

Western Australia

WESTERN AUSTRALIAN COLLEGE OF TEACHING

BILL 2003

EXPLANATORY MEMORANDUM

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The purpose of this Bill is to establish the Western Australian College of Teaching.

A commitment to establish the Western Australian College of Teaching was announced in the Government's education policies prior to the last State election.

On Monday 29 April 2002, Cabinet approved the drafting of legislation to establish the College.

The College will be a professional body for teachers, administered by teachers.

The main emphases in the Western Australian College of Teaching Bill 2003 are on enhancing the status of the profession of teaching, establishing professional standards and values for teaching in schools and administering the schemes of teacher registration and disciplinary proceedings.

The College will represent all teachers in Western Australia, and as an overarching regulatory body, will ensure that the quality of teachers in all education sectors in the State will meet a minimum standard.

The establishment of a teacher registration authority in Western Australia follows a trend across Australia towards teacher registration. South Australia and Queensland have both had registration authorities for many years. New South Wales, Tasmania, Victoria and the Northern Territory are currently establishing their own registries.

The Interim Board responsible for the draft legislation consists of representatives from the government, Catholic and private education sectors, as well as teachers' unions, parents & citizens associations and members of the teaching profession.

This Bill, the result of wide consultation with teachers, the Western Australian public, local education authorities, relevant government agencies, and other states' teacher registration authorities is now presented to Parliament for approval.

Part 1 – Preliminary

This part contains the title of the Act, the commencement provisions and definition and interpretation of terms used within the Bill.

Clause 1 Short title

- This clause provides the short title and citation.

Clause 2 Commencement

- Subclause (1) provides that the Act comes into operation on a day fixed by proclamation.

Subclause (2) provides for sections 30, 31 and 82 (prosecution for offences in relation to teaching, employing persons or pretending to be a teacher when the person concerned is not a registered teacher or a person with a limited authority to teach) to come into effect on the day 18 months after the day the Act comes in to operation, reflecting the intended transitional phase.

Clause 3 Interpretation

This clause defines (or refers to definitions) in regard to certain words and expressions used in the proposed Act. Reference will be made to definitions as appropriate in relation to specific clauses.

Clause 4 Crown Bound

- Subclause (1) indicates that the Act binds the Crown in right of the State.

Subclause (2) removes Crown liability to prosecution for an offence under this Act.

Subclause (3) provides for Subclause 2 not to affect the liability of any officer, employee or agent of the Crown to be prosecuted for an offence.

Part 2 – Western Australian College of Teaching

Division 1 Establishment of College

Clause 5 College established

Subclause (1) provides for the establishment of the College.

Subclause (2) provides that the College is a Body corporate, with perpetual succession and a common seal, and that it may sue or be sued in its corporate name.

Clause 6 **College not an agent of the Crown**
This clause indicates that the College does not represent, nor is it an agent of the Crown.

Division 2 **Board of Management**

Clause 7 **Board of Management**
Subclause (1) provides for the College to have a board of management.

Subclause (2) provides for the composition of the Board of Management to include 9 Ministerial appointees, and 10 elected members.

Clause 8 **Functions of the Board**
- Subclause (1) provides for the Board to be the governing body of the College.

Subclause (2) provides for the Board, in the name of the College, to perform the functions, determine the policies and control the affairs of the College.

Clause 9 **Membership of the Board**
This clause details the membership of the Board, the number of representatives and the sectors they represent.

Subclause (1) details which nine members are to be appointed by the Minister based upon the nominations received by specified organisations

Subclause (2) details that ten teachers are to be elected by the membership of the College and specifies that seven shall represent registered government school teachers, two shall represent registered teachers in the system the governing body of which is the Catholic Education Commission of Western Australia and one shall represent all other schools. All elected members shall be registered teachers teaching in a school in the sector represented.

Subclause (3) allows the Minister to appoint a person as he thinks fit should an organisation in subclause (1) fail to nominate a person for appointment within 30 days of a request to do so.

Subclause (4) stipulates that a person may only vote once in any election.

Subclause (5) provides that the election of members under subclause (2) is to be conducted by the Electoral Commissioner, appointed under the *Electoral Act 1907*, in accordance with the rules.

Subclause (6) provides that that the College will meet the expenses incurred by the Electoral Commissioner in holding an election for the members of the Board of Management of the College.

Subclause (7) provides that each member of the Board is to be an individual.

Subclause (8) states that the Director of the College is not to be a member of the Board.

Clause 10 Constitution and Proceedings

This clause indicates that Schedule 1 provides for the constitution and proceedings of the Board.

Clause 11 Remuneration and allowances

This clause provides for the remuneration and allowances of members of the Board:

Subclause (1) provides that members of the Board and committees are to be paid out of College funds at a rate to be determined by the Minister on the recommendation of the Minister for Public Sector Management.

Subclause (2) provides for teachers' schools to be provided with funds to cover a relief teacher during a Board Member's absence during school hours.

Subclause (3) prevents a Board Member from receiving both the allowances under subclause (1) and the teacher relief under subclause (2). Only one type of payment is permitted.

Clause 12 Meetings and minutes of meetings

This clause outlines the requirements for meetings and minutes of meetings:

Subclause (1) provides that every meeting of the Board is open to all members of the College.

Subclause (2) provides, in spite of Subclause (1), for a meeting or part of a meeting to be closed:

- (a) by the Board – to members of the College, but not to Board Members; and
- (b) at the request of a teacher, who is the subject of a disciplinary action or an inquiry.

Subclause (3) provides for the board to consider the request of a teacher under Subclause (2) (b) and to order a meeting or part of a meeting be closed if it considers that this is in the best interests of the parties involved or for the maintenance of professional standards.

Subclause (4) requires that minutes of a meeting of the Board are to be open for inspection at its principal place of business by members of the College during normal office hours without a fee, other than the minutes relating

- (a) to a disciplinary action or inquiry;
- (b) a matter deemed to be confidential because it infringes a person's right to privacy, or
- (c) a meeting ordered closed by the Board under subclause (2) (a) or (3).

Subclause (5) allows a member of the College to obtain a copy, at a prescribed fee, of any minutes of the Board available for inspection under subclause (4).

Subclause (6) allows the Board to determine a matter confidential where it considers disclosure is likely to infringe a person's right to privacy.

Clause 13 Committees

This clause sets out the role and obligations of committees.

Subclause (1) provides that the College

- (a) may establish a committee as it requires,
- (b) must establish a committee to hold an enquiry when dictated by the provisions of Part 7 Division 3.

Subclause (2) allows the College to:

- (a) determine the functions, membership and constitution of a committee; and
- (b) select Board members or other persons for any committee as it thinks fit.

Subclause (3) requires that each member of a committee be an individual.

Subclause (4) allows the College to remove any person from a committee, reconstitute a committee or discharge a committee.

Subclause (5) allows the College to direct any committee with respect to the performance of its functions and the committee is to comply with that direction, except where the committee is established to hold an enquiry as required under Part 7 Division 3.

Subclause (6) requires a committee to record and preserve accurate minutes of each of its meetings.

