Statutory Review of the
Teacher Registration Act 2012

Report

March 2018
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Introduction

The Teacher Registration Act 2012 came into force on 7 December 2012. It replaced the earlier Western Australian College of Teaching Act 2004.

Requirement to review

Section 130 of the Teacher Registration Act (the Act) requires the responsible Minister to review the operation and effectiveness of the Act as soon as practicable after the expiration of four years from its commencement. That section directs the Minister to consider and have regard to the following:

(a) the effectiveness of the operations of the Teacher Registration Board of WA (the Board) established by the Act to register and regulate teachers;
(b) the need for the continuation of the functions of the Board;
(c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of the Act.

The Minister for Education and Training, Sue Ellery MLC, requested the Higher Education and Legislative Review Directorate, Department of Education, to undertake the review, assisted by a stakeholder reference group, and approved the following terms of reference.

Terms of reference

The Review was required to inquire into and report on:

1. The operation and effectiveness of the Act.
2. The effectiveness of the make-up and operations of the Board.
3. The need for the continuation of the functions of the Board.
4. The need for amendments to the Act to ensure:
   a) its provisions operate as intended;
   b) the purposes of the Act are achieved including:
      o a fair and efficient registration system that promotes a skilled teaching workforce;
      o a disciplinary scheme that operates fairly while making the protection of children, and their best interests more broadly, the paramount concern;
      o appropriate oversight by the State Administrative Tribunal;
      o adequate resources are available for the performance of the Board’s functions; and
   c) appropriate consistency with relevant national developments is promoted.

Stakeholder reference group

The reference group advising the Review was chaired by Mr Terry Werner, Director, Higher Education and Legislative Review, and was constituted as follows:

- Ms Sabine Winton MLA, nominee of the Minister for Education and Training
- Mr Damien Stewart, nominee of the Director General, Department of Education
- Ms Jayne Taylor, nominee of the Executive Director, Catholic Education Western Australia
- Ms Nicola Davidson, nominee of the Association of Independent Schools of Western Australia
- Ms Samantha Schofield, nominee of the State School Teachers’ Union of Western Australia
- Ms Angela Briant (with substitute Leonie Alexander when required), nominee of the Independent Education Union, Western Australia.
Information paper
With the assistance and advice of the reference group, the Review published an Information Paper and Call for Submissions online in early September 2017. The Review wrote to 34 stakeholders to inform them about the review and the information paper and to invite them to make a submission. Notice of the review was also published in The West Australian on two occasions.

The paper required submissions to be made by 10 November 2017, a deadline which was later extended by one week.

Submissions
Twenty-four submissions were received all but one of which, with each author’s consent, were published on the review webpage:


The list of submissions is at Appendix 1.

Follow-up
The Review followed up information provided in one submission with a request for further information to the Chair of the Teacher Registration Board of WA and subsequently to the Director, Teacher Registration. The Review requested and received comment from the WA Commissioner of Police about the submission from the Director of Public Prosecutions which would affect both offices. Additional information was sought and obtained from the Director General, Department of Education. Follow-up discussions were held with senior officers of the Teacher Registration Board of WA, the Association of Independent Schools of WA and the State School Teachers’ Union of WA.

This report
Although the advice and commentary of the reference group members was sought throughout the Review process, the contents, conclusions and recommendations in this report are the responsibility of the authors who undertook the Review on behalf of the Minister. Reference group members do not necessarily all agree with all of the recommendations.

Authors
The Review was conducted, and this report was authored, by Terry Werner, Director, Higher Education and Legislative Review, formerly in the Department of Education Services and now in the Department of Education, and Meredith Wilkie, Principal Policy Consultant (Legislation), also formerly in the Department of Education Services and now in the Department of Education.

Mr Werner conducted the Review of the Western Australian College of Teaching Act 2004, the forerunner of the current legislation, in 2009-10. Ms Wilkie was the instructing officer in the drafting of the Teacher Registration Act 2012, the subject of this Review.

Guiding questions
The Review’s terms of reference 1 dictated its guiding questions:

1. Is there a continued need for a statutory teacher registration scheme in Western Australia?
2. Has the Act operated as intended? If not, should it do so and what amendments are required to achieve that?
3. Has the Act delivered a fair and efficient registration system which promotes a skilled teaching workforce?

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1 Some of which were in turn dictated by section 130 of the Act itself.
4. Does the disciplinary scheme of the Act operate fairly while making the protection of children, and their best interests more broadly, the paramount concern?
5. Does the Board operate effectively and appropriately in light of the Act’s objectives?
6. Is the State Administrative Tribunal involved as appropriate in decision-making under the Act?
7. Are the Board’s financial, human and other resources adequate to enable it to perform its functions?
8. Are the provisions of the Act consistent with relevant national developments? If so, is such consistency appropriate to the Western Australian context? If inconsistent, would greater consistency be beneficial in the Western Australian context and in pursuit of the objectives of the Act?

Summary
As detailed in this report, our responses to these questions may be summarised as follows:

1. Teacher registration under a statutory scheme has been adopted in all Australian States and Territories. Other professions are likewise registered in accordance with either State/Territory or Commonwealth legislation. There are no grounds on which it could now reasonably be argued that teacher registration should be abandoned.

2. The Act has not operated entirely as intended. This is particularly the case in the context of the disciplinary scheme. Relatively minor amendments are required in that context.

3. The Act has delivered a fair and efficient registration system for most applicants and employers. However, it does not adequately accommodate all who make a valuable contribution, particularly those who provide relief teaching. Neither is it as fair as it could be to new graduates, teachers taking periods of leave (parental, carer or sick leave), those returning to teaching from non-teaching positions in support of the education sector, teachers with disabilities or early childhood teachers working in early childhood services. On the whole, those provisions which operate unfairly are not necessary to promote a skilled teaching workforce.

4. Adjustments are needed to the disciplinary scheme of the Act if the Board and other decision-makers are to be able to make the best interests of children their paramount consideration as required by section 5 of the Act.

5. The Board’s operations are efficient and the majority of its policy and procedural settings appropriately aim to achieve the objectives of the Act. While it is disappointing that employers in early childhood services still do not have access to the information on the professional-access part of the register of teachers or ‘TRIP’, it is acknowledged that the sector fully transitioned into the Act only in December 2014, two years after the Act commenced. Our recommendation for greater transparency as to the expenditure of Board funds is addressed to the Director General of the host department who has responsibility for the management of and accounting for those funds.

6. The State Administrative Tribunal is the appropriate decision-maker when a teacher’s conduct or competence are so far below the required standard that the teacher’s registration should be cancelled.
7. The Board’s resources are largely funded from fees, principally the annual fee payable by all registered teachers. Fee revenue is barely sufficient to enable the Board to perform its registration functions effectively. Fit and proper assessments are somewhat under-funded and transition from provisional to full registration is currently free of charge despite the need to undertake a new fit and proper assessment. The Board’s accreditation function appears significantly under-funded with the accreditation and re-accreditation fees not yet approaching cost-recovery.

8. The Act, Regulations and Board policies largely mirror nationally-agreed teacher registration requirements. The Board has limited discretion to enable it to diverge from these, despite the unfairness in the way they operate for some applicants. The Review notes that the requirements were agreed by State, Territory and Commonwealth Education Ministers. We note further that by no means all of the requirements are uniformly implemented across other teacher regulatory authorities in Australia. In our recommendations we have, therefore, favoured fairness over national consistency wherever the two are in conflict.
Recommendations

Recommended amendments to the Teacher Registration Act 2012

Section 3. Terms used

Insert definitions for the following terms:

Administration. For the purpose of the definition of teach, administration of an educational programme should be defined to mean the provision of oversight, leadership and management in respect of the development and/or implementation of educational programmes within an educational venue (page 34).

Educational venue. For completeness the venue currently prescribed in regulation 5 of the Teacher Registration (General) Regulations 2012 should be added to this definition (consolidating amendment).

Impairment. This should be defined, as in the Equal Opportunity Act 1984, to mean one or more of the following conditions –

(a) any defect or disturbance in the normal structure or functioning of a person’s body; or
(b) any defect or disturbance in the normal structure or functioning of a person’s brain; or
(c) any illness or condition which impairs a person’s thought processes, perception of reality, emotions or judgment or which results in disturbed behaviour, whether arising from a condition subsisting at birth or from an illness or injury (page 108).

Renewal. A new term of registration in the current registration category (consequential amendment).

