifying information provided by the Commissioner of Police under section 41A. Administratively, such notices will not include information that could compromise police investigations or investigative practices. This clause also provides for minor amendments in line with current drafting practice.

**Clause 23 Section 32 amended**

The Board must give an applicant a reasonable opportunity to show cause why a decision to refuse a registration application or grant a registration application subject to a condition should not be made. This clause provides for minor amendments in line with current drafting practice.

**Clause 24 Section 34 deleted**

This clause facilitates the deletion of section 34.

**Clause 25 Section 36 amended**

The Board is required to maintain a register of teachers. This clause provides that the Board may remove information on the register in respect of a teacher whose registration is suspended.

**Clause 26 Section 37 amended**

This clause amends section 37 of the Act, which provides for access to the information on the register of teachers. The amendment expands the list, previously contemplated in regulations, of persons who may access more information than is publicly available to expressly include supervisors of centre-based and child care services, principals at detention centres and those nominated by the persons aforementioned and whom have been accepted by the Board as suitable.

**Clause 27      Section 38 amended**

A registered teacher must notify the Board if they or their employer are ordered to pay compensation or damages because of something that happened while they were teaching or if they are convicted or found guilty of a criminal offence which could result in imprisonment. This clause facilitates the insertion of an amended 38(2), which sets out the particular timing for giving notice in relation to an order or finding or conviction of guilt, and that it is a defence to a charge of an offence for the teacher to prove that they had a reasonable excuse for failing to give the notice.

This clause also provides for minor amendments in line with current drafting practice.

**Clause 28      Section 39 amended**

This clause requires a registered teacher to notify the Board if the qualifications that enabled them to become registered are withdrawn or cancelled. This clause provides for minor amendments in line with current drafting practice.

**Clause 29      Section 40 amended**

A registered teacher must notify the Board in the event their entitlement to work with children is lost by virtue of an interim negative notice or a negative notice under Working with Children legislation. This clause facilitates minor amendments in line with current drafting practice and adds that, as well as providing notice as prescribed within 14 days after the issue of the interim negative notice or negative notice, a copy of the interim negative or negative notice itself must be provided to the Board.

**Clause 30      Sections 41 and 42 replaced**

This clause facilitates the division of section 41 into sections 41 and 41A, which set out the circumstances in which the Commissioner of Police must give notice to the Board, and section 41B, which prescribes the notice obligations of the Director of Public Prosecutions.

The Commissioner of Police is required to give notice to the Board as soon as practicable if it becomes aware that a registered teacher has been charged with an actionable offence, a registered teacher is convicted or found guilty of an indictable offence dealt with summarily or a police officer discontinues, or there is an acquittal or mistrial in relation to, all charges against a registered teacher of actionable offences.

The Commissioner of Police may also provide to the Board identifying information in relation to victims and witnesses regarding a prosecution if the Board considers the information to be necessary to protect the safety of the child and the Commissioner considers that doing so would not prejudice an investigation or prosecution and is in the best interests of the victim, alleged

victim or witness. This is intended to cover the very narrow circumstances where, for example, a criminal trial is discontinued and there is a residual risk associated with the teacher's conduct that may be subject to further inquiries in order to progress disciplinary proceedings. This would only happen in circumstances where the available evidence is considered insufficient and only persons who have the requisite skills and experience would be engaged for the purpose of undertaking such further inquiries, noting the paramount consideration is the best interests of children.

The Director of Public Prosecutions is required to give notice to the Board as soon as practicable if on prosecution, a registered teacher is convicted or found guilty of an indictable offence or the Director of Public Prosecutions discontinues, or there is an acquittal or mistrial in relation to, all charges against a registered teacher of actionable offences. The Director of Public Prosecutions is not required to confirm whether each person prosecuted for such an offence referred is a registered teacher.

Section 42 is amended under this clause to provide that an employer is obliged to give notice about teachers in suspected cases of serious incompetence or misconduct within 7 days after the day on which the teacher is dismissed, suspended or resigns or otherwise ends teaching or after the day the employer suspected the incompetence or misconduct (whichever is the later). Employers must no longer wait for the result of an investigation to provide this notice. The time to notify has been reduced from 30 days to 7 days to reduce the scope for the teacher to engage, unchecked, with another employer. These amendments have been made to better protect the safety and wellbeing of children.

**Clause 31      Section 42A inserted**

This clause inserts new section 42A, which provides that there is no liability for information disclosed under subdivision 2 in good faith.

**Clause 32      Section 43 amended**

The Board requires a teacher to consent to a criminal record check within 14 days of the notice being given or a later time as specified in the notice. This clause facilitates minor amendments in line with current drafting practice.

**Clause 33      Section 45 replaced**

There are several courses of action that the Board can take on receipt of a notice or criminal record check. These include cancellation of registration, imposition of an interim order, formulation of a complaint or advising the person's employer of the information contained in the notice or criminal history check. This clause inserts an additional action, being the ability of the Board to publish, subject to a public interest test, any of the information under section 118 of the Act. It also makes minor amendments in line with current drafting practice.