Subclause (7) provides for a committee, subject to this Act, to determine its own procedures.

Subclause (8) provides for a person with special knowledge or experience to be invited to act in an advisory capacity to a committee if the committee feels this will assist it in its functions and the College approves the invitation.

Subclause (9) requires each committee to submit to the College as soon as practicable after 31 March each year an annual report in respect of the functions performed by the committee during the year that ended on 31 March.

Subclauses (10) (a) and (b) provide that each member of a committee shall have the same rights and obligations as a member of the Board in terms of disclosure of material personal interest in a matter being considered by a committee, presence during discussion on such a matter or voting on such a matter unless the Board has passed a resolution specifying the member, the interest and the matter and that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

Subclause (10) (c) allows that a quorum (at least half of the members of the committee) should be present to vote where that committee would have less members than the Board where at least 8 members normally constitute a quorum.

Division 3 Relationship of College with the Minister

Clause 14 College to give regard to advice of Minister

This clause expects the College to give due regard to any advice given by the Minister regarding the exercising of its powers and in the performance of its functions.

Clause 15 Minister to have access to information

Subclause (1) entitles the Minister to have information in the possession of the College and to have, make and retain copies of documents where that information is in or on a document.

Subclause (2) allows, for the purposes of Subclause (1), the Minister to

- (a) request the College to furnish information;
- (b) gain access to information, and
- (c) make use of College staff to do so.

Subclause (3) requires the College to comply with the Minister's request for making facilities and staff available as allowed under subclause (2) (c).

Subclause (4) disallows the Minister from gaining information which may disclose or reveal the identity of a person unless that person has consented to such disclosure.

Subclause (5) defines 'document' and 'information'.

Division 4 **Functions and Powers**

Clause 16 **Functions**

This clause outlines the functions of the College which are to:

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

Clause 17 Powers

Subclause (1) provides that the College may do all things that are necessary or convenient to be done for, or in connection with, its functions.

Subclause (2) stipulates that the College may not acquire, hold or dispose of real property other than the premises it uses or will use as office premises.

Subclause (3) provides that, without limiting its powers under Subclause (1), the College may for the purpose of performing one of its functions

- (a) conduct professional development courses for teachers;
- (b) conduct research and produce and publish information; and
- (c) develop and sell any technology, software or other intellectual property that relates to the function, and, for that purpose, apply for, hold, exploit and dispose of any patent, patent rights, copyright or similar rights.

Clause 18 Delegation by College

Subclause (1) provides for the College to delegate to the Director any function of the College other than

- (a) this power of delegation; or
- (b) the conduct of an inquiry.

Subclause (2) provides that the delegation must be made in writing executed by the College.

Subclause (3) stipulates that the person to whom a power is delegated under this section, cannot delegate that power or duty.

Subclause (4) provides that the person who carries out a delegated function is to be taken to be carrying out the function as delegated unless the contrary is shown.

Subclause (5) provides that this section shall not limit the ability of the College to perform a function through a member of its staff or an agent.

Division 5 Director and Other Staff

Clause 19 Director

Subclause (1) provides that there is to be a director of the College.

Subclause (2) provides that the College may

- (a) appoint and remove a person as Director; and
- (b) fix and alter the terms and conditions of service of the Director.

Subclause (3) allows the College to appoint a person to act in the place of the Director and to be taken to be the Director while

- (a) the Director is unable to act by reason of sickness, absence or other cause; or
- (b) there is a vacancy in the office of the Director.

Subclause (4) provides for an acting Director not to be questioned about his actions or omissions on the ground that the occasion for his or her acting had not arisen or had ceased.

Clause 20 Role of the Director

Clause 20 provides that, subject to the control of the College, the Director is responsible for, and has the power to administer, the day-to-day operations of the College.

Clause 21 Staff, etc.

Subclause (1) allows the College to engage persons under contracts for services to provide professional, technical or other assistance, as the College considers necessary for the performance of its functions.

Subclause (2) enables the College to engage persons under contracts of service or other arrangements with respect to

- (a) conducting research or courses;
 - (b) producing or publishing information; or
 - (c) providing any professional, technical or other assistance,
- that the College considers necessary to enable it to perform its functions.

Clause 22 Use of government staff and facilities

Subclause (1) allows the College, by arrangement with the relevant employer, to make use, either full-time or part-time, of the services of any officer or employee

- (a) in the Public Service;
- (b) in a State agency or instrumentality; or
- (c) otherwise in the service of the Crown in right of the State.

Subclause (2) allows the Board, by arrangement with

- (a) a department of the Public Service; or
 - (b) a State agency or instrumentality,
- to make use of any facilities of the department, agency or instrumentality.

Subclause (3) stipulates that an arrangement entered into under Subclauses (1) or (2) is to be made on such terms as are agreed to by the parties.

Division 6 General

Clause 23 Protection from liability

- Subclause (1) provides that civil action cannot be taken against a person for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.

Subclause (2) relieves the College of any liability it might otherwise have had for another person having done anything as described in subclause (1).

Subclause (3) states that the protection provided for in this section applies even though the thing described in subclause (1) may have been capable of being done whether or not this Act had been enacted.

Subclause (4) provides that a reference to the doing of any thing includes a reference to an omission to do anything.

Clause 24 Duty not to make improper use of information

- Clause 24 imposes a duty on any member or former member of the Board or a committee, whether within WA or elsewhere, not to make improper use of information acquired by virtue of his or her position such that he or she might gain, directly or indirectly, an advantage for himself or herself or for any other person. A penalty of up to \$10,000 may be imposed for a breach of this Clause.

Clause 25 Common seal and execution of documents by College

- Subclause (1) provides that a document is duly executed by the College if

- (a) the common seal of the College is affixed to an authorised document in the presence of and signed by any 2 members of the Board attesting that the common seal was fixed in accordance with this section as specified in subclauses (2) and (3); or
- (b) it is signed on behalf of the College by a member, or members, of the Board authorised by the College to do so.

Subclause (2) requires that the common seal of the College not be affixed to a document except as authorised by the College.

Subclause (3) requires that the common seal of the College be affixed to a document in the presence of and signed by any 2 members of the Board to attest that the common seal was properly fixed.

Subclause (4) provides that the common seal of the College is

- (a) to be in a form determined by the College
- (b) to be kept in such custody as the College directs; and
- (c) not to be used except as authorised by the College.

Subclause (5) provides that a document purporting to be executed in accordance with this section is to be presumed valid until the contrary is shown.

Subclause (6) provides that when a document is produced bearing a seal purporting to be the common seal of the College, it is to be presumed that the seal is valid until the contrary is shown.

Subclause (7) directs that all courts and persons acting judicially are to take notice of the common seal of the College.

Part 3 – Financial Provisions

Clause 26 Funds of the College

Subclause (1) provides that the funds of the College will consist of

- (a) fees received by the College; and
- (b) other money or property lawfully collected by the College in the performance of its functions.