Serious incompetence. A non-exhaustive definition of serious incompetence should include consistently or frequently carrying out the teacher’s duties, without reasonable excuse, at a standard that is significantly lower than the standard that can reasonably be expected of the teacher, having regard to —

(a) his or her education, training and experience; and
(b) the standard met by other teachers with comparable education, training and experience when carrying out similar duties (page 92).

Serious misconduct. A non-exhaustive definition of serious misconduct should include:

(a) anything that constitutes serious misconduct as defined in the Corruption, Crime and Misconduct Act 2003 section 3(1);
(b) conduct which has caused, causes or is likely to cause harm to any person at the educational venue (page 92).

Transition. A change of registration category (page 73).

Section 4. Crown bound

This section should be amended to make explicit that the Crown’s immunity from prosecution does not extend to employees and officers of the Crown. Such an amendment will make explicit that government school principals and teachers may be prosecuted under sections 6, 8, 9, 38-40, amended sections 56 and 71, and sections 72 and 127 (page 115).
Section 10. Application for registration

Sub-section (1) should be amended by deleting paragraph (d). It should no longer be possible to obtain non-practising registration as an initial registration category. Only a person already holding full or provisional registration will be entitled to transition to non-practising (or ‘non-teaching’ as proposed) registration (page 46).

Section 11. Application for renewal of registration

This section should be amended to cover an application for transition as well renewal. Alternatively, a new section could be inserted for that purpose. Non-teaching registration can only be obtained on transition from full or provisional registration and, as it is of indefinite duration, does not need to be renewed (page 72).

Section 15. Full registration – requirements

In paragraph (a) a third qualification type should be inserted: (iii) a teaching qualification and experience that the Board considers to be suitable for full registration (page 48).

Section 16. Provisional registration – requirements

The qualification requirements should be different for the two sub-categories of provisional registration: provisional registration (graduate teacher) and provisional registration (returning teacher) (pages 41-2).

For provisional registration (graduate teacher) the required qualification should be as in (a)(i): a teaching qualification from an accredited initial teacher education programme (page 48).

For provisional registration (returning teacher) the first qualification type should be as in (a)(ii): a teaching qualification that the Board recognises as equivalent to a qualification from an accredited initial teacher education programme. The second qualification type should be: a teaching qualification and experience that the Board considers to be suitable for provisional registration (pages 48-9).

The provisional registration requirement that the applicant meets the approved professional standards or has done so within the past five years should be a requirement only for provisional registration (graduate teacher). It should not be a requirement for the other sub-category – provisional registration (returning teacher) (page 49).

Section 18. Non-practising registration – requirements

The section should be renamed ‘Non-teaching registration – requirements’. All references in the Act and Regulations to non-practising registration should be replaced with ‘non-teaching registration’ (page 44).

Paragraph (b) enabling a person to teach on obtaining non-practising registration should be deleted entirely (page 46).

A new subsection is needed to impose a condition on non-teaching registration that the teacher is prohibited from teaching in an educational venue while so registered. This condition would not prevent the teacher from volunteering in an educational venue, provided it is not prohibited by regulation 7, or undertaking a paid role in an educational venue other than teaching (pages 46, 62).
Section 22. Renewal of registration

Subsection (2) paragraph (a) should be deleted and a new paragraph (a) inserted to stipulate the requirement that the teacher continues to be a fit and proper person to be a registered teacher (page 66).

Subsection (3) should be amended to enable the Board to renew provisional registration if, in the opinion of the Board, there are sufficient reasons for doing so (page 72).

Section 22A. Transition

A new section is needed applying to applications for transition. An application for transition should be made at least 28 days before the expiry of the current registration. If this is done, the current registration should continue until the Board determines the application for transition (page 73).

For transition from provisional registration to full registration, the applicant must satisfy all of the requirements in section 15 with the exception of the qualification and English language skills requirements in paragraphs (a) and (d) respectively. Such an applicant will, by definition, have established his or her eligibility for provisional registration (whether initially or on renewal) within the previous five years and should therefore be taken to have the necessary English language skills (page 75).

For transition from limited registration to either provisional or full registration, the applicant must satisfy all the requirements in section 16 or 15 respectively. Such ‘transition’ is more appropriately dealt with as an initial application for either provisional or full registration (consequential).

For transition from non-teaching registration to provisional registration (returning teacher) the applicant must satisfy the fit and proper and English language requirements in section 16 (page 76).

For transition from non-teaching registration to full registration the applicant must satisfy the requirements in section 15(b)-(d). Such an applicant’s qualifications (section 15(a)) will have already been assessed or deemed to be met (page 76).

For transition to non-teaching registration the only requirement is that the teacher holds full or provisional registration. Note that a person holding limited registration will not be able to transition to non-teaching registration (page 46).

Section 23. Duration of registration

Subsection (1) should be amended to provide that the period of both full and provisional registration – for both graduate teachers and returning teachers – is five years, or such shorter period as is approved by the Board, from the day that registration is granted or renewed. Subsection (2) should deal only with the duration of limited registration (pages 63, 64).

Subsection (3) should be amended to delete reference to a prescribed form and require instead that the notice of the intention to apply is to be made in writing in the form approved by the Board. Paragraph (b) should be deleted and the subsection should conclude that, if the notice of intention is given, then the limited registration is to be taken to have been granted on the date of the notice being given to the Board (pages 61-2).

Subsection (4) should be amended to include a new paragraph providing that if an application for limited registration is not made within 14 days of the submission of the notice referred to in
subsection (3), then the limited registration expires at the end of the fourteenth day following the giving of the notice (page 61).

Subsection (5) should be amended to include an application for transition so that such an application also benefits from the 28-day rule (page 73).

Section 24. Who is a fit and proper person

A new paragraph should be inserted providing a further consideration: whether the person has a serious medical condition or an impairment that adversely affects, or is likely to adversely affect, the person’s ability to work as a teacher (page 56).

Section 41. Notice to be given by DPP or Commissioner of Police about committal, conviction etc of registered teacher

The section should be split into two, one applying to the Director of Public Prosecutions and the other to the Commissioner of Police. The notification obligation of each officer should be limited only to the roles and responsibilities of that officer (page 94). Each new section should omit the words “where practicable” in subsection (1) (page 95).

The DPP will be required to notify when:
(a) at the instance of the Director of Public Prosecutions, a prosecution is commenced against a registered teacher for a sexual offence involving a child;
(b) on prosecution by the Director of Public Prosecutions, a registered teacher is committed for sentence before any court for a sexual offence involving a child;
(c) on prosecution by the Director of Public Prosecutions, a registered teacher is convicted or found guilty of an indictable offence in this State;
(d) in the case of a prosecution referred to in paragraph (a) or (b), the prosecution is discontinued.

The Commissioner of Police will be required to notify when:
(a) on prosecution by police, a registered teacher is charged with, or committed for sentence before any court for, a sexual offence involving a child;
(b) on prosecution by police, a registered teacher is convicted or found guilty of an indictable offence in this State;
(c) in the case of a charge referred to in paragraph (a), the prosecution of the charge is discontinued or does not result in a committal for trial or sentence, or there is an acquittal or mistrial.

Section 42. Notice to be given by employer about suspension, dismissal or resignation of registered teacher

The section should be replaced. A new section should impose the obligation on both the person or entity who engaged, employed or appointed the teacher and the person or entity who gave the teacher permission to teach (page 89).

The obligation should be to notify the Board in writing within 5 business days if the employer —
(a) has taken improvement action or disciplinary action, including dismissal or non-renewal of the teacher’s contract, in respect of a registered teacher because of serious incompetence as a teacher;
(b) has taken disciplinary action, including dismissal or non-renewal of the teacher’s contract, in respect of a registered teacher because of serious misconduct;
(c) is in possession of information about a registered teacher who was formerly employed at the educational venue which the employer reasonably believes could have led to improvement action or disciplinary action following an investigation had the teacher still been employed at the educational venue (pages 91, 93).

A subsection should be included to provide that the notice is to contain such information as is prescribed (page 90).

**Section 45. Action to be taken by Board on receiving a notification or criminal record check**

An additional requirement should be included: that on receiving a notice or a criminal record check, the Board is to consider whether to publish that information or any of it in accordance with section 118 (i.e. in the public interest) (page 93).

Before making a decision on the action to be taken, if any, the Board should be able to make any assessments and investigations it considers appropriate and utilise its investigation powers in section 56 (page 97).

**Section 46. Terms used [in Part 5]**

The definition of impairment should be deleted. It should be defined in section 3 for the purpose of the Act as a whole (page 108).