#### **Clause 34 Part 5 heading replaced**

This clause replaces the Part 5 heading with:

### **Part 5 – Disciplinary matters, impairment matters and investigations**

#### **Clause 35 Sections 46 to 48 replaced**

This clause defines terms used in Part 5, including *disciplinary matter* and *impairment matter*.

It provides for the following to be treated as disciplinary matters in relation to a registered teacher or a formerly registered teacher:

- the teacher has contravened the Act;
- the teacher has contravened a condition imposed on their registration;
- the teacher has contravened an order made under this Part;
- the teacher has been convicted or found guilty of –
  - a serious offence;
  - an actionable offence; or
  - a prescribed offence.
- the teacher has taught with serious incompetence at an educational institution;
- the teacher has engaged in serious misconduct;
- the teacher has contravened an undertaking given to the Board under this Act;
- the teacher has taught at an educational institution while their registration was suspended.

A disciplinary matter is not confined to conduct of a teacher that occurs within the State. For example, serious misconduct that occurs while a teacher is outside Western Australia would still be a disciplinary matter.

The clause defines an *impairment matter* in relation to a registered teacher: if the teacher's ability to carry out the inherent requirements of the work of a registered teacher is affected, or is likely to be affected, because of an impairment. It is intended that the *Teacher Registration Act 2012* will prevail to the extent of any inconsistency with the *Equal Opportunity Act 1984* as provided in new section 125 (see clause 81).

The clause inserts a new section 48A, which defines *serious incompetence*: a registered teacher or formerly registered teacher has taught with serious incompetence if the teacher has taught at a standard, whether by act or omission, that is substantially below the standard that is reasonably expected of a registered teacher. In making a determination as to whether a teacher has been seriously incompetent, factors that must be taken into account are the frequency of the incompetence, the extent of the incompetence, including any risks caused to the education of a student or the safety of a person, the level of teacher's training or experience and any other relevant matter.

It also inserts a new section 48B, which defines *serious misconduct*: a registered teacher or formerly registered teacher has engaged in serious misconduct if the teacher engaged in improper conduct of a serious kind that departs from the standard of behaviour reasonably expected of a registered teacher. The definition covers improper conduct, or wrong behaviour, of a weighty or important kind, or which is not trifling. It captures anything that constitutes a departure of behaviour reasonably expected of a teacher where that departure is serious. Although the definition is stated in general terms, it would also capture the types of behaviour covered by the definition of serious misconduct for the purposes of s 3(1) of the Corruption, Crime and Misconduct Act 2003. Relevant examples include: (a) a teacher's corrupt conduct in the performance of their role; (b) a teacher corruptly taking advantage of their role as a teacher to obtain a benefit for themselves or for another person or to cause a detriment to any person; and (c) conduct of the teacher that causes harm, or is likely to cause harm, to a person at an educational institution.

The clause inserts new section 48C, which defines the Board's investigative powers. These include the power of the Board to conduct an investigation in relation to notices, criminal history checks, complaints and any other information it receives. It expands the actions that the Board can take in relation to investigations to enhance their effectiveness and creates an offence for a person to fail to comply with a direction from the Board (\$5,000 penalty). A person who is given a direction by the Board has a reasonable excuse defence available to them and the information obtained is not admissible in evidence against the person except in limited circumstances.

The insertion of 48D provides that a person who complies with a direction is protected from liability as a result of their compliance with the direction except in limited circumstances.

The jurisdiction of the Board to deal with disciplinary matters involving teachers is not confined to their activities in this State.

**Clause 36      Section 49 amended**

The Board is required to establish one or more disciplinary committees comprised of three members, one of whom must be a registered teacher, one of whom must be a lawyer and one of whom must be a member of the Board. The clause facilitates minor amendments in line with current drafting practice.

**Clause 37      Section 50 amended**

The Board must establish an impairment review committee comprised of three members, one of whom must be a registered teacher, one of whom must be a medical practitioner and as a result of an amendment to this section, one of whom must be a lawyer (previously the member could be "such other person as the Board considers appropriate"). The clause also facilitates minor amendments in line with current drafting practice.



**Clause 38 Part 5 Division 3 heading replaced**

This clause replaces the Part 5 Division 3 heading with:

**Division 3 — Complaints, assessments and investigations**

**Clause 39 Section 51 replaced**

Complaints can be made to the Board about a disciplinary matter in relation to a currently or formerly registered teacher. Complaints can be made about an impairment matter in relation to registered teacher. Replacement section 51 allows complaints to be made by members of the public and other relevant persons and leaves board-formulated complaints to be dealt with under new section 51A.