Subclause (2) permits the College to apply its funds to

- (a) administration and enforcement of the Act, including remuneration and allowances for Board and committee members as well as the Director and the staff of the College;
- (b) furthering education and research in relation to teaching and the education of teachers; and
- (c) any other purpose which would enable the College to perform its functions or to facilitate the implementation of the objects of this Act.

Clause 27 Accounts

Subclause (1) requires the College to keep proper accounts and records of transactions and affairs of the College, and to prepare financial statements in accordance with Australian Accounting Standards.

Subclause (2) requires the College to keep the accounts on an accrual basis, unless the College determines otherwise.

Clause 28 Audit

Clause 28 requires the College's accounts and financial statements to be audited at least once a year, at its own expense and by a registered company auditor (as defined in the *Corporations Act 2001*) appointed by the College with the prior approval of the Minister.

Clause 29 Annual report and other reports

Subclause (1) requires the College to submit its annual report together with its financial statements and auditor's report to the Minister by 31 July each year for the preceding year ending at 31 March.

Subclause (2) prevents the annual report from disclosing the identity of either a person who has made a complaint or a person who is the subject of a complaint.

Subclause (3) provides for material contained in the annual report of the College to include:

- (a) the success with which the College has performed the functions set out in section 16;
- (b) the number, nature and outcome of
 - (i) investigations and inquiries
 - (ii) matters brought before the District Court by the College;
- (c) the number and nature of matters referred to in (b) that are outstanding;
- (d) trends or special problems emerging during the year;
- (e) workload forecasts for the following year.; and
- (f) proposals for improving College operations.

Subclause (4) requires the Minister to submit a copy of the College's annual report, financial statements and auditor's report to each House of Parliament within 14 sitting days of that House after receipt of the report by the Minister.

Subclause (5) requires the College, after complying with subclause (4), to have copies of its reports available on request for inspection at its premises.

Part 4 – Membership of College

Division 1 Persons who may teach in schools

Clause 30 Persons who may teach in schools

Clause 30 stipulates those persons who may teach in schools and prevents any person from teaching in a school unless that person is a

- (a) registered teacher; or
- (a) the holder of a limited authority to teach and complies with that authority.

A maximum penalty of \$5,000 for a first offence and \$10,000 for a second or subsequent offence is prescribed for a teacher who works without appropriate authority and this part of the Act will come into force 18

months after the Act is proclaimed as stipulated in Section 2 (2).

Clause 31 **Persons who may be employed, engaged or given permission to teach in schools**

Clause 31 stipulates that a person (employer) must not employ, engage or give permission to a person to teach in a school unless that person is a

- (a) registered teacher; or
- (b) the holder of a limited authority to teach and complies with that authority.

A maximum penalty of \$5,000 for a first offence and \$10,000 for a second or subsequent offence is prescribed for those persons who employ, engage or give permission for a person to teach who is not authorised to teach and this part of the Act will come into force 18 months after the Act is proclaimed as stipulated in Section 2 (2).

Division 2 **Registered teachers**

Clause 32 **Provisional registration as a teacher**

Subclause (1) provides that a person who meets the requirements of this Act regarding provisional registration as a teacher and who has paid the registration fee, if any, prescribed by the regulations is to be registered provisionally as a teacher by the College.

Subclause (2) provides for the provisional registration of a person as a teacher to be approved for a period of up to three years from the day after the registration is effected, to be provided in writing and to be renewable.

Clause 33 **Requirements for provisional registration as a teacher**

This clause prescribes the requirements for provisional registration to be:

- (a) a teaching qualification approved by the College;
- (b) a record clear of offences the nature of which would make the person unfit to be a teacher;
- (c) proficiency in written and spoken English, unless exempted by the College
- (d) any other requirement prescribed by the regulations for the purposes
- (e) of this section.

Clause 34 **Registration as a teacher**

Subclause (1) provides that a person who meets the requirements of this Act regarding registration as a teacher and who has paid the registration fee, if any, prescribed by the regulations is to be registered as a teacher by the College.

Subclause (2) provides for the registration of a person as a teacher to expire five years from the day after the registration is effected, to be provided in writing and to be renewable.

Clause 35 Requirements for registration as a teacher

Clause 35 prescribes the requirements for registration to be:

- (a) a teaching qualification approved by the College;
- (b) a record clear of offences the nature of which would make the person unfit to be a teacher;
- (c) a standard of professional practice approved by the College
- (d) proficiency in written and spoken English, unless exempted by the College
- (e) within the five years preceding the application,
 - (i) has at least one year of teaching experience, be it full or part time; or
 - (ii) has complied with any requirements as to professional involvement prescribed by the regulations;
- (f) any other requirements prescribed by the regulations for the purpose of this section.

Division 3 Limited authority to teach

Clause 36 Limited authority to teach

Subclause (1) allows the College to issue an applicant with a limited authority to teach where the applicant has met the requirements of this Act regarding limited authorities to teach and has paid the prescribed fee, if any.

Subclause (2) allows for a limited authority to teach to

- (a) be issued for a period of up to 2 years from the day after which it commences, as approved by the College;
- (b) specify the school or schools at which the holder is authorised to teach and any limitations on the subject areas or teaching duties that apply to the holder; and
- (c) be renewed.

Clause 37 Requirements for limited authority to teach

Subclause (1) outlines the requirements of an applicant for a limited authority to teach to include:

- (a) specialist knowledge, training, skills or qualifications;
- (b) proficiency in written and spoken English, unless exempted by the College
- (c) an offer of a teaching position, or positions, at a school or schools for which no suitable registered teacher or teachers are available subject to the applicant being the holder of a limited authority to teach;
- (d) a record clear of offences the nature of which would make the person unfit to be the holder of a limited authority to teach; and

(e) any other requirements prescribed by the regulations for the purposes of this section.

Subclause (2) provides that the College may, on application of the holder of a limited authority to teach, vary the school or schools or the subject areas or teaching duties specified on the limited authority to teach.

Division 4 **Associate membership of the College**

Clause 38 **Associate membership of the College**

Subclause (1) allows the College to accept an applicant as an associate member of the College if it is satisfied that the applicant has met the requirements of this Act regarding associate membership of the College and has paid the prescribed fee, if any.

Subclause (2) provides for associate membership to expire one year after the day on which it commences and for it to be renewable.

Clause 39 **Requirements for associate membership of the College**

Clause 39 stipulates that eligibility requirements for associate membership of the College are

- (a) a teaching qualification approved by the College or a contribution to education or teaching recognised by the College;
- (b) a record clear of offences the nature of which would make the person unfit to be a member of the College; and
- (c) any other requirements prescribed by the regulations for the purpose of this section.

Division 5 **Applications**

Clause 40 **Applications**

Subclause (1) allows an applicant to apply for

- (a) membership of the College in any of the following categories:
 - (i) registration as a teacher;
 - (ii) provisional registration as a teacher;
 - (iii) limited authority to teach; or
 - (iv) associate membership of the College;
- (b) renewal of membership; or
- (c) to vary information specified on a limited authority to teach.