**Section 47. Disciplinary matters**

The disciplinary matter in paragraph (b) should cover both contravention of the Act and failure to comply with it (page 117).

The disciplinary matter in paragraph (e) should be amended to include only conviction in Western Australia for one or more indictable offences and conviction elsewhere of one or more offences which would be indictable had they been committed in Western Australia (page 99).

The disciplinary matter in paragraph (f)(ii) should be 'engaged in serious misconduct' (page 99).

**Section 48. Impairment matters**

The section should be deleted and replaced with one defining an impairment matter to be 'that a registered teacher has a serious medical condition or an impairment that adversely affects, or is likely to adversely affect, the teacher’s ability to work as a teacher'. This mirrors the matter relevant to fitness and propriety proposed to be added to section 24 (page 110).

**Section 51. Making a complaint**

This section should be re-titled ‘Public complaints’. Reference to Board-formulated complaints should be deleted and subsection (3) therefore removed. Sub-section (2) can also be deleted as unnecessary and liable to cause confusion (page 96).

**Section 51A. Inappropriate and trivial complaints**

A section entitled ‘Inappropriate and trivial public complaints’ should be inserted here. It should contain what is currently in section 57(1). Subsection (2) may set out a Board discretion to notify the complainant, giving the reasons, in the event a public complaint is dismissed (page 97).
Section 51B. Formulating a complaint

A new section is needed to deal with complaints formulated by the Board. The section would contain the current section 51(3) with the addition of a new paragraph (d) referring to a public complaint made under section 51 (page 97).

Section 51C. Complaints without substance

A new section is needed to enable the Board to dismiss its own complaint once it has made such assessments and investigations as it considers appropriate. The Board should be able to utilise all of its investigation powers in section 56 for this purpose. Reasons for dismissing a complaint should be:

- that the matter could more appropriately be dealt with by another person or authority;
- that the matter is not within the power of the Board, a disciplinary committee or the impairment review committee to deal with under the Act;
- that the matter lacks substance; or
- that the complaint should be dismissed in the public interest.

This section will not apply to public complaints (page 97).

Section 52. Teacher to be notified of complaint

This section should apply in the event of (1) formulation of a complaint by the Board and (2) initiation of an investigation where it precedes the formulation of a complaint (page 97).

Section 53. Assessment, investigation and referral by Board

This section should apply only to complaints (that is, to Board-formulated complaints). Subsection (1), paragraph (a), should enable the Board to dismiss a complaint (under proposed new section 51C) without taking further action (page 97).

Section 56. Board’s powers of investigation

A penalty provision should be included for any person failing to comply with a notice given under this section without reasonable excuse. The penalty should be a fine of $5,000 (page 100).

Section 57. Inappropriate and trivial complaints

This section should apply only to public complaints under amended section 51. It should be re-titled, amended and re-located to follow section 51 as recommended above (page 97).

Section 59. Interim disciplinary orders may be made where risk of injury or harm

This section should be amended to remove the requirement for imminence but retain the requirement for a risk of injury or harm to the physical or mental health of any person. It should be further amended to ensure that the Board has the power to prevent a registered teacher from teaching without having to delay issuing an order until the teacher obtains a teaching position such that he or she is a present risk. The circumstances in which the Board or a disciplinary committee can issue an interim disciplinary order should be widened to cover the situations in which the teacher has not been re-employed or the Board is unaware whether or not the teacher has been re-employed (page 105).
Models which may be considered include:

- section 240 of the *School Education Act 1999* which gives the Director General of Education power to require an employee to leave the premises of a government school and remain away from those premises or from all government school premises if she suspects that the presence of the person on the premises constitutes a risk to the safety or welfare of students;
- section 24B of the *Teachers Registration Act 2000* (Tas) enabling the Tasmanian Board to suspend registration if it believes on reasonable grounds that the teacher may pose a risk of harm to a student; and
- section 49 of the *Education (Queensland College of Teachers) Act 2005* which gives the Queensland College of Teachers the power to suspend a teacher’s registration if it reasonably believes the teacher poses an unacceptable risk of harm to children.

**Section 68. Powers of inquiry**

This section should be amended to enable a disciplinary committee to require any person to attend or produce a document. See the revised penalty provision proposed at section 71 (page 103).

**Section 71. Failure to comply with notice under section 68**

This section should be amended to apply the penalty provision to any person given a notice by a disciplinary committee. It should be further amended to enable a ‘reasonable excuse’ to be given rather than a ‘lawful excuse’ as at present (page 103).

**Section 75. Impairment matter – procedure and evidence**

A right to appear in person and/or be represented before an impairment review committee should be inserted in this section, on the model of section 67 (page 111).

**Section 87. Membership of Board**

This section should be amended to increase the membership of the Board from seven to nine (pages 137-8).

**Section 89. Functions**

This section should be amended to remove functions which state or imply that the Board implements or participates in a national initial teacher education programme accreditation scheme. Paragraphs (b) and (c)(i) should be deleted. Paragraph (c)(ii) should be retained with appropriate wording enabling the Board to work with and join associations of Australasian teacher regulatory authorities. Paragraph (d) should be retained subject to the deletion of the words ‘so established’ (page 121).

**Section 117. Confidentiality of information**

Additional subsections or new sections may be needed in Part 7 Division 1 of the Act to address the following matters.

**Protecting the identity of child victims**

Identifying information about a child victim (including an alleged victim) of a teacher’s misconduct, and about the child’s school, once the Board has received it by notification under section 41 or 42 or by way of a complaint, should be adequately protected from publishing to the public or broadcasting (e.g. by a media outlet which obtains it under Freedom of Information or
It may be that an explicit reference is needed in the Teacher Registration Act to apply section 35 of the Evidence Act 1906 and section 35 of the Children’s Court of Western Australia Act 1988 to matters under consideration by the Board as well as to the court proceedings referenced in those Acts. Legal advice should be obtained as to the amendments needed, if any, to ensure that the identity of a child victim or witness and the identity of the child’s school, when known to the Board, are protected from publication to the public and from broadcast (page 95).

Information sharing relevant to the wellbeing of a child or a class or group of children
In accordance with sections 28A-C of the Children and Community Services Act 2004, the Teacher Registration Board is a prescribed public authority which is authorised to share information relevant to the wellbeing of a child or class or group of children with other prescribed authorities and with schools. Other prescribed authorities include WA Police and the Department of Education (regulation 20A, Children and Community Services Regulations 2006). Section 23 of the Act authorises the Department of Communities to disclose such information to, and obtain it from, any prescribed authority, including the Teacher Registration Board. Interstate authorities, however, are not party to this information-sharing scheme. Legal advice should be sought as to the amendments required, if any, to enable the Board to share information about registered teachers, including information held on the TRIP, with other Australasian teacher regulatory authorities, WA Police, the Director of Public Prosecutions and child protection agencies where the information is relevant to the wellbeing of a child or a class or group of children, including the future safety of children (page 83).

Australian Teacher Workforce Data Strategy
In December 2016 the COAG Education Council agreed to fund the Australian Institute of Teaching and School Leadership (AITSL), working with relevant organisations including teacher regulatory authorities, to implement an Australian Teacher Workforce Data Strategy (Data Strategy) by July 2021. The aim is to compile anonymised data on who is being prepared to teach and how effectively, who is teaching, where they are teaching, what they are teaching, and any gaps in the availability of teachers for Australian student population needs. The Teacher Registration Board is concerned that section 117 would not authorise it to provide the required information without obtaining each teacher’s consent. Legal advice should be obtained as to the amendments required, if any, to enable the Board to provide the data sought for the purposes of the Strategy as agreed by Education Council while at the same time addressing legitimate privacy concerns (page 86).

Section 119. Legal proceedings
This section should be amended to negative the application to Teacher Registration Board prosecutions of the 12 months limitation period in the Criminal Procedure Act 2004 and provide that a prosecution must be commenced within six years of the commission of the alleged offence (page 115).

Recommended amendments to the Teacher Registration (General) Regulations 2012

Regulation 3. Terms used
The term ACARA and its definition should be deleted (consequential amendment).
Regulation 5. Places where centre-based services operate are educational venues (s. 3)

This educational venue type should be added to the definition of educational venue in section 3 of the Teacher Registration Act 2012. The regulation will become redundant (consolidation).