The clause also inserts new section 51A, which enables the Board itself to formulate a complaint based on a notice, criminal history check, any other information referred to it or a public complaint about a disciplinary matter that has occurred or allegedly occurred or an impairment matter that exists or allegedly exists, and section 51B, which permits the Board to make assessments, undertake investigations and reassess or reinvestigate at any time in relation to a complaint.

**Clause 40 Section 52 amended**

The Board must give notification of a complaint to the teacher who is the subject of it. This clause provides for minor amendment in line with current drafting practice and amends the section 52 heading to: “Teacher must be notified of complaint”.

**Clause 41 Part 5 Division 4 heading amended**

This clause amends the Part 5 Division 4 heading to:

**Division 4 — Dealing with and referring complaints.**

**Clause 42 Section 53 replaced**

This replacement section provides for the ways in which the Board must deal with a complaint. These include rejecting a public complaint or withdrawing a board-formulated complaint, making an interim order, referring the complaint to a disciplinary committee or the impairment review committee or referring the complaint to the State Administrative Tribunal. This clause provides for the complaint to be referred to another person, organisation or agency if the Board considers that it could be more appropriately dealt with by that party.

This clause further enables the Board to make such assessments and investigations as it deems appropriate before deciding how to deal with a complaint.

**Clause 43 Sections 55 and 56 replaced**

This clause expands the actions available to a committee of the Board, enabling a committee to which a complaint has been referred, unless otherwise required by the Act, to make a request or recommendation to the Board that the Board undertakes further investigation of the complaint, makes an interim order, refers the complaint or part thereof to another committee, person, organisation, agency or the State Administrative Tribunal or dismisses the complaint (or part of the complaint).

The clause further provides the ways in which the Board may respond to the Committee's request or recommendation in relation to a complaint and sets out when a notice of decision must be given.

**Clause 44 Section 57 amended**

In certain circumstances, it is suitable for the Board to reject a complaint. These include where the complaint is in respect of a matter that is not within the power of the Board, its committees or the State Administrative Tribunal, has already been appropriately dealt with by another authority, when a public complaint is vexatious or without substance or not a matter that is in the public interest to pursue or a board-formulated complaint is without substance or not a matter that is in the public interest to pursue. This clause specifies the actions the Board may take in the circumstances.

The heading to amended section 57 is amended to read: "Complaints without substance."

**Clause 45 Part 5 Division 5 replaced**

This clause facilitates the replacement of the Part 5 Division 5 heading with:

**Division 5 – Interim orders**

The general requirements for interim orders are set out in section 58 of the Act. In particular, that they are time-limited to 30 days and notice of an order must be given. An interim order may be revoked by the Board unless the matter in respect of which the order was made has been referred to the State Administrative Tribunal.

The clause inserts new section 59 providing that an interim order may be made to impose, modify or cancel conditions on a teacher's registration if the Board reasonably believes that a registered teacher may pose a risk of harm to any person. It further sets out that an interim order suspending the teacher's registration may be made if the Board reasonably believes a teacher poses a risk of harm to a student and the suspension is necessary to protect a student. In forming this belief and before imposing an order, the Board is to have regard to any evidence available to it.

The Board must also impose an interim order suspending a teacher's registration under new section 60 in circumstances where it becomes aware that a teacher has been charged with an actionable offence.

Such orders may be made in these circumstances whether or not the teacher is currently teaching at an educational institution. Imminency has been removed from the requirement so that the Board can act in the interests of child safety (rather than delaying the order until the teacher obtains a teaching position and represents an imminent risk).

Interim orders must be referred to the State Administrative Tribunal within 14 days after the making of the order by the Board and any inquiries commenced before the interim order was made are to be discontinued. The Board may apply to the Tribunal for an extension of time if necessary.

It also provides that in circumstances where an interim order is in force, the complaint relating to the matter may be referred by the Board to the Tribunal before or after charges for offences against the relevant teacher have been finally determined.

**Clause 46 Section 62 amended**

This section provides for the ways in which a disciplinary committee may deal with a complaint, following a preliminary assessment. The clause streamlines the actions available to the committee, removing the ability to dismiss the complaint or make an interim order and retaining the ability to deal with the complaint by way of an inquiry, making a request or recommendation to the Board or postponing the complaint pending an outcome if the matter is already before another person or body.

The heading to amended section 62 is amended to read: "Initial assessment."

**Clause 47 Sections 63 and 64 replaced**

A disciplinary committee may deal with a complaint in relation to a registered teacher or formerly registered teacher by means of an inquiry. Consent from the teacher to conduct an inquiry is no longer required.

This clause inserts a new section 63A, which provides that hearings may be held for the purposes of an inquiry and that they must be held in public, unless the confidential nature of any evidence or matter or any other reason makes it preferable to hold the hearing in private. Administratively, if the matter relates to a police investigation, liaison would be undertaken with WA Police in making a determination, but this would generally weigh in favour of such a hearing being held in private. It is not in the best interests of children or the public interest for children to participate in public hearings.