Subclause (2) requires that an application be in writing, accompanied by evidence that the person meets the relevant requirements of the Act, written consent of the applicant for the College to undertake a criminal record check in respect of the application; and the relevant fee, if any.

Subclause (3) provides for fees to be not refundable.

Clause 41 Renewal of membership of the College

Subclause (1) requires that renewal of membership of the College is to be made before the expiry of a person's membership.

Subclause (2) provides that the College shall, personally or by post to the person's last known address, give 28 days written notice of the expiry of a member's membership and if it fails to do so, will give the member 28 days from the time of notice to renew the membership.

Subclause (3) provides that the College shall renew the membership of a person, if it is satisfied that the applicant

- (a) continues to meet the requirements for membership in one of the categories: registered teacher, provisionally registered teacher, teacher with a limited authority to teach or associate member of the College as detailed in clauses 33, 35, 37 and 39;
- (b) complies with any current condition of membership; and
- (c) in the case of renewal of registration or provisional registration, has undertaken such further professional education or development requirements as are prescribed by the regulations.

Clause 42 Information in support of applications

Subclause (1) requires the applicant to provide

- (a) such further information as the College requests in relation to the application and, if requested by the College to do so, is to verify information by statutory declaration; and
- (b) written consent to allow the College to seek from another person or body specified by the College, further information about the applicant relevant to the application.

Subclause (2) permits the College, where it has good cause to do so, to request, in writing, that an applicant attends before the College for the purpose of satisfying the College as to any matter relevant to an application.

Subclause (3) allows the College to refuse an application where an applicant fails to comply with a request made under this section for further information or checking of claims.

Subclause (4) defines "applicant" in relation to an application for a limited authority to teach, or for a variation of the information specified on a limited authority to teach, as being either the teacher or the employer or potential employer of the teacher.

Clause 43 Imposition and removal of conditions

Subclause (1) allows the College to approve an application but impose a condition or conditions relating to the practice of teaching by that applicant.

Subclause (2) prevents the College from imposing conditions on associate membership of the College.

Clause 44 Entitlement of applicant to make submissions

Before an application is refused or granted conditionally, the College is to give an applicant, in writing, an opportunity to provide further evidence in support of the application to seek to prevent a refusal or conditional approval.

Clause 45 Notification of outcome of application

Subclause (1) requires the College to notify applicants of the outcome of their applications in writing not later than 30 days after deciding on the outcome of the application.

Subclause (2) stipulates that the notice of granting an application for membership should contain

- (a) the category of membership granted;
- (b) the period for which membership is granted;
- (c) the person's membership number;
- (d) any conditions imposed upon the membership; and
- (e) if conditions have been imposed, the reasons therefore and advice on review rights under section 80.

Subclause (3) requires that notice of a refused application is to contain the reasons why it has not been granted; and advice on review rights under section 80.

Division 6 Annual fees

Clause 46 Annual fees

Subclause (1) requires each member of the College to pay to the College the prescribed annual fee, if any.

Subclause (2) empowers the College to cancel a person's membership if a person does not pay any annual fee due, after reasonable steps have been taken to remind the person to do so.

Subclause (3) requires that the notice of cancellation of membership is to be given in accordance with section 59. I.e. in writing not later than 7 days after the decision is taken with notice of review rights under section 80.

Division 7 Register

Clause 47 Register of teachers to be kept

Subclause (1) requires the College to keep an accurate and up to date register containing a list of all registered and provisionally registered teachers and all persons who hold a limited authority to teach and in respect of each person is to record

- (a) the person's name;
- (b) the category of membership held;
- (c) the person's membership number;
- (d) the date of registration, provisional registration or limited authority to teach; and
- (e) any other information prescribed by regulation.

Subclause (2) allows the Director to compile, record or store the register in any form the Director considers appropriate.

Clause 48 Inspection of register

Subclause (1) specifies that the register be kept in the office of the Director.

Subclause (2) specifies that the register be available for inspection by members of the public during normal office hours.

Subclause (3) provides for a person to obtain a certified copy of the register or a particular entry in the register for a fee prescribed by the regulations on application to the Director.

Part 5 – Certain information to be given to College

Division 1 College to be notified about certain matters

Clause 49 DPP or Commissioner of Police to notify College about committal, conviction etc. of teachers

Subclause (1) expects that the Director of Public Prosecutions, or where the matter is conducted by a police prosecutor, the Commissioner of Police, to give written notice, where practicable, to the College after becoming aware of or believing on reasonable grounds that any of the following situations exist:

- (a) a teacher is charged with, or committed for trial or sentence before any court for a sexual offence against a child as specified in Schedule 2;
- (b) a teacher is convicted or found guilty of an indictable offence in this State;

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- (c) in the case of a charge referred to in paragraph (a) it is withdrawn or does not result in a committal for trial or sentence, or there is an acquittal, mistrial or presentation of nolle prosequi to a court;
- (d) in the case of a committal referred to in paragraph (a) there is an acquittal, mistrial or presentation of nolle prosequi to a court.

Subclause (2) defines the term “teacher” in this case as a person who is believed on reasonable grounds by the DPP or the Commissioner of Police, as is relevant, to be a teacher at a school or to be, or have been at any time, a member of the College.

Subclause (3) expects the Director of Public Prosecutions or the Commissioner of Police to provide the notice under subsection (1) as soon as practicable after becoming aware of or forming the belief that the relevant situation exists.

Subsection (4) requires the College, as soon as practicable, after receiving a notice under subsection (1), to

- (a) consider the notice and any other information it considers relevant and decide whether or not:
- (i) a person’s membership should be cancelled under section 55 which provides for cancellation of a membership where a sexual offence involving a child has occurred; or
 - (ii) to hold an inquiry,
- and
- (b) to advise the employer of the person of the information in the notice if the person is teaching at a school.

Clause 50 Employer to notify College about suspension or dismissal of teacher from school

Subclause (1) requires an employer to give written notice to the College within seven days after taking action to suspend or dismiss a registered teacher or one who holds a limited authority to teach on the basis of the employer’s opinion that the teacher is seriously incompetent or has engaged in serious misconduct. The notice shall set out the action taken and reasons for the action.

Failure to do so attracts a maximum penalty of \$5000.

Subclause (2) requires the College, as soon as possible after receiving a notice under this section, to consider the notice and any other information it considers relevant and decide if it is necessary to hold an inquiry.

Subclause (3) defines the usage in subclause (1) of the term “employer”, in relation to a registered teacher or a person who holds a limited authority to teach, to mean a person who has employed, engaged or given permission to the person to teach in the school.

Clause 51 Member to notify College about certain legal actions

Subclause (1) requires a member of the College to provide written notice to the College, setting out details of the order or conviction, within 7 days after

(a) being ordered to pay damages or compensation as a result of civil proceedings arising out of the practice of teaching or arising from events which occurred while the person was, employed, engaged or given permission to teach in a school, and in a school;

or

(b) being convicted of an offence the statutory penalty for which is, or includes, imprisonment.

Failure to do so attracts a maximum penalty of \$5000.