Regulation 6. Prescribed curriculum (s. 3)

The list of prescribed curriculums should be reviewed and revised. Amendments should include replacing paragraph (b) with any curriculum which has current approval from the School Curriculum and Standards Authority (for the duration of that approval); deleting paragraph (h); and including a new paragraph prescribing any curriculum approved in accordance with a non-government school registration standard determined by the Minister for Education in accordance with section 159(1)(a) of the School Education Act 1999. The Certificate in General Education for Adults is still the curriculum used at the Banksia Hill Detention Centre and paragraph (g) must therefore be retained to ensure detention centre teachers are required to be registered (page 31).

Regulation 10. English language skills for full and provisional registration (ss. 15(d) and 16(d))

Sub-regulation (2) should be amended to require evidence of a test taken within the two years prior to the application for initial registration or transition from non-teaching registration and achievement of scores acceptable to the Board rather than named tests and scores (page 59).

Regulation 11. English language skills for limited registration (s. 17(c))

Sub-regulation (2) should be amended to require evidence of a test taken within the two years prior to the application for initial registration and achievement of scores acceptable to the Board rather than named tests and scores (page 59).

Sub-regulation (3) should be amended to make clear that any nominee for limited registration whose qualification, skill or expertise is relied on under regulation 12(a) amended as proposed below, should be able to avoid taking an English language test because his or her qualification was undertaken, or skill or expertise developed, entirely in English in one of the countries listed in the sub-regulation (page 59).

Regulation 12. Other requirements for limited registration (s. 17(d))

Paragraphs (a), (b) and (c) should be deleted and replaced with (a): 'the nominee has, in the opinion of the Board, qualifications, expertise or skills relevant to the teaching position' (page 43).

Regulation 13. Renewal of registration – requirements for professional engagement and professional learning activities (s. 22(2)(c))

Sub-regulation (2) should be amended to apply to applications for renewal of both provisional and full registration. The sub-regulation should be made subject to a new sub-regulation (6) (consequential).

Sub-regulation (3) should be amended to apply only to applications for renewal of limited registration. The sub-regulation should also be made subject to a new sub-regulation (6).

Sub-regulation (5) should be amended to expand the Board’s discretion by:
- applying it to both professional engagement and professional learning; and
- removing reference to 'extenuating circumstances' and inserting instead reference to 'sufficient reasons in the opinion of the Board' (pages 67, 69).
A new sub-regulation (6) should provide that a teacher is under no obligation to undertake any professional learning during any year in which that teacher has taught for fewer than 20 days (full-time equivalent). In calculating the reduced professional learning requirement at renewal, the obligation should be taken to be 20 hours per year in which the applicant taught for at least 20 days and zero hours per year in which the applicant taught for fewer days (page 70).

Regulation 14. Intention to apply for limited registration (s. 23(3)(a))

As the form is not to be prescribed in future, this regulation is redundant (refer to the proposed amendment to section 23(3)(a) of the Act above). Schedule 2 should also be deleted (consequential).

Regulation 15. Duration of non-practising registration

This regulation should be amended to refer to ‘non-teaching registration’. Sub-regulations (2) – (4) should be deleted as it will no longer be permissible to return to teaching while holding non-teaching registration. Sub-regulation (1) should be amended accordingly (page 46).

Regulation 16. Condition on non-practising registration

This regulation should be deleted. If the following condition on non-teaching registration is not included in the Act, it should be inserted here instead: the teacher is prohibited from teaching in an educational venue while so registered. The regulation, if so amended, should stipulate that the condition does not prevent the teacher from volunteering in an educational venue, provided it is not prohibited by regulation 7, or undertaking a paid role in an educational venue other than teaching (page 62).

Regulation 21B. Additional persons who may inspect register information (professional) (s. 37(3)(b))

For the sake of completeness the persons listed in this regulation should be added to the list in section 37(3) of the Teacher Registration Act 2012 (consolidation).

Regulation 26. Notice to be given by employer about suspension, dismissal or resignation of registered teacher – investigations and serious incompetence (s. 42)

This regulation should be amended in light of the proposed amendments to section 42, including the extension of the obligation to school principals and approved supervisors in centre-based education and care services as persons who, if not the employer by virtue of having engaged, employed or appointed the teacher, may be as having given the permission to teach. Sub-regulations (1) – (3) will no longer be required (page 91).

New sub-regulations may be required to explain the meanings of ‘improvement action’ and ‘disciplinary action’. In particular it will be necessary to make clear that the action taken does not necessarily have to include the suspension or dismissal of the teacher. Improvement action refers to any requirement imposed on a teacher by his or her employer, principal or supervisor to address his or her serious incompetence with a view to improving the teacher’s competence. Disciplinary action refers to any sanction imposed on a teacher by his or her employer, principal or supervisor in response to his or her serious incompetence or serious misconduct including, but not limited to, termination of employment (page 92).
A new paragraph should be added to sub-regulation (4) to require that the following must be included in a section 42 notice: the date the improvement action or disciplinary action was taken, as applicable (consequential amendment).

Sub-regulation (4), paragraph (d) should be deleted and replaced with the following: (d) the reasons for the employer’s opinion including whether the suspected misconduct or incompetence may have been due, in whole or in part, to a serious medical condition or an impairment (page 90).

Sub-regulation (4), paragraph (e) should be amended by adding 'if any' after the word ‘investigation’. Sub-regulation (4), paragraph (f) should be deleted and replaced with the following: (f) the nature of the improvement action or disciplinary action imposed, as applicable (consequential amendments).

Schedule 1 – Fees

The schedule should be amended to provide as follows:

- Item 1 should be amended to provide for a registration fee payable by an applicant for (initial) provisional registration (returning teacher) who wishes to have his or her qualification coupled with experience assessed by the Board as suitable equivalent to that payable by an applicant with an overseas qualification claimed to be equivalent to an accredited qualification (currently $443 – item 1(c)) (page 49).

- Item 2 should be amended to provide for a registration fee payable by an applicant for (initial) full registration who wishes to have his or her qualification coupled with experience assessed by the Board as suitable equivalent to that payable by an applicant with an overseas qualification claimed to be equivalent to an accredited qualification (currently $475 – item 2(c)) (page 48).

- In the case of an applicant with an overseas qualification who was previously registered with the Board or its predecessor the Western Australian College of Teaching, the registration fee should be equivalent to that paid by an applicant with a locally conferred qualification (currently $131 for provisional registration and $166 for full registration – items 1(a) and 2(a) respectively) (page 129).

- For limited registration there should be only one fee – that at item 3(c) which is currently $220. Item 3(b) should be retained so that no fee is payable for exchange teachers’ registration (page 43).

- A fee equivalent to that applicable to a copy of a single entry in the public register should be added for the provision of a letter of recognition or statement of professional standing at the request of a registered teacher (currently $55) (page 131).

- Item 1(e) should be amended to refer to ‘non-teaching’ rather than ‘non-practising’ registration and a fee should be inserted for an application for transition from non-teaching registration to provisional registration which is equivalent to that payable by an applicant for renewal of registration (currently $52 – item 5). There is currently no fee for this transition although a fit and proper assessment is required (page 131).

- Item 2(e) should be amended to refer to ‘non-teaching’ rather than ‘non-practising’ registration and a fee should be inserted for an application for transition from non-teaching or provisional registration to full registration which is equivalent to that payable by an applicant for renewal of registration (currently $52 – item 5). There is currently no fee for this transition although a fit and proper assessment is required (page 131).
• Item 4(a) should be amended to refer to non-teaching rather than non-practising registration and to section 18 of the Act rather than section 18(a). Item 4(b) referring to section 18(b) of the Act should be deleted (pages 44, 46).

**Recommended amendment to the Teacher Registration (Accreditation of Initial Teacher Education Programmes) Regulations 2012**

**Regulation 12. National accreditation scheme**

This regulation should be deleted and replaced, should it be considered necessary, with a regulation authorising the Board to liaise with other bodies, including national and inter-State bodies, on matters relating to the accreditation of initial teacher education programmes. Section 89(c) of the Act already authorises the Board to work with and join associations of teacher regulatory authorities (page 121).

**Recommendations for Board and Department policy and practice**

**Professional standards requirement for full registration**

Current proficiency as a teacher is the key feature of a fully registered teacher. There is no reason to diverge from the existing requirement that currency means within the immediate past five years (page 50).

The Teacher Registration Board should review the professional standards for full registration in consultation with sector stakeholders and representatives and submit revised standards to the Minister under section 21 (page 54).

Revised professional standards for full registration submitted to the Minister for approval should not include any requirement as to a minimum number of days’ teaching. This should be left to Board policy (pages 54-5).