The clause strengthens the inquiry process by including in section 64 the ability for the committee to determine its own procedures (subject to procedural fairness rules) and enlist the assistance of a legal practitioner.

**Clause 48      Section 65 amended**

This clause provides for the rights of the affected teacher during an inquiry, including calling and giving evidence, examining and cross-examining witnesses and making submissions. This clause provides for minor amendments in line with current drafting practice.

**Clause 49      Section 66 replaced**

This section of the Act enables an inquiry to consider evidence and findings of other court or tribunal proceedings and may draw conclusions of fact from anything that it receives in evidence or adopts. This clause makes amendments to clarify the types of evidence a disciplinary committee may receive and the potential sources of the findings or decisions it may adopt. Evidence and adopted findings or decisions may be sourced from bodies constituted under the law of this State or any other place.

**Clause 50      Section 67 amended**

A registered teacher or formerly registered teacher who is the subject of a complaint is entitled to appear before the inquiry in person or be represented by another person, who does not need to be a legal practitioner. This clause applies minor amendments in line with current drafting practice.

**Clause 51      Section 68 replaced**

Section 68 of the Act sets out the disciplinary committee's powers when conducting an inquiry, including requiring persons to attend and produce evidence before the committee. This clause strengthens the inquiry process by directing a person to give any information to the committee in relation to a matter or to answer a question put to them.

The clause inserts new section 68A which provides for an offence with a penalty of \$5,000 to be applied if a person fails to comply with a direction and when given the direction were informed that a failure to comply may constitute an offence. A defence to the charge exists if the person proves that they had a reasonable excuse for failing to comply with the direction. This new section also places limitations on how the evidence provided by the person can be used.

New section 68B provides protection against liability for persons who must comply with a direction except in limited circumstances.

The clause inserts sections 68C, which provides that a person must not hinder or obstruct the conduct of an inquiry, or insult the committee or its members, and that to do so would attract a penalty and fine of \$5,000, and 68D, which provides immunity for those performing functions in relation to an inquiry.

**Clause 52      Section 69 amended**

Section 69 of the Act requires that a record be kept of an inquiry and that a registered teacher or formerly registered teacher is entitled, upon request, to a copy of the record of the inquiry in relation to their disciplinary matter. The clause inserts two new provisions: that the record of an inquiry may include an audio or visual recording of the inquiry or part of the inquiry and that the record of an inquiry must not contain identifying information provided by the Commissioner of Police under section 41A. Administratively, a record of inquiry will not include information that could compromise police investigations or investigation practices.

**Clause 53 Section 70 amended**

This clause amends section 70, which sets out the outcomes available to the disciplinary committee at the conclusion of an inquiry if the committee finds that a disciplinary matter occurred in relation to a registered teacher or a formerly registered teacher. They include upholding the complaint in whole or in part, making a request or recommendation to the Board in relation to any part of the complaint not related to the finding, ordering that a person is cautioned or reprimanded, imposing a fine up to \$5,000 or recommending that the complaint be referred in whole or part to the State Administrative Tribunal.

It further provides that if the finding is in relation to a currently registered teacher, an order may be made to suspend the person's registration for no more than two years, a condition may be imposed on the person's registration or an order made that an existing condition be cancelled, or if a teacher with full registration has been found to be seriously incompetent, an order may be made to cancel that registration and substitute it with provisional (returning teacher) registration. The disciplinary committee may also order that the teacher pay costs and expenses to the Board.

**Clause 54 Part 5 Division 6 Subdivision 3 deleted**

This clause facilitates the deletion of Part 5 Division 6 Subdivision 3, Offences relating to inquiries as these are now provided in new sections 68A and 68C (see clause 51).

**Clause 55 Part 5 Divisions 7 to 9 replaced**

This clause facilitates the deletion and replacement of Part 5 Divisions 7 to 9.

**Division 7 – Role of impairment review committee**

**Subdivision 1 – Initial assessment of complaints and other matters**

This clause inserts Subdivision 1, which requires the impairment committee to deal with complaints referred to it by the Board in a number of ways, including dealing with the complaint by way of an inquiry, making a request or recommendation to the Board, postponing consideration of the complaint pending the outcome if the matter is already before another person or body or recommending that the Board imposes or modifies a condition on the

teacher's registration. Complaints must be dismissed when teacher's registration is cancelled or otherwise ends.

## **Subdivision 2 — Inquiries**

The clause inserts Subdivision 2, which provides that the impairment committee may conduct an inquiry into the complaint and give notice to the registered teacher of its intention to do so. Hearings must be conducted in private and teachers must be given the opportunity to call and give evidence, examine and cross-examine witnesses and make submissions, unless the committee decides to only consider hard copy evidence for the purposes of the inquiry. The teacher may appear in person before the committee or be represented by another person, who does not have to be a legal practitioner.