Subclause (2) requires the College, as soon as possible after receiving a notice under this section, to consider the notice and any other information it considers relevant and decide whether or not to cancel the membership of the person under section 55 (sexual offences involving a child); or if it is necessary to hold an inquiry.

Clause 52 Member to notify College about loss of qualifications

Subclause (1) requires a member of the College to provide written notice to the College within 7 days after a qualification that enabled the person to gain membership is withdrawn or cancelled by the body that conferred the qualification.

Failure to do so incurs a maximum penalty of \$5000.

Subclause (2) requires the College, as soon as possible after receiving a notice under this section, to consider the notice and any other information it considers relevant and decide whether or not to cancel the membership of the person under section 56 (1) (b) (which allows for cancellation of membership on loss of a relevant qualification); or decide if it is necessary to hold an inquiry.

Division 2 Criminal record checks

Clause 53 College may request consent to undertake a criminal record check

Subclause (1) enables the College to request, by notice in writing given to a member, that the member provide written consent for the College to undertake a criminal record check in respect of the member.

Subclause (2) provides that the notice to the member shall specify that the consent is to be provided within 14 days of the notice being given under subclause (1), or such later time as is specified in the notice.

Subclause (3) requires the College, in the event of the failure of the person to comply with the notice given under subclause (1) to give further notice that the person's membership may be cancelled under section 57 (which allows for cancellation of membership should a person fail to provide consent for the College to undertake a criminal record check with advice thereof provided in writing and review rights notified) unless consent is forthcoming within 7 days, or such later time as is stated in that notice.

Clause 54 Criminal record check

Subclause (1) provides for the College to undertake a criminal record check for a person who has given written consent for the College to do so.

Subclause (2) requires the College to consider the criminal record check and any other relevant information as soon as possible after receiving a criminal record check and decide whether or not the membership of the person should be cancelled under Section 55, or whether or not it is necessary to hold an inquiry.

Part 6 – Cancellation of membership in certain instances

Clause 55 Membership to be cancelled where sexual offence involving a child has occurred

Subclause (1) provides for the College to be able to cancel the membership of a person as soon as possible after the College becomes aware that the person has been convicted or found guilty of a sexual offence involving a child.

Subclause (2) requires that the membership of the person remain cancelled during an appeal from the conviction or finding.

Subclause (3) allows the cancellation of membership under subsection (1) to cease to apply if the conviction or finding is quashed or overturned on appeal.

Subclause (4) provides that this section will apply irrespective of whether the person was convicted or found guilty of the offence in this State or elsewhere.

Subclause (5) requires that notice of cancellation of membership under this section shall be given in accordance with section 59, which requires that the College shall give written notice (including information about the person's right to seek a review) within 7 days after making the decision to cancel membership, to the person whose membership is cancelled and to each employer of the person.

Subclause (6) defines the meaning of "child" and "sexual offence" in this section.

Clause 56 Membership may be cancelled where certain registration requirements not complied with

Subclause (1) allows the College to cancel the membership of a registered teacher if

- (a) the teacher registered under section 34 has
 - (i) not been teaching within the preceding 5 years for at least a year, whether or not on a full-time basis; or
 - (ii) has failed, within that time, to comply with any registration requirements as to professional involvement as prescribed by the regulations for the purpose of section 35(e) (ii); or
- (b) has had the qualification that enabled the person to gain membership withdrawn or cancelled by the body that conferred the qualification.

Subclause (2) requires the College to give the person written notice of the proposal to cancel membership under Subsection (1) and the reasons for the proposal.

Subclause (3) provides for the written notice to include provision for the member to make written representations to the College, within 28 days after the notice is given, concerning the proposal to deregister and the College is not to cancel the membership of the person without considering any representations received within that period.

Subclause (4) requires notice of the cancellation of membership under this section to be given in accordance with section 59, i.e. to the member, the member's employer or employers and to include information about the right to review.

Clause 57 Membership to be cancelled where consent to undertake a criminal record check not given to College as requested

Subclause (1) provides for the College to cancel the membership of a person who does not give to the College his or her written consent for the criminal record check to be carried out in accordance with a notice under section 53 (3).

Subclause (2) requires notice of cancellation to be provided in accordance with section 59, i.e. to the member, the member's employer or employers and to include information about the right to review.

Clause 58 Effect of cancellation of membership of College

Clause 58 provides that the cancellation of a person's membership of the College under this Act, shall

- (a) cause the member to cease to be a member of the College; and
- (b) if the person was a registered teacher or holder of a limited authority to teach, to have his or her name removed from the register.

Clause 59 Notification to be given of cancellation of membership

Subclause (1) requires the College to give written notice of the cancellation of a person's membership under sections 46(2) [failure to pay fees], 55 [sexual offence against a child], 56 [not meeting registration requirements] or 57 [failure to give consent to criminal record check] to the person whose membership is cancelled; and to each employer of that person not later than 7 days after making the decision.

Subclause (2) requires such written notice under subsection (1) to contain a statement that the applicant has a right to review under section 80.

Subclause (3) defines the meaning of the word "employer" in this section as to be a person who has employed, engaged or given permission to the person to teach in a school.

Part 7 – Disciplinary proceedings

Division 1 Preliminary

Clause 60 Interpretation

Clause 60 interprets the meaning of "affected person" as being a person whose conduct is the subject of disciplinary proceedings.

Clause 61 Inappropriate and trivial complaints

This clause provides that the College is not obliged to deal with a complaint made about a member of the College if the College is of the opinion in the first instance that the complaint is

- (a) in respect of a matter that could more appropriately be dealt with by another person or authority (e.g. an employer);
- (b) in respect of a matter that is not within the power of the College to deal with, such as industrial relations issues, employer/employee relations or where the matter is of a criminal nature; or
- (c) is vexatious, trivial, unreasonable or without substance.

Division 2 **Disciplinary action**

Clause 62 **Disciplinary action may be ordered for unprofessional conduct**
Subclause (1) permits the College to order that disciplinary action be taken against a member of the College if it has been found at an inquiry into the conduct of that member that the member has engaged in unprofessional conduct.

Subclause (2) indicates that the only disciplinary action that may be ordered against an associate member of the College is the cancellation of the person's membership of the College.

Subclause (3) allows the College to deal with a person who is no longer a member of the College as if that person were still a member of the College if that person's alleged unprofessional conduct occurred while the person was a registered teacher.

Clause 63 **Unprofessional conduct**

Subclause (1) defines what would be found to be unprofessional conduct as being:

- (a) conviction of an offence the nature of which renders the person unfit to be a teacher;
- (b) engagement in serious misconduct the nature of which renders the person unfit to be a teacher;
- (c) finding the person seriously incompetent as a teacher;
- (d) contravention of the Act; or
- (e) contravention of a condition of membership relating to the way he or she practices teaching.

Subclause (2) indicates that the conduct which would prove a person "seriously incompetent as a teacher" or guilty of "serious misconduct the nature of which renders the person unfit to be a teacher" will be prescribed in the regulations.