The Board’s policy on demonstrating proficiency for full registration should:

1) be aligned with the nationally-consistent teacher registration requirement for 80 days’ teaching in the previous five years;
2) ensure there is flexibility to accept fewer days for sufficient reasons; and
3) enable a person with provisional registration (returning teacher) to demonstrate his or her proficiency again with a combination of days’ teaching and days’ work in such educational activities in support of schools, education and care services and/or teachers in Australia or New Zealand as are acceptable to the Board (pages 54-5, 79).

**Fitness and propriety for limited registration**

Nominees for limited registration may commence teaching immediately the applicant employer submits a Notice of Intention to Apply. Until the application itself is submitted – currently within five days – the nominee may teach without having consented to a criminal record check.

Without offending the Working With Children (Criminal Record Checking) Act 2004, the Board should require some assurance of a nominee’s fitness and propriety and/or safety to work with children with the employer’s Notice of Intention to Apply such as one or more of the following:
- the nominee’s Working with Children application receipt number and date;
- a declaration by the nominee that he or she has not been issued with a negative notice, or an interim negative notice which has not been withdrawn, in Western Australia or any other jurisdiction;
- a full fit and proper declaration by the nominee such as is currently required in each registration application;
- the nominee’s consent under section 44 for the Board to obtain a criminal record check;
- the employer’s declaration that a fit and proper assessment has been undertaken in respect of the nominee (page 59).

Annual fee payment in advance

The payment of annual fees some years in advance is permitted by regulation 28(4)(b) in the Teacher Registration (General) Regulations 2012. Only about 2,000 teachers (under 4%) have availed themselves of the option. The Board should devise incentives to encourage more registered teachers to pay their annual fees several years in advance (to the expiry date of the current registration period) and advise the Minister should amendments to the regulations be required to facilitate these (page 127).

Accreditation standards

The Acting Equal Opportunity Commissioner for WA has received complaints of disability and family responsibilities discrimination from student teachers being required to undertake their supervised practicum experience on a full-time basis. The Board and the Minister should consider amending the accreditation standards so as to explicitly enable flexible practicum arrangements that are consistent with contemporary employment arrangements for people with disabilities or family responsibilities (page 123).

Accreditation fee

In all probability the fee for the accreditation and re-accreditation of initial teacher education programmes does not achieve cost-recovery. The accreditation and re-accreditation fee should be reviewed in accordance with the Department’s annual review of fees and charges primarily by taking into account the known costs of performing the accreditation function to date. This review should consult with teacher regulatory authorities elsewhere in Australian and take into consideration the fees of other higher education accreditation bodies such as the Tertiary Education Quality and Standards Agency (TEQSA) and the Australian Nursing and Midwifery Accreditation Council (ANMAC) (page 131).

Enhancing consistency of assessment of initial teacher education programmes

Initial teacher education programmes in Western Australia undergo two layers of scrutiny: provider registration and course accreditation by the Tertiary Education Quality and Standards Agency (TEQSA) under Commonwealth legislation and programme accreditation under the Teacher Registration Act 2012. Some Australian teacher regulatory authorities have entered into non-binding memorandums of understanding (MOUs) with TEQSA to cooperate with a view to a synchronised, consistent assessment of programmes. The Teacher Registration Board has not done so.

The Board should commence discussions with the Tertiary Education Quality and Standards Agency (TEQSA) with a view to establishing a memorandum of understanding for the purposes of enabling
the sharing of information relevant to programme assessments and of aligning their regulatory processes (page 125).

**Financial reporting**

The reported scepticism among teachers and teacher unions regarding ‘value for money’ will continue if the limited financial reporting included in past annual reports of the Board is maintained. The certified financial statements of future annual reports should transparently show the operation of the Teacher Registration Board Account, in particular the costs to the Board of the staff, services – including any not provided on a cost-recovery basis - and facilities provided and costs re-couped by the Director General of Education (page 134).

**Other recommendations**

**Education support workers – consultants, advisers and others**

The Review does not support the creation of an optional registration category with separate requirements for education workers outside currently listed educational venues or any obligation on such workers to be registered (page 35).

**Fraudulent information in an application**

Deliberately or recklessly including false or misleading information material to a registration decision in an application should be dealt with as a disciplinary matter and not as a matter requiring automatic cancellation of registration (page 37).

**Section 27 – automatic cancellation of registration**

No change should be made to the disentitling and reinstatement provisions in section 27 of the Act (page 39).

**Teacher training ‘on-the-job’**

The fourth sub-category of limited registration should be retained despite the fact that the Board has yet to utilise it to authorise Teach for Australia Associates to obtain limited registration, preferring to use the third sub-category instead (page 43).

**Limited registration applicant is the employer**

No change should be made to the requirement that the applicant for limited registration is the employer (page 61).

**Late payment processing fee**

The current late payment processing fee is fit for purpose and any need to address natural justice claims may be accommodated through the exercise of Board discretion (page 129).
Composition of the Teacher Registration Board

The members of the Board should continue to be appointed by the Minister. The positions currently reserved for a lawyer and three registered teachers should be retained (page 138).

Teacher Registration Board functions

With the exception of those functions implying that the Board accredits initial teacher education programmes in accordance with a national scheme, the Board’s functions should be retained unaltered (page 139).
Chapter 1 – History of teacher registration in WA

1.1 Development of WACOT

The Western Australian Teachers’ Registration Act 1976 would have required all teachers to be registered by the beginning of 1978. However, it was repealed before that requirement came into effect. At the time only two other States – Queensland and South Australia – had a similar requirement.

The desirability of requiring teachers to be registered was raised again during debates on the School Education Bill which was enacted in 1999. At that time both the Coalition and Labor were committed to some form of regulation of the profession.

The Gallop Labor Government, elected in February 2001, had made an election commitment to introduce teacher registration in Western Australia. The key features of the proposed model were:

- a self-funding College of Teaching, independent of the Education Department;
- registration with the College to be a prerequisite for teaching in WA;
- a majority of the College’s Board would be made up of qualified teachers elected by their peers;
- registered teachers would be required to successfully complete a minimum number of hours of professional development every five years; and
- the College of Teaching would monitor the effectiveness of the professional development requirement.

The Western Australian College of Teaching Act 2004 (WACOT Act) came into force on 15 September 2004. Section 90 of that Act required its operations and effectiveness to be reviewed as soon as practicable after the expiration of four years from its commencement. That review, conducted by the then Department of Education Services, made the findings summarised below (section 1.2), all of which were accepted by the then Minister for Education who directed that the WACOT Act be amended or replaced to reflect them.

1.2 2010 WACOT review findings

An independent survey of teachers commissioned by the ‘WACOT review’ found, among other things:

- that teachers gave very low ratings to the performance of the College on ten of its statutory functions that they regarded as being of high importance although two-thirds of respondents agreed the College’s management of membership applications was efficient;\(^2\) and
- three-quarters of respondents disagreed with the statement that the College represented good value for money.\(^3\)

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1 The WACOT review report was tabled in the WA Legislative Assembly on 23 September 2010 and can be consulted among the Tabled Papers at www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3812639a88770c107825a92c482577a8000ca89b/$file/tp2639.pdf last accessed on 25 March 2018.


3 Id, page 9.
Submissions also included trenchant criticism of the performance of the College, although most supported the continuation of the College in some form, particularly the continuation of compulsory registration.

The College estimated that its basic regulatory functions accounted for in excess of 90% of its annual revenue, leaving very little available for the carrying out of the other nine statutory functions. Either fees would have to rise or functions would have to be reduced.

The 2010 review came to the following conclusions about the governance of the College.

- The WACOT Act granted too much independence to the College with the Board of Management composed of a majority of elected members and the remainder nominated by named stakeholders in which the Minister had little or no say and the virtual exclusion of the Minister from having any say in its decision making.
- As a consequence, there could be no guarantee that the Board would have the requisite spread of expertise and experience required to administer the Act.
- The Act listed the Board’s functions in a way which did not appropriately concentrate the attention of the Board on the prime reason for establishing an Act of Parliament for the purpose, which is the protection of the public interest, especially in relation to the protection of the interests of children, which are served primarily by the exclusion from the profession of persons who are not fit and proper.
- The objects indicated that the primary purpose of the Act had more to do with ‘promoting the profession’ than with protecting the public interest.

The following proposals were therefore made.

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

Like other Acts regulating professions in Western Australia, a key registration eligibility criterion for teachers should be fitness and propriety. The College should have power to suspend a teacher’s registration pending the outcome of a charge related to an offence conviction for which would render the teacher no longer fit and proper to be a teacher. A teacher aggrieved by a College decision should be able to apply to the State Administrative Tribunal for a review of that decision. The Tribunal should also have original jurisdiction with respect to serious disciplinary proceedings against teachers with the College retaining original jurisdiction for less serious matters.