Provisions are also made in relation to health assessments conducted by a medical practitioner or psychologist for the purposes of the inquiry. The health assessment is to be paid for by the Board and the resultant report given to the Board, which it must provide to the teacher. If the teacher does not undergo a health assessment, the committee must recommend to the Board that the complaint be referred to the State Administrative Tribunal.

The impairment committee's powers are set out when conducting an inquiry, including requiring persons to attend an inquiry, produce evidence and respond to directions from the committee. Provision is also made for the committee to inspect and copy a document or other thing produced as evidence and direct that any information or answer must be given under oath or affirmation or be verified by statutory declaration.

A person commits an offence if they fail to comply with a direction (\$5,000) and when given the direction the person was informed that a failure to comply may constitute an offence. A defence to the charge exists if the person proves that they had a reasonable excuse for failing to comply with the direction. There are limitations placed on how the evidence provided by the person can be used. Protection against liability is provided to persons who must comply with a direction except in limited circumstances.

The Subdivision further provides that a person must not hinder or obstruct the conduct of an inquiry, or insult the committee or its members, and that to do so would attract a penalty and fine of \$5,000.

A record is to be kept of an inquiry and a registered teacher or formerly registered teacher is entitled, upon request, to a copy of the record of the inquiry in relation to their impairment matter. Immunity is provided for those performing functions in relation to an inquiry.

The outcomes available to the impairment review committee at the conclusion of its consideration of an impairment matter are set out, including upholding the complaint in whole or in part, making a request or recommendation to the

Board in relation to any part of the complaint that is not related to the finding, recommending to the Board that the complaint is referred in whole or part to the State Administrative Tribunal, requesting that the teacher consent to the imposition of conditions on their registration, suspending the teacher's registration for up to two years or undergoing counselling specified by the committee. Notice of decisions must be provided within 14 days after the decision is made.

The Board is to consider the recommendation of the impairment review committee and decide how to proceed, including taking any action the teacher has consented to under the Act. Notice of the decision is to be given within 14 days after the decision is made to the teacher and to any complainant.

### **Subdivision 3 — Imposing or modifying conditions in relation to complaints about impairment matter**

The clause inserts Subdivision 3, which provides that a registered teacher may agree with the impairment review committee's recommendation to the Board to impose a condition on their registration or that an existing condition be modified, which enables the action to be taken in relation to the condition. The complaint in relation to the teacher must be dismissed by the Board when the condition is imposed or modified. Notice of the decision must be given within 14 days after the decision is made.

The Board may cancel a condition of registration imposed with the teacher's agreement if the teacher satisfies the impairment review committee that their ability to teach is no longer affected by the impairment.

## **Division 8 – Tribunal**

### **Subdivision 1 – Referrals to the Tribunal**

This clause facilitates minor amendments to section 83 of the Act, which deals with the referral of complaints to the State Administrative Tribunal, in line with current drafting practice.

### **Subdivision 2 –Tribunal**

The clause inserts an amended section 84, which lists the actions that can be undertaken by the State Administrative Tribunal for disciplinary or impairment matters referred to it in relation to registered or formerly registered teachers.

This includes upholding the complaint in whole or part, dismissing any part of the complaint not related to the finding, ordering that the person be cautioned or reprimanded, ordering that the person pay the Board a fine not exceeding \$5,000 or if the person is a formerly registered teacher, ordering that the person is disqualified from having registration granted for a period or indefinitely.

Where an impairment matter is found to exist during a proceeding in relation to a complaint, the Tribunal may also order that the teacher undergoes

counselling or medical treatment or acts in accordance with medical advice provided to the teacher.

For currently registered teachers, the Tribunal may order that the registration of the person be suspended for a period not exceeding two years, that a condition be imposed on their registration or that an existing registration be modified or cancelled, or if a teacher with full registration has been found to be seriously incompetent, an order may be made to cancel that registration and substitute it with provisional (returning teacher) registration or order the cancellation of a person's registration and their disqualification from having registration granted for a specified period or, for disciplinary matters, indefinitely.

If the Tribunal does not make a finding that a disciplinary matter or impairment matter exists in relation to a complaint about a teacher, the Tribunal must dismiss any part of the complaint that relates to the matter.

The Tribunal may make an interlocutory order that a registered teacher the subject of a complaint undergo a health assessment. This order may be affirmed, revoked or varied pending final determination of the referral from the Board.

The Tribunal may also make an interlocutory order that suspends the registration of a registered teacher who is the subject of a complaint from teaching if they pose risk of harm to any person, a health assessment has not been undergone as ordered or a teacher has been charged with an actionable offence. This order may be affirmed, revoked or varied pending final determination of the referral from the Board.

## **Division 9 — Notice of orders and decisions made under this Part**

This clause inserts an amended section 85, which sets out that within 14 days after making a Part 5 order or decision, the Board, a disciplinary committee or the impairment review committee must give written notice of the order or decision, and details who the notice must be given to and what the notice must contain. The notice must advise of the possibility of review by the State Administrative Tribunal in appropriate cases. A notice must not contain identifying information provided by the Commissioner of Police under section 41A. Such notices will include short particulars of the reasons for the order or decision. Administratively, these short particulars will not include information that could compromise police investigations or investigation practices.