Clause 64 **Disciplinary action**

Clause 64 states that the following are disciplinary actions

- (a) imposition of a condition on a person's membership relating to the way he or she practices teaching;
- (b) suspension of a the person's membership for a period not exceeding 2 years;
- (c) imposition of a penalty on a person not exceeding \$5000;
- (d) cancellation of a person's membership of the College.

Division 3 Inquiries

Clause 65 College or committee to conduct inquiry

Clause 65 provides for the College Board or one of its committees to conduct an inquiry.

Subclause (1) determines that the College will decide when it is necessary to hold an inquiry.

Subclause (2) allows the College to hold the inquiry itself, or to establish a committee for the purpose.

Subclause (3) provides for a committee established under this section to have such powers of the College as it needs to carry out the inquiry.

Subclause (4) requires each committee to have at least three people, including a registered teacher and a member of the Board.

Clause 66 Notice to be given to affected person and attendance of affected person

Subclause (1) requires the College to notify the person whose conduct is the subject of disciplinary proceedings (the “affected person”) before an inquiry commences.

Subclause (2) specifies that the notice shall

- (a) specify the grounds for the inquiry;
- (b) specify time and place for any hearing that is part of the inquiry;
- (c) specify the names of any committee members if a committee is formed;
- (d) specify the disciplinary actions that may result from the inquiry;
- (e) include information regarding or copies of such provisions of this Part of the Act as is prescribed by the regulations.

Subclause (3) requires that the affected person is notified of an inquiry in writing or personally at least 21 days before the inquiry commences and that there is a written record of the notice.

Subclause (4) allows the College to proceed with the inquiry in the absence of the affected person provided it is satisfied that the person received notice in the manner required in subclause (3).

Clause 67 Inquiry open to public

Subclause (1) requires that inquiries will be open to the public, unless the College orders that due to the special circumstances of a particular matter, all or part of the inquiry should be closed to the public.

Subclause (2) allows the affected person to request that all or part of the inquiry be closed to the public.

Subclause (3) allows the College to order against publishing any or all of the following information:

- (a) the names of the affected person, a person making a complaint, or any person who gives evidence at the inquiry;
- (b) any evidence given at the inquiry;
- (c) the contents of any document produced at the inquiry.

Subclause (4) prevents a person from publishing or permitting to be published, any information that the College has ordered not be published under subsection (3). To do so incurs a maximum penalty of \$5000 for an individual, and for a non-individual the maximum penalty is up to five times that.

Clause 68 Procedure and evidence

Clause 68 outlines the proceedings of an inquiry

- (a) requiring the College to be as informal, speedy and with as little technicality as the requirements of the Act and the proper hearing of the matter allow.
- (b) showing that the College is not bound by the rules of evidence and may inform itself on any matter as it thinks fit; and
- (c) allowing that it may determine its own procedures within the bounds of the Act and the rules of procedural fairness.

Clause 69 Rights of affected person as to evidence and witnesses

Subclause (1) requires the College to give the affected person an opportunity to call and give evidence, examine and cross examine witnesses, and make submissions.

Subclause (2) rules out subsection (1) if the College has adopted the findings, decision, judgment or reasons for judgment under section 70 and the affected person has been given an opportunity to call and give evidence, examine and cross examine witnesses, and make submissions by a court, tribunal or other body referred to in section 70.

Clause 70 Evidence and findings in other proceedings

Clause 70 allows the College, as it considers proper for the purposes of an inquiry, to receive in evidence a transcript of evidence taken in proceedings, or to adopt any findings, decision, judgment or reasons for a judgment of a court, tribunal or other body constituted under law in any place and draw from it such conclusions of fact as it considers proper.

Clause 71 Representation at inquiry

Subclause (1) allows a party to an inquiry to appear before the inquiry in person or to be represented by another person.

Subclause (2) allows a person who is not a certificated legal practitioner to represent a party before an inquiry and to provide advice and other services for the purpose of acting for a party in connection with an inquiry.

Clause 72 Powers of inquiry

Subclause (1) allows the College, for the purposes of conducting an inquiry,

- (a) to require (with written notice) the attendance of a person to give evidence as a witness at a time and place specified in the notice;
- (b) to require (with written notice) a person to produce any document or other thing that is in the person's possession and which is relevant to the matter before the College;
- (c) to examine witnesses on oath or affirmation; or
- (d) to inspect a document or other thing produced before it.

Subclause (2) allows the College to require a person who appears before an inquiry to take an oath or make an affirmation, and it may authorise a member of the Board to administer an oath or affirmation to the person.

Subclause (3) allows the College to inspect, retain for such reasonable period as it thinks fit and copy, photograph or take extracts from the document or any of its contents or any other thing produced.

Clause 73 Notification of findings

Subclause (1) requires a committee to report its findings to the College as soon as practicable after the conclusion of an inquiry.

Subclause (2) requires the College to consider a committee's report resulting from an inquiry in making a decision as to disciplinary action.

Subclause (3) requires the College, as soon as practicable after the conclusion of an inquiry held by the College or after receiving a report from a committee which has held an inquiry, to give written notice of the findings and any disciplinary action ordered to be taken against the affected person to the affected person and each employer of the affected person.

Subclause (4) requires any notice to an affected person under subsection (3) to advise the affected person of a right to review under Section 80.

Subclause (5) states that in subsection (3)(d), reference to "employer" in relation to an affected person, means a person who employs, engages or gives permission to the person to teach in a school.

Clause 74 Record of inquiry

Subclause (1) requires the College to keep a record of an inquiry.

Subclause (2) provides the affected person with the entitlement to a copy of the record of the inquiry upon request and payment of the cost of copying.

Division 4 **Offences relating to inquiries**

Clause 75 **Failure to comply with notice under section 72**

Subclause (1) provides that a person cannot refuse or fail, without lawful excuse, to attend before an inquiry or produce a document or other thing requested in writing under Section 72(1).

Subclause (2) provides that a person cannot refuse or fail, without lawful excuse, to take an oath or make an affirmation as required for the conduct of an inquiry under Section 72(2).

Failure to appear before an inquiry, produce required documents or other requested things or to take an oath or make an affirmation will result in a maximum penalty of \$5000.

Clause 76 **Disruption of inquiry**

Clause 76 prohibits a person, during an inquiry, from

- (a) attempting to improperly influence the inquiry,
- (b) wilfully insulting the College, a committee or a member of the College or a committee,
- (c) wilfully interrupting or obstructing proceedings of the inquiry,
or
- (d) otherwise wilfully disrupting it.

Breaking this law may result in a fine of up to \$5000.

Division 5 **Miscellaneous**

Clause 77 **Cancellation of conditions**

Subclause (1) allows the College to cancel a condition imposed under this Act if it is no longer applicable.

Subclause (2) requires the College to provide notice to the person specifying the removal of a condition and the date from which it is cancelled.

Clause 78 **Suspension**

Subclause (1) provides for a person, whose membership of the College has been suspended, to be considered an unauthorised teacher during the period of suspension.

Subclause (2) requires the College to cancel a suspension under this Act when the reason for the suspension no longer applies.