4 Id, page 79.
5 Id page 84.
6 Id, page 85.
7 Ibid.

29
The 2010 review noted the limitations of the test of teaching which excluded early childhood teachers in early childhood services from both the opportunity and the obligation to be registered. It recommended that the definition of ‘teaching’ in the Act be widened to:

- ensure that early childhood teachers may gain and maintain registration as teachers when working in early childhood services following the implementation of the National Partnership Agreement for Early Childhood Education and Care; and
- cover the registration of teachers of school aged children who may not be delivering “an educational programme designed to implement the curriculum framework approved under the Curriculum Council Act 1997”, but rather a programme to implement, for example, the national curriculum.8

The 2010 review was critical of the absence of provisions for renewal of registration which required each ‘renewal’ application to be treated as a new application for registration. The concept of ‘re-registration’, it was proposed, should be replaced with a simple scheme requiring regular renewal of registration. The operation of Limited Authority to Teach was found to be cumbersome and it was recommended that the provision that each registered teacher was also a member of the College (incurring a separate fee) be abolished.9

**Amend or replace?**

The scale of the changes required, coupled with the severe financial difficulties facing the College which emerged during early work on amendments to the WACOT Act, led the Government to conclude that the WACOT model should be repealed in its entirety and replaced with a new Act establishing a small Ministerially-appointed Board with the limited functions of registration and renewal, discipline and impairment review, and accreditation of initial teacher education programmes and, further, that the Board’s secretariat and related services should be provided by a government department.

The *Teacher Registration Act 2012* was passed on 21 June 2012 and came into operation on 7 December 2012.
Chapter 2 – Coverage of registration

2.1. Who must be registered?
The scheme of the Teacher Registration Act 2012 (the Act) is typical of schemes that regulate professions generally. The basis of such schemes is (a) to make it unlawful for a person to practise the profession unless registered and (b) to make it unlawful to employ a person who is not registered to practise the profession. It is also an offence for a registered teacher to teach in breach of any condition on their registration or to pretend to be registered or entitled to teach.

The Act does not cover all teaching and all teachers regardless of circumstance and location. Some types of teaching and teachers are ruled in and others ruled out. Generally teachers not teaching a prescribed curriculum in an educational venue are not required to be registered, although they may obtain registration if eligible.

The key elements of the registration requirement are spelt out in definitions of the terms ‘teach’ (and by extension both ‘teaching’ and ‘teachers’), ‘educational venue’ and ‘prescribed curriculum’.

To teach means to undertake duties in an educational venue that include –
(a) the delivery of an educational programme designed to implement a prescribed curriculum and the assessment of student participation in such an educational programme; or
(b) the administration of any such programme.

Educational venues are schools, community kindergartens, child care centres, youth detention centres and centre-based education and care services (formerly known as long day care services).

The prescribed curriculums are:
(a) Belonging, Being and Becoming: The Early Years Learning Framework for Australia;
(b) the national school curriculum, known as the “Australian curriculum”;
(c) the outline of curriculum and assessment in schools established by the School Curriculum and Standards Authority;
(d) a course developed, or caused to be developed, by the School Curriculum and Standards Authority;
(e) a course accredited by the School Curriculum and Standards Authority;
(f) an alternative curriculum framework published by ACARA on its Recognition Register;
(g) a course registered as accredited on the Victorian State Register as being suitable for the purposes of a certificate in general education for adults;
(h) the Advanced Placement Programme, developed by the College Board (USA); and

1 The Teacher Registration Act 2012 does this at sections 6 and 7 respectively.
2 Sections 8 and 9.
3 Interpretation Act 1984, section 9, provides: “Where a word or phrase is defined in a written law, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.”
4 Teacher Registration Act 2012, section 3.
5 Section 3 and Teacher Registration (General) Regulations 2012, regulation 5.
6 An element of the national education and care services quality framework and referred to in the Education and Care Services National Regulations 2012 (WA), regulation 254(1)(a).
7 Developed and administered under the Australian Curriculum, Assessment and Reporting Authority Act 2008 (Cth), section 6(a).
8 School Curriculum and Standards Authority Act 1997, section 9(1)(a).
9 School Curriculum and Standards Authority Act 1997, section 9(1)(c).
10 School Curriculum and Standards Authority Act 1997, section 9(1)(d).
(i) the International Baccalaureate Diploma programme offered by the International Baccalaureate educational foundation.11

The list of prescribed curriculums appears to be outdated in certain respects. The Australian Curriculum is not approved for use in Western Australian schools. Rather they must use the modified Western Australian Curriculum developed by the School Curriculum and Standards Authority. Non-government schools may be approved by the School Curriculum and Standards Authority to deliver alternative curriculums which are not listed such as the Steiner and Montessori curriculums. Consideration should be given to including on the list of prescribed curriculums any curriculum which has current Authority recognition.12 For Years 11 and 12 in non-government schools the Director General of Education currently has power to approve alternative curriculums in accordance with the standard determined by the Minister under section 159(1)(a) of the School Education Act 1999. Any such alternative should also be prescribed.

The Review recommends that the list of prescribed curriculums be reviewed and revised as necessary to ensure its accuracy and completeness of coverage.

Duties that are not teaching are duties of the kind undertaken –

- by a teacher’s aide or a teacher’s assistant, or by a student teacher on practicum placement; or
- by a person employed or engaged to provide care at a child care centre but who is not employed or engaged to teach at that centre; or
- by an unpaid volunteer, unless the volunteer is undertaking duties of a kind, or to an extent, prescribed for the purposes of this paragraph; or
- by such persons, or in such circumstances, if any, as are prescribed.13

The following classes of person are prescribed as not teaching, despite performing educational activities:

- teachers in venues such as private coaching colleges, volunteer tutoring programmes and home tutoring (they do not work in an educational venue as defined although they may teach a prescribed curriculum);
- people who tutor, coach or teach an extra-curricular subject (they do not teach a prescribed curriculum as defined although they may work in an educational venue); and
- Vocational Education and Training (VET) trainers, assessors and administrators, as defined under either the Western Australian or the national VET legislation (as they are adequately regulated under VET legislation).14

2.1.1 Inclusion of early childhood teachers

The Teacher Registration Act 2012 coincided closely with the passage into law of the Education and Care Services National Law (WA) Act 2012. The latter Act requires every centre-based education and care service15 (for children in the early years) to have at least one qualified teacher. The Teacher

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11 Listed in Teacher Registration (General) Regulations 2012, regulation 6.
12 The Authority approves each curriculum for use in individual named schools on an annual basis.
13 Teacher Registration Act 2012, section 3.
14 Teacher Registration (General) Regulations 2012, regulation 8.
15 Formerly known as long day care services. As other child care services may also engage qualified teachers, we refer in this report to early childhood services to cover both types. Each is an ‘educational venue’ under the Act.
Registration Act therefore includes early childhood teachers at these services among those who must be registered.

2.1.2 Exclusion of VET trainers and assessors

Vocational Education and Training (VET) is now an accepted aspect of school education in the senior years. Under the Western Australian College of Teaching Act 2004 (WACOT Act), VET courses in schools had to be taught by registered teachers but not those in TAFE Colleges. This meant that a school was frequently unable to engage the most highly skilled tradesperson to deliver a particular VET course because that tradesperson did not have a teaching qualification. The requirement for registration caused particular difficulties in rural and remote communities. Most VET trainers engaged by schools under the WACOT Act were granted a Limited Authority to Teach (LAT). The LAT, however, had to be renewed every two years and did not enable the trainer to pursue a secure career path in teaching.

Currently, VET in schools is either provided by the school itself as a registered training provider (RTO) under State or Federal VET legislation or by another RTO or a TAFE College working in partnership with the school. VET legislation imposes minimum standards with respect to the qualifications of VET trainers and assessors. In order to work with children in any RTO setting, including a school, they must have applied for a Working with Children assessment.\textsuperscript{16} In drafting the Teacher Registration Act, therefore, the view was taken that requiring a VET trainer and assessor to be registered in order to teach in an educational venue was unnecessary. No submissions were received by the Review which argued for re-inclusion of VET trainers and the Review does not recommend this course of action.\textsuperscript{17}

2.1.3 Inclusion of principals and other school leaders

Like the WACOT Act, the Teacher Registration Act requires principals and school leaders to be registered. The second part of the definition of teaching applies to people administering (as distinct from delivering and assessing) prescribed curriculums in educational venues.