### **Clause 56 Section 87 amended**

This clause facilitates amendment to the number of Board members from seven to nine to be appointed by the Minister. The increase in number of members maintains the current requirement for three registered teachers and one lawyer to be included in the Board membership. The clause also provides for minor amendments in line with current drafting practice.



**Clause 57      Section 88 amended**

Board members may receive such remuneration and allowances as are determined by the Minister on the recommendation of the Public Sector Commissioner. This clause inserts a further provision that if moneys standing to the credit of the account are applied to meet the reasonable cost of providing a relief teacher while a member of the Board or a committee is attending a meeting during school hours, then that member is not entitled to any remuneration in respect of attendance at that meeting.

**Clause 58      Section 89 amended**

This section of the Act sets out the functions of the Board. This clause provides for the amendment of section 89 to better reflect the Board's role in relation to other regulatory authorities and its role in establishing, implementing and administering an accreditation scheme for initial teacher education programs in Western Australia.

**Clause 59      Section 91 amended**

This section provides for the delegation of the Board's powers or duties. This clause facilitates a distinction between the delegation of powers or duties under any provision of the Act, and the delegation of the Board's investigative powers or duties under section 48C of the Act and lists the possible delegates in each circumstance.

**Clause 60      Section 92 replaced**

The CEO of the Department of Education must provide to the Board such staff, facilities, services, resources and other support as are reasonably necessary to enable it to perform its functions. This clause facilitates minor amendments in line with current drafting practice.

**Clause 61      Section 93 amended**

Section 93 of the Act enables the Minister to give written directions to the Board with respect to its performance of its functions. This clause facilitates minor amendments in line with current drafting practice.

**Clause 62      Section 94 amended**

Section 94 of the Act enables the Minister to have access to information in the possession of the Board and associated documents. This clause makes minor amendments in line with current drafting practice.

**Clause 63      Part 6 Division 5 heading amended**

This clause facilitates the amendment to the heading to Part 6 Division 5 to read:

## **Division 5 — Constitution and proceedings of Board**

### **Clause 64 Section 96 amended**

This section of the Act makes provision for the resignation of Board members and the removal of Board members by the Minister. This clause allows for removal of a Board member if the Board member has been found guilty of an offence (currently only convictions allow for removal in relation to offences).

### **Clause 65 Section 98 amended**

This section of the Act enables the Minister to appoint alternate members in certain circumstances. This clause makes minor amendments in line with current drafting practice.

### **Clause 66 Section 102 amended**

This section of the Act provides that the Board will determine its own meeting procedures. This clause makes minor amendments in line with current drafting practice.

### **Clause 67 Section 108 amended**

This section of the Act requires a Board or committee member who has a material personal interest in a matter before the Board or committee to declare that interest, subject to a maximum penalty of \$25,000. This clause makes minor amendments in line with current drafting practice.

### **Clause 68 Section 112 amended**

Section 112 of the Act enables the Minister to declare the rules on material personal interests contemplated in sections 109 and 111 inoperable. This clause makes minor amendments in line with current drafting practice by referring to sitting days expressly.

### **Clause 69 Section 113 amended**

This section of the Act sets out when a document is properly executed by the Board. This clause makes minor amendments in line with current drafting practice. The heading now reads: Execution of documents by Board.

### **Clause 70 Section 115 amended**

The Teacher Registration Board Account is an agency special purpose account to be administered by the CEO of the Department of Education. Fees payable to the Board are to be credited to this account and the costs of performing the functions of the Board under the Act are to be paid from it. This clause makes minor amendments in line with current drafting practice.

**Clause 71 Section 116 amended**

This section defines the term “publish” in relation to information for the purposes of the Division regarding the publication and use of information. This clause makes minor amendments in line with current drafting practice.

**Clause 72 Section 117 amended**

Persons dealing with information in pursuance of functions under the Act must refrain from publishing or making use of it improperly, subject to a maximum penalty of \$25,000. This clause makes minor amendments in line with current drafting practice.

**Clause 73 Section 118 amended**

The Board may publish registration and any other information under the Act to any person it deems should be made aware of it, provided it is satisfied that publication is in the public interest.

This clause provides clarification that the section applies to matters in relation to both registered and formerly registered teachers and includes information under Part 4 and matters under Part 5 (including any complaints or investigations).

It also inserts new section 118(3A) which makes it explicit that the section is subject to the *Evidence Act 1906* section 36C and the *Children’s Court of Western Australia Act 1988* section 35.

**Clause 74 Section 118A inserted**

This clause inserts section 118A, which enables the Board, with the approval of the Minister, to provide any information it holds in relation to the teaching workforce to the Australian Teacher Workforce Data Initiative.