Subclause (3) requires the College to provide notice to the person specifying the cancellation of a suspension under Subsection (2) and the date from which it is cancelled.

Clause 79 Publication of proceedings

Subclause (1), without limiting section 23 (protection from liability), provides for there to be no action, claim or demand against a person to whom this section applies who communicates or publishes in good faith any finding, order, reasons or decisions of the College.

Subclause (2) defines that the above section applies to

- (a) the College, any member of the College, the Director or any member of the College staff.
- (b) any committee or committee member or person advising a committee
- (c) any other teacher registration and supervision board and its officers, employees or agents
- (d) anyone (including journalists) involved in publishing in a paper or electronic medium

Subclause (3) allows the College to provide notice of a finding, order, reason or decision in respect of a person to any other teacher registration board, person in the media, professional association or trade union of which the person is a member, an employer or any other person who the College believes should be aware of the matter and to publish it in the Gazette or in such other manner as the College thinks fit.

Part 8 – Review of certain decisions

Clause 80 Review

Clause 80 allows an aggrieved person to seek a review at the District Court of a decision by the College to refuse membership of the College; to grant membership but with a condition; to issue a disciplinary order; or to cancel membership for failure to comply with application requirements or for conviction for a sexual offence involving a child.

Part 9 – Miscellaneous

Clause 81 False or misleading information

Clause 81 allows the College to penalise a person for providing false or misleading information in an application for College membership or in response to a requirement by the College for provision of information. The person is not to knowingly or with reckless disregard make statements that are false or misleading, provide false or misleading information, or fail to disclose relevant information.

The penalty for contravening this section is \$5000 for a first offence and up to \$10,000 for a second or subsequent offence.

Clause 82 Pretending to be entitled to teach in a school

Clause 82 makes it illegal for a person to claim or pretend to be, or use any certificate, title, words, name, abbreviation, description or letters which might suggest that a person is qualified or entitled to teach in a school, a registered teacher or a holder of a limited authority to teach when that is not the case.

The penalty for contravening this section is \$5000 for a first offence and up to \$10,000 for a second or subsequent offence.

Clause 83 Legal proceedings

Subclause (1) allows legal proceedings for an offence under this Act to be taken in the name of the College by the Director or by another person authorised by the College.

Subclause (2) requires that proceedings be heard by a court of summary jurisdiction constituted by a magistrate.

Subclause (3) provides that an assertion that a person is a Board or committee member or a person authorised to take legal action on behalf of the College is to be accepted unless evidence exists to the contrary.

Subclause (4) provides that the person with authority at law to do so under subsection (1) is not limited in their ability to take legal action.

Subclause (5) provides that in absence of evidence to the contrary, any certificate or document or copy or extract of such certifying a member's status with the College purported to be issued by the College is to be taken as evidence of the matters so stated.

Subclause (6) provides that in absence of evidence to the contrary, any person to whom a certificate of membership is issued by the College is taken to hold the status advised on the certificate.

Clause 84 Rules

Subclause (1) allows the College (with approval of the Governor) to make rules prescribing all matters required or permitted by this Act to be prescribed by rules or necessary or convenient to be prescribed for the carrying out of this Act.

Subclause (2), without limiting the generality intended under subsection (1), suggests that rules may be made for all or any of the following:

- (a) regulating meetings, practice and proceedings of, and conduct of business by the Board or a committee;
- (b) allowing for temporary members to act on the Board in the absence of Board members in prescribed circumstances;
- (c) regarding the various categories of membership of the College;
- (d) regarding election of Board members;
- (e) regarding issuing, amending, renewal and surrender of certificates of membership;
- (f) maintaining accuracy of the register;
- (g) the display and use of certificates and authorities;
- (h) provision of information to members;
- (i) provision of information to the College by employers about persons teaching in schools or about teaching in their school;
- (j) complaints procedures;
- (k) procedures for the conduct of inquiries;
- (l) prescribing fees and liability for fees;
- (m) prescribing forms for the purposes of the Act;
- (n) verification by statutory declaration of any information supplied to the College.

Clause 85 Regulations

Subclause (1) allows for the Governor to make regulations prescribing all matters that are required or permitted by this Act to be prescribed by regulation, and with respect to any matter on which the College may make rules.

Subclause (2) allows the regulations to provide for a penalty not exceeding \$5000 for breaching a regulation.

Subclause (3) provides for a regulation to prevail over a rule where there is inconsistency.

Clause 86 Forms may be approved

Clause 86 allows the College to prescribe forms convenient for the purposes of this Act by regulation or by its approval in writing.

Clause 87 **Consequential amendments**

Clause 87 advises that Schedule 3 provides for changes to other legislation as a consequence of this Act.

Clause 88 **Transitional provisions**

Clause 88 advises that Schedule 4 provides for transitional arrangements.

Clause 89 **Review of Act**

Subclause (1) requires the Minister to review the operation and effectiveness of this Act after 5 years from its commencement, and to assess the effectiveness of the College operations, the need for the College to continue to function; and any other matters that appear to the Minister to be relevant to the operation and effectiveness of the Act.

Subclause (2) requires the Minister to prepare a report on the review and submit it to each House of Parliament, as soon as is practicable after the report is prepared.

Schedule 1 – Constitution and proceedings of Board

Division 1 General provisions

Clause 1 Meaning of “member”

Defines the meaning of “member” in this schedule as meaning a member of the Board.

Clause 2 Term of office

Subclause (1) provides that, subject to clause 4 where a member can be removed from office,

- (a) an appointed member holds office for up to three years, as specified in the instrument of his or her appointment, and is eligible for reappointment; and
- (b) an elected member holds office for the normal term of office of three years or, if the vacancy occurs other than at the normal expiry of the term of office, that remaining period of the term of office for which his or her predecessor was elected, and is eligible for re-election.

Subclause (2) provides that, if no person has been elected to fill the vacancy, a previously elected member will continue on the Board for up to three months after the normal term of office expires or until a person is appointed or elected to fill the vacancy, whichever occurs first.

Clause 3 Vacancy in the office of an elected member

Clause 3 requires the Board to conduct an election whenever a position either becomes vacant or the term of office is due to expire.

Clause 4 Resignation, removal etc

Subclauses (1 and 2) specify that the office of a member of the Board may become vacant by the member’s written resignation to the Minister, the member’s bankruptcy or the member’s removal from the Board by the Minister on the grounds of misconduct or incompetence, long term incapacity impairing performance, an elected member ceasing to be a registered teacher, or absence without leave from 3 consecutive meetings of the Board of which the member has had notice.

Subclause (3) defines ‘misconduct’ in Subclause 2(a) as meaning conduct that makes the member unfit to hold office whether the misconduct was related to Board functions or not.

Clause 5 Chairperson and deputy chairperson

Subclause (1) provides for the Board to elect a chairperson and a deputy chairperson from among its members.

Subclause (2) provides for the elected chairperson and deputy to hold that office for one year and to be eligible for re-election.

Subclause (3) provides for the deputy chairperson to act in the chairperson's place when the chairperson is absent for any reason.