The Teacher Registration Board submitted that the second part of the definition of ‘teach’ — namely “to undertake duties in an educational venue that include — (b) the administration of [an educational programme designed to implement a prescribed curriculum — referencing paragraph (a)]” needs to be clarified. The Board suggested that “administration” should be defined to mean “the provision of oversight, leadership and management in respect of the development and/or implementation of educational programmes within the educational venue”.\textsuperscript{18} This clarification would cover the non-classroom educational leadership of a school while still:

- clearly excluding departmental and system advisers and consultants who are not part of the school-based educational leadership team; and
- excluding the approved supervisor in an education and care service unless that supervisor is an early childhood teacher as defined in the Education and Care Services National Regulations 2012.\textsuperscript{19}

\textsuperscript{16} And not been refused one.

\textsuperscript{17} VET trainers/assessors in NSW are also explicitly exempted from the accreditation requirement: Teacher Accreditation Regulation 2015 (NSW), regulation 7.

\textsuperscript{18} Submission 12, Teacher Registration Board of WA, page 9.

\textsuperscript{19} They are currently excluded by the Teacher Registration (General) Regulations 2012, regulation 8(a).
The Review therefore recommends amending the definition of ‘teach’ to make clear that ‘administration’ means “the provision of oversight, leadership and management in respect of the development and/or implementation of educational programmes within the educational venue”.

2.1.4 Registration by mutual recognition

Under the Mutual Recognition Act 1992 (Cth) (MR Act), persons holding a licence in one participating Australian jurisdiction are entitled to a licence in another if equivalent work is licensed in both.

The Trans-Tasman Mutual Recognition Arrangement between Australian governments and the Government of New Zealand under the Trans-Tasman Mutual Recognition Act 1997 (Cth) (TTMR Act) enables New Zealand licence holders to have their licences recognised in Australia and vice versa.

The principles of the MR Act and the TTMR Act are the same. That is, a person licensed to practise in one participating jurisdiction can practise in another, without the need to undergo further testing or examination. This is not an automatic process; individuals must apply for recognition and pay any applicable fee. From the date a person lodges their mutual recognition application they are deemed to be registered pending the grant or refusal of registration. Deemed registration continues until it is cancelled, suspended or otherwise terminated. For example, deemed registration ends once the person is either granted or refused registration.

Equivalency is based on whether or not the activities authorised to be carried out under the original occupational licence are substantially the same. Equivalency is not based on whether the qualifications or other competency requirements of the recipient and home jurisdictions are the same. Equivalency of occupations may be achieved through the imposition of appropriate conditions on a person’s registration in Western Australia.

Until the beginning of 2018, not all New South Wales teachers were required to be accredited in that State and they therefore fell outside the definition of ‘occupation’, making it more difficult for NSW teachers to become registered in WA.

Table 2.1 - Registrations granted under mutual recognition legislation

<table>
<thead>
<tr>
<th>Year</th>
<th>7/12/2012 - 30/6/2013*</th>
<th>2013-14</th>
<th>2014-15</th>
<th>2015-16</th>
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<td>558</td>
<td>474</td>
<td>406</td>
<td>337</td>
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</tbody>
</table>

* The Teacher Registration Board commenced operations on 7 December 2012 and its first annual report covered the period from that date to 30 June 2013.

2.2 Who may be registered?

Several submissions argued for an extension of the definition of teaching by one or more of the following means so as to expand the number of people, and the types of roles, who may choose to be registered:

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20 Together with the corresponding New Zealand legislation of the same name and date.
21 The fee levied by the Teacher Registration Board of WA for MRA and TTMRA applications is currently $131.
22 Conditions may be imposed under section 26.
23 Teacher Accreditation Act 2004 (NSW) section 28 making accreditation mandatory commenced on 1 January 2018.
24 Data sourced from Teacher Registration Board annual reports.
• defining administration to include the roles of educational consultants and advisers to schools;
• defining teaching to include the delivery and assessment of an accredited Initial Teacher Education Programme;
• including accredited Initial Teacher Education Programmes among prescribed curriculums; and/or
• expanding the range of educational venues to include universities and school employers' central and regional offices.25

The Review notes that people undertaking these roles, delivering these curriculums and/or working in these venues are not barred from being registered provided they satisfy or have satisfied the applicable registration requirements. They may, however, face difficulty in having their registration renewed.

Expanding the definition of teaching, without making other changes, would require all such people to be registered before commencing to teach as newly defined. Submissions, however, seem to prefer an optional registration category for them.

The Review does not support the creation of an optional registration category with separate requirements and does not support establishing a requirement that education workers other than those in an educational venue should be registered. It would create two classes of worker within these non-school settings: those who choose registration and those who do not. It would add significantly to the Board’s workload, albeit with the additional funds these new registrants would contribute. We note that any who currently hold full or provisional registration already have the option of becoming registered non-practising.

As the principal difficulty for these registered teachers is having their proficiency recognised on transition back to teaching or their work and professional development being counted for renewal, it is preferable that their situation be considered in the context of the professional standards for registration (Chapter 3) and the professional engagement and professional learning requirements for renewal (Chapter 4) rather than the definition of teaching.

2.3 Who must be deregistered?
The Teacher Registration Board must cancel a teacher’s registration if that teacher is disentitled to be registered for any of the following reasons:

• they are convicted or found guilty of a sexual offence involving a child, including child pornography;
• they are issued with a negative notice or an interim negative notice under the Working with Children (Criminal Record Checking) Act 2004;
• they do not provide written consent to a criminal record check when requested by the Board;
• a qualification relied on for registration is withdrawn or cancelled;
• a qualification relied on for registration was forged or fraudulently obtained;
• they are in arrears of fees due and payable under the Act.26

25 Submission 7, Maria Doolan; Submission 16, Association of Independent Schools of WA, page 1, paragraph 6; Submission 19, Australian Secondary Principals' Association and Western Australian Secondary School Executives Association; Submission 20, Professional Teaching Council of WA.
26 Teacher Registration Act 2012, section 27.
Other jurisdictions deal with these matters in different ways. For example, in the Northern Territory, in respect of some similar matters, an inquiry may be held after which the Board may suspend registration or impose conditions. However, registration is automatically cancelled if the teacher is convicted of any sexual offence. In NSW a teacher’s accreditation may be suspended if disciplinary proceedings are pending in relation to alleged misconduct or if criminal proceedings are pending and a conviction would enable the Authority to revoke accreditation.

2.3.1 Fraudulent applications

The Australasian Teacher Regulatory Authorities (ATRA) and the Teacher Registration Board (which is an ATRA member) both recommended the addition of a further disqualifying ground: that the applicant included fraudulent information in his or her application.

The Board considers it reasonable that there be one additional matter that should result in automatic cancellation. If a person is registered, and it is later found that they were not entitled to be registered due to fraudulent information included in their application, there is no provision that allows for the loss of their entitlement to remain on the register.

Information on which the success or otherwise of a registration or renewal application may depend (in addition to qualifications), and which could be falsified, includes:

- duration and location of teaching experiences;
- hours and focus of professional learning undertaken;
- acknowledgement of prior convictions; and
- details about a serious medical condition or an impairment.

On one view adding fraudulent information in an application to section 27 is a minor change since the section already includes forged or fraudulently obtained qualifications. On another view, however, it is potentially very significant. Automatic cancellation allows the Board no discretion to deal more leniently with minor infractions. It would be very difficult to define a serious infraction warranting cancellation and to distinguish it from a minor one warranting a lesser proportionate response.

A very significant change to section 27, the most punitive provision of the Act, should not be made, in the Review’s opinion, without evidence of need. The Board’s submission provided no data as to the extent of the problem of fraudulent applications although subsequently the Director, Teacher Registration, advised that two cases were known to have occurred and clarification was sought from applicants in other suspect cases. One alternative to automatic cancellation could be to make a finding that the teacher is not a fit and proper person. Another would be to make having submitted an application containing fraudulent information a disciplinary matter. A third would be to

27 Teacher Registration (Northern Territory) Act, sections 50 and 53.
28 Teacher Registration (Northern Territory) Act, section 69.
29 Teacher Accreditation Act 2004 (NSW), section 24A.
30 Submission 7, Australasian Teacher Regulatory Authorities (ATRA), page 2, paragraph 13; Submission 12, Teacher Registration Board of WA, page 27.
31 Submission 12, Teacher Registration Board of WA, page 27.
32 Section 24(d)(ii), although applicable only at the time of application (including for renewal), requires the Board to consider whether any behavior of the applicant shows he or she is not of good character.
33 Section 47(b) makes contravention of the Act a disciplinary matter. The Review proposes amending that provision to provide that either contravention or non-compliance is a disciplinary matter (Chapter 9).
Prosecute the person for making a statement known to be false or misleading in a material particular or with reckless disregard. Each alternative is currently available under the Act, or will be if the Review’s proposals are implemented.