**Clause 75 Part 7 Division 1A inserted**

**Division 1A – Accreditation Standards**

This clause inserts section 118B, which provides for the Minister to approve standards developed by the Board in relation to the requirements for program accreditation and sets out when the standards commence, how they may be developed and that they must be made available on a website maintained by the Board.

**Clause 76 Section 119 amended**

Offences under the Act can be prosecuted by the Board or another person authorised to do so by the Board. This clause provides that prosecutions must

be commenced within 6 years after the day on which the offence is alleged to have been committed.

**Clause 77 Section 121 amended**

Section 121 sets out the matters that are taken to be proved in legal proceedings for offences against the Act. This clause makes minor amendments in line with current drafting practice.

**Clause 78 Section 122 amended**

Section 122 sets out the matters that can be stated in an evidentiary certificate given by the Board and the effect of such a certificate. This clause makes minor amendments in line with current drafting practice.

**Clause 79 Section 123 replaced**

The Board may recover fees, penalties, costs or expenses in any court of competent jurisdiction. This clause makes minor amendments in line with current drafting practice.

**Clause 80 Part 7 Division 3 replaced**

**Division 3 – Review by Tribunal**

Section 124 of the Act provides that reviewable decisions can be the subject of an application to the State Administrative Tribunal for review. This clause clarifies that the provision applies to both registered teachers and formerly registered teachers and applicants for grant, renewal and change of category of registration. It also inserts impairment review committee orders under section 78(1)(a) as reviewable decisions and decisions of the Board to refuse to cancel a condition under section 82(1).

**Clause 81 Section 125 replaced**

This clause replaces the current section 125 with a provision providing that if a provision of this Act is inconsistent with a provision of the *Equal Opportunity Act 1984*, then the provision of this Act prevails to the extent of the inconsistency.

**Clause 82 Section 127 replaced**

It is an offence for providing false or misleading information in connection with an application or for any other purpose under the Act or failing to disclose information that is known to be materially relevant. This clause facilitates minor amendments in line with current drafting practice.

**Clause 83 Section 128 amended**

Regulations may be made prescribing all matters required or permitted by the Act to be prescribed or which are necessary or convenient to give effect to the purposes of the Act. This clause provides the ability for regulations to be made for keeping records or requiring matters to be in accordance with the professional learning activities policy, the professional standards or accreditation standards and makes minor amendments in line with current drafting practice.

**Clause 84 Section 130 amended**

This clause provides that the Minister must review the operation and effectiveness of the Act as soon as practicable after the expiration of four years from the commencement of the *Teacher Registration Amendment Act 2022* Part 2 and lists the matters to which the Minister must have regard. It provides further that the Minister must prepare a report based on the review as soon as practicable after the preparation of the report and cause it to be laid before each House of Parliament.

**Clause 85 Part 8 Division 4 inserted**

This clause provides for the following heading to be inserted at the end of Part 8:

**Division 4 — Application of Act to individual who was WACOT teacher**

This Division sets out how the Act will apply to an individual who was registered under the *Western Australian College of Teaching Act 2004*.

**Clause 86 Part 8A inserted**

This clause inserts Part 8A, which provides for the insertion of the following headings before Part 9:

**Part 8A — Transitional provisions for *Teacher Registration Amendment Act 2022***

**Division 1 — Preliminary**

This clause provides for sections 149C and 149D, which define terms that are relevant to the provisions in Part 8A and stipulate that this Part or transitional regulations made under this part are not intended to prejudice the operation of the *Interpretation Act 1984* y.

**Division 2 – Applications undecided before commencement day**

This clause inserts Division 2 which provides, in general terms, that applications made before commencement day for full registration, provisional registration, non-practising and limited registration or renewal thereof (where applicable) are taken to be applications under the amended Act. Applications to extend non-practising registration received before commencement day are treated differently however and lapse on and after commencement and must

not be dealt with under the amended Act (unless the applicant holds full or provisional registration in which case the application will be treated as an application to change registration category). This is due to the fact that under the amended Act, the category of non-practising registration is a transition category only and therefore an application can no longer be made to be registered or renewed in this category. Teachers who hold non-practising registration with an end date will transition to provisional registration pursuant to s 149P.

The clause further provides that an applicant who has been given pre-commencement fit and proper person advice within 5 years after the day on which the Board receives the registration application for the person is taken to be fit and proper under the amended Act (section 24) if no further information has become available to the Board about the person's fitness or propriety, including from a criminal history check, since the advice was given.

### **Division 3 — Registration**

This clause inserts Division 3, which provides that teachers holding full registration before commencement of the amended Act are taken to hold full registration under and subject to the amended Act. Such a teacher is taken to hold transitional registration in that category for the remainder of the registration period that would have applied to the pre-commencement registration, on the same conditions as applied prior to commencement and subject to any statutory conditions that apply to transitional registration under the amended Act.