Clause 6 **Leave of absence**

Clause 6 provides for the Board to grant leave of absence to Board members on such terms and conditions as it thinks fit.

Clause 7 **Calling of meetings**

Subclause (1) provides for the Board to hold meetings at times and places determined by the Board, unless the chairperson convenes a special meeting of the Board as allowed under Subsection (2).

Subclause (2) allows the chairperson to convene a special meeting of the Board at any time.

Subclause (3) requires the first meeting of the Board to be convened by the person nominated under section 9(1)(a) [i.e. the Department of Education and Training].

Clause 8 **Presiding officer**

Subclause (1) requires the chairperson to preside at all meetings of the Board at which he or she is present.

Subclause (2) requires Board members to appoint one of their number to preside when both the chairperson and the deputy chairperson are absent.

Clause 9 **Voting**

Subclause (1) requires that, in voting, each question before the Board is to be decided by a majority of its members.

Subclause (2) gives each member present at a meeting a deliberative vote.

Subclause (3) provides the chairperson with a second or casting vote where there is an equality of votes.

Clause 10 **Minutes**

Clause 10 requires the Board to keep accurate minutes of proceedings at its meetings.

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- Clause 11 Resolution without meeting**
Clause 11 allows a resolution to be passed without a meeting of the Board. A written resolution signed by each member or assented to by each member by letter or facsimile is as effectual as if it had been passed at a meeting of the Board.
- Clause 12 Telephone or video meetings**
Clause 12 allows a meeting to be valid if conducted by telephone or video provided a majority of Board members participate and
- (a) each is capable of communicating with all other Board members instantaneously at all times during the proceedings and
 - (b) all members were advised of the meeting and were given the opportunity to participate.
- Clause 13 Board to determine its own procedures**
Clause 13 allows the Board, within the parameters of this Act, to determine its own proceedings.
- Clause 14 Interim Board members**
Clause 14 allows the Minister to establish an Interim Board by appointing persons to act as members until the members who would be elected under section 9 (2) are elected.
- Division 2 Disclosure of interests**
- Clause 15 Disclosure of interests**
Subclause (1) requires a member who has a material personal interest in a matter before or coming before the Board, to disclose the nature of the interest at a meeting of the Board as soon as possible after becoming aware of it. Failure to do so may result in a penalty of up to \$10,000.
- Subclause (2) requires that such a disclosure of interest be recorded in the minutes of the meeting.
- Clause 16 Voting by interested members**
Clause 16 requires that a member with a material personal interest in a matter being considered by the Board exclude him or herself from considering or voting on the matter, including exclusion from considering or voting on a proposed resolution to waive this requirement under Section 17.

Clause 17 **Clause 16 may be declared inapplicable**

Clause 17 allows the Board to waive the previous section if the Board has passed a resolution that specifies the member, the interest and the matter and states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

Clause 18 **Quorum where clause 16 applies**

Subclause (1) specifies that where members of the Board are disqualified under Clause 16 in relation to voting on a matter, a quorum exists if at least 8 members are present who are entitled to vote on any motion that may be moved at the meeting in relation to the matter.

Subclause (2) allows the Minister to deal with a matter where the lack of a quorum prevents the Board from dealing with it.

Schedule 2 – Sexual offences

Clause 1 ***The Criminal Code***

Clause (1) describes those sexual offences involving children under the *Criminal Code* where an applicant, if convicted of such an offence, faces automatic cancellation of membership.

Clause 2 ***Prostitution Act 2000***

Clause (2) describes those sexual offences involving children under the *Prostitution Act 2000* where an applicant, if convicted of such an offence, faces automatic cancellation of membership.

Schedule 3 – Consequential amendments

Clause 1 ***Constitution Acts Amendment Act 1899 amended***

Clause (1) itemises that section of the *Constitution Acts Amendment Act 1899* that is amended as a consequence of this Act.

Clause 2 ***Sentencing Act 1995 amended***

Clause (3) itemises that section of the *Sentencing Act 1995* that is amended as a consequence of this Act.

Schedule 4 – Transitional provisions

Clause 1 Interpretation of Schedule

Clause (1) provides the interpretation of the “commencement day” being that day fixed by proclamation under Section 2(1).

Clause 2 Teachers currently teaching

Subclause (1) indicates that, despite other provisions existing in the Act, a teacher who is currently teaching who applies in a manner approved by the College, will automatically be granted registration as a teacher or a limited authority to teach as applicable, unless the College is satisfied that the person has been convicted of an offence or engaged in serious misconduct, the nature of either of which renders the person unfit to be a teacher.

Subclause (2) specifies that an application under this provision is to be made within 18 months after the commencement day, or in such further time as the College allows, if the College decides there are special circumstances to do so.

Subclause (3) defines “teacher currently teaching” to mean a person who was employed or engaged to teach in a school, whether or not the person was actually teaching, immediately before the commencement day of this Act.

Clause 3 Teachers not currently teaching

Subclause (1) provides that, despite other provisions existing in the Act, a teacher, who applies for registration as a teacher or authority to teach in a manner approved by the College, who was currently teaching but who has been employed or engaged to teach in a school at some time before the commencement day of this Act, may be registered as a teacher or issued a limited authority to teach unless the College is satisfied that the person has been convicted of an offence or engaged in serious misconduct, the nature of which renders the person unfit to be a teacher.

Subclause (2) specifies that an application under this provision is to be made within 24 months after the commencement day, or in such further time as the College allows, if the College decides there are special circumstances to do so.

Subclause (3) defines “teacher not currently teaching” to mean a person who was not employed or engaged to teach in a school immediately before the commencement day of this Act, but who was employed or engaged to teach in a school at some time before the commencement day of this Act.

[N.B. The additional time is given to these teachers who may not become aware of the transitional provisions because they are not currently teaching – scenarios such as raising children or overseas travel may mean that more time is required to become informed of the changes.]

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- Clause 4 Notice to be given to teacher**
Clause 4 requires the College to advise each person in writing of the outcome of an application under the transitional provisions.
- Clause 5 Renewal of registration gained under this Schedule (approved qualification not necessary)**
Clause 5 allows for those teachers who gained registration under the transitional provisions for teachers who are currently teaching or for teachers who are not currently teaching, to renew their registration without the requirement to meet the qualifications requirement of section 35(a) as they did not have to meet this in being registered under the transitional provisions.
- Clause 6 Review of decision of College**
Clause 6 allows a person who is aggrieved by a decision of the College under the schedule for transitional provisions, to apply for a review under Section 80 as if the decision were eligible for review under that section.
- Clause 7 Applications under this Schedule**
Subclause (1) clarifies, in case there is doubt, that an application for membership made under the transitional provisions is an application for the purpose of this Act.
- Subclause (2) indicates that, despite the application requirements for registration stipulated in Section 40 (2), those requirements do not apply to an application for membership under the transitional provisions. [i.e. the requirement for supporting documents proving eligibility, consent for a police records check and a prescribed fee, if any, do not apply in the transitional provisions.]