The clause operates in the same manner for teachers holding provisional registration prior to commencement, with teachers being taken to hold registration as either provisional (graduate teacher) or provisional (returning teacher) under the amended Act, depending on when their qualification was conferred.

Teachers holding non-practising registration before commencement day who notified the Board before commencement day that they had commenced teaching are taken to hold transitional registration under and subject to the amended Act as either provisional (graduate teacher) or provisional (returning teacher) depending on when their qualification was conferred. This change of category enables them to legally teach under the amended Act as the non-practising category no longer permits teachers in that category to teach in an educational institution. The expiry period for transitional registration in the provisional registration category is taken to be 3 years from the day on which the person gave notification that they had commenced teaching or 3 years from the day on which the person last received an extension of their pre-commencement registration. The same conditions apply to the transitional registration that were applied to a person's pre-commencement registration and any that statutorily apply to transitional registration under the amended Act.

Teacher holding non-practising registration who did not notify the Board they had commenced teaching before commencement day are taken to hold non-practising registration under and subject to the amended Act. This transitional registration is held by the teacher indefinitely subject to any earlier termination or cancellation under the amended Act and on the same conditions as were applied to their registration before commencement of the amended Act or which may be applied statutorily to the transitional registration under the amended Act. Such teachers will not be entitled to teach until such time that they transition to provisional registration or full registration.

Teachers holding limited registration before commencement day are taken to hold limited registration under and subject to the amended Act and hold this transitional registration for the remainder of the period that would have applied to the pre-commencement registration. Conditions in place prior to the commencement and any statutory conditions that apply to the transitional registration will apply.

#### **Division 4 — Professional standards, Professional learning activities policy and accreditation standards**

This clause inserts Division 4, which provides for the repeal of the professional standards, professional learning activities policy and accreditation standards in force before commencement day. These will be remade in compliance with the amended Act.

#### **Division 5 — Investigations, complaints, inquiries, proceedings and other matters**

This clause inserts Division 5.

New section 149T in Division 5 provides that conduct of a teacher that occurred before commencement day and relates to certain applicable matters, unless it is excluded conduct, must be dealt with under the amended Act. This is to provide retrospective application of the Act to conduct of teachers in certain circumstances.

An investigation started under section 56 of the Act before commencement of the amended Act but not completed before commencement must be continued and dealt with as if it were an investigation under the amended Act (section 48C).

A complaint in force before commencement but not finally dealt with must be continued and dealt with as if it were a complaint under the amended Act and may be reformulated by the Board.

Interim disciplinary orders made before and inquiries started before commencement that were not finally dealt with or for which a decision had not been made or which has not been referred to the impairment review committee or the Tribunal must be handled under the amended Act. A disciplinary committee, on recommendation from the Board, may allow the

complaint that is the subject of an ongoing pre-commencement inquiry to be reformulated.

Complaints in relation to impairment matters for which a decision had not been made before commencement of the amended Act must be continued and finally dealt with under the amended Act. Further, a notice given to a registered teacher in relation to an inquiry being undertaken into an impairment matter before commencement is taken to be a notice provided under the amended Act. Agreements made and consents sought and provided in relation to a health assessment prior to commencement are taken to be agreements given and consents provided under the amended Act. Similarly, an examination as in force before commencement day is taken to be a health assessment under the amended Act.

Complaints referred to the State Administrative Tribunal before commencement day that had not been finally dealt with are taken to have been referred to the Tribunal under the relevant provision of the amended Act.

In relation to disqualifications ordered before commencement day, the clause provides that a pre-commencement disqualification order remains in force, with the teacher taken to be disqualified from having registration granted for the period, or indefinitely, as stated in the order. The teacher may make an application for registration under the amended Act. Approval from the State Administrative Tribunal to apply for registration during a period of indefinite disqualification before commencement is taken to be an approval under the amended Act.

Employers must give notice when teachers cease teaching in cases of serious incompetence or misconduct under the amended Act even if the circumstance occurred before commencement day.

## **Division 6 — Transitional regulations**

This clause permits the making of transitional regulations to address any deficiencies in the transitional provisions of the Bill. These may provide that specified provisions of the Bill do not apply or apply in a restricted capacity. Whilst it is not expected that regulations of this nature will be needed, the power to make them is essential to remedy any inadvertent failure to address a matter of inconvenience, hardship, cost, inconsistency, or other unintended consequence. In certain circumstances, a person is protected from prejudice or liability that would otherwise arise from the impact of the transitional regulations.

### **Clause 87 Various references to “is to” replaced**

This clause provides for various occurrences of “is to” to be replaced with “must” in line with current drafting practice.

### **Clause 88 Various references to “criminal record check” amended**



This clause provides for various occurrences of “criminal record check” to be replaced with “criminal history check.”

**Clause 89    Various references to “one” amended**

This clause provides for various occurrences of “one” to be replaced with “1” in line with current drafting practice.