In the case of a registered teaching making application for renewal of registration or transition to a different category, fraud is most appropriately dealt with as a disciplinary matter. Advantages of this approach over that proposed by the Board include:

- a disciplinary committee or the State Administrative Tribunal will consider the evidence on both sides of the argument and reach a reasoned conclusion as to whether the teacher’s actions, including knowledge and understanding, amounted to fraud;
- a disciplinary committee and the State Administrative Tribunal can both impose disciplinary measures short of cancellation, including a fine, condition or suspension;
- if necessary, the Board can refer a serious case to the State Administrative Tribunal which has the power, following a proper hearing, to cancel the teacher’s registration and also, should it choose, to ban the teacher from re-applying for registration within a stipulated period.

In the case of suspected fraud by an applicant for initial registration, the Board’s options are to refuse registration and/or to prosecute under section 127 of the Act.

The Review recommends that deliberately or recklessly including false or misleading information material to a registration decision in an application should be dealt with as a disciplinary matter and not as a matter requiring automatic cancellation of registration. We note that contravention of the Act is already a disciplinary matter and propose in Chapter 9 that failure to comply with the Act should also be a disciplinary matter whether or not a prosecution has been brought.

2.3.2 Cancellation or suspension of registration?

2.3.2a) Interim negative notice

Two submissions argued that not all of the disentitling matters in section 27 should result in automatic cancellation of registration. The State School Teachers’ Union proposed that being issued with an interim negative notice under Working with Children legislation should result in suspension of registration rather than cancellation with automatic lifting of the suspension if the interim negative notice is withdrawn. Further,

[It should not be] an offence for an employer to maintain the employment of a teacher who is suspended ... However, the teacher [should be] prohibited from teaching at an education venue during the period that registration is suspended.

The Review notes that it is not an offence for an employer to maintain the employment of a teacher who is suspended. Indeed it is not an offence for an employer to maintain the employment of a teacher whose registration is cancelled. However, it would be an offence for the employer to permit

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35 Section 127 creates the offence of knowingly making a false or misleading statement or doing so with reckless disregard.
36 In Victoria an allegation of application fraud must go to a hearing before registration can be cancelled: Education and Training Reform Act 2006 (Vic), section 2.6.20. The same applies in the Northern Territory: Teacher Registration (Northern Territory) Act, section 50.
37 Section 47(b).
38 It does not appear to the Review that the Board has obtained legal advice on this question.
the teacher to ‘teach’ as defined in the Teacher Registration Act. Moreover, it is an offence for a person to whom an interim negative notice has been issued to undertake child-related work.\(^{40}\)

In the scheme of the Act there is no material difference between suspension and cancellation. In both cases the person’s name is removed from the register and he or she would commit an offence by teaching.\(^{41}\) Neither is it easier to reinstate the registration of a suspended teacher than for a cancelled teacher in these circumstances. Section 27(3)(b) requires registration to be reinstated if the Board becomes aware that the interim negative notice has been cancelled by the Working with Children Screening Unit. As the Teacher Registration Board stated, the problem is not whether registration is cancelled or merely suspended; rather it is the content of the teacher’s contract of employment, any applicable industrial award or agreement and the employer’s policy.\(^{42}\) If the contract of employment requires the person to be registered, this requirement could not be complied with whether the registration was suspended or cancelled. However, there is nothing in the Act itself to prevent the teacher’s employment continuing while an interim negative notice is in place, provided the teacher is not engaged in child-related work.

2.3.2b) Fee arrears
The other disentitling matter objected to in submissions was being in arrears in respect of fees due and payable.\(^{43}\)

AISWA notes that there appears to be no provision in the Act/Regulations for the conditions under which registration can be suspended other than in disciplinary matters. It is our suggestion that suspension rather than cancellation for non-payment of fees is more appropriate.\(^{44}\)

Several mechanisms are available to the Board to ensure fees are paid. With respect to registration (application) fees and fees for specific services, the Board will simply not accept the application or provide the service until the fee is paid. The annual fee is clearly in a different category. Non-payment of the annual fee is by far the largest reason for automatic cancellation each year although the numbers are gradually dropping.

Table 2.2 - Registrations cancelled by the Board for ineligibility by reason and year\(^{45}\)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-payment of annual fee</td>
<td>1,764</td>
<td>2,507</td>
<td>1,395</td>
<td>1,154</td>
<td>904</td>
</tr>
<tr>
<td>Other</td>
<td>10</td>
<td>7</td>
<td>9</td>
<td>9</td>
<td>5</td>
</tr>
<tr>
<td>Total</td>
<td>1,774</td>
<td>2,514</td>
<td>1,404</td>
<td>1,163</td>
<td>909</td>
</tr>
</tbody>
</table>

Apart from early invoices and reminders being sent, the Regulations allow the Board to accept annual fees paid up to a full month late subject to including the additional late payment processing fee.\(^{46}\)

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\(^{40}\) Working with Children (Criminal Record Checking) Act 2004, section 23.

\(^{41}\) Section 34.

\(^{42}\) Submission 12, Teacher Registration Board of WA, page 26.

\(^{43}\) Failure to pay the annual fee also results in cancellation in Queensland: Education (Queensland College of Teachers) Act 2005 (Qld), section 66. In NSW the Authority may suspend accreditation for non-payment of the annual fee: Teacher Accreditation Act 2004 (NSW), section 25.

\(^{44}\) Submission 16, Association of Independent Schools of WA, page 2, paragraph 12.

\(^{45}\) Data sourced from Teacher Registration Board annual reports.

\(^{46}\) Regulation 28(5).
That fee is currently $55. The State School Teachers’ Union called this fee “harsh and unjust” and argued that suspension would be preferable.

As indicated above (section 2.3.2a), there is no material difference between suspension and cancellation in this context. Moreover, the Board has four further mechanisms to assist it to avoid unfairness.

The first is the requirement that teachers must notify the Board of any change to their postal address or email address. This is intended to ensure that the Board’s notices, invoices and reminders are delivered to the correct address.

The second is that employers are alerted to annual fee due dates and each staff member’s risk of cancellation through the Teacher Registration Information (Professional) (known as TRIP).

The third is that registration cannot be cancelled for non-payment of fees if the Board is of the opinion that there are extenuating circumstances.

The fourth is that the registration of a teacher in fee arrears must be reinstated if the Board is of the opinion that there are extenuating circumstances.

Table 2.3 - Registrations reinstated for extenuating circumstances affecting teachers in fee arrears (section 27(3)(c))

<table>
<thead>
<tr>
<th>Year</th>
<th>7/12/2012 - 30/6/2013</th>
<th>2013-14</th>
<th>2014-15</th>
<th>2015-16</th>
<th>2016-17</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number reinstated</td>
<td>0</td>
<td>45</td>
<td>29</td>
<td>18</td>
<td>23</td>
</tr>
</tbody>
</table>

The Review recommends that no change be made to the disentitling and reinstatement provisions in section 27 of the Act.

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47 Regulation 27A.
48 Section 27(3)(c).
49 Data sourced from Teacher Registration Board annual reports.
Chapter 3 – Registration categories and requirements

3.1 Categories of registration
The Act creates four categories of registration: full, provisional, limited and non-practising. Nearly four in every five Western Australian registered teachers hold full registration.

**WA registered teachers by category, 30 June 2017**

Significant changes in the distribution of teachers among the four categories during the existence of the Teacher Registration Board may be noted from Table 3.1. It shows a drop in the number and proportion of teachers with provisional registration and increases in both non-practising and limited registration.

**Table 3.1 - Registered teachers by category and date**

<table>
<thead>
<tr>
<th>Category</th>
<th>Full</th>
<th>%</th>
<th>Provisional</th>
<th>%</th>
<th>Non-practising</th>
<th>%</th>
<th>Limited</th>
<th>%</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>30/6/2013</td>
<td>38,872</td>
<td>77.2</td>
<td>10,921</td>
<td>21.7</td>
<td>213</td>
<td>0.4</td>
<td>328</td>
<td>0.7</td>
<td>50,334</td>
</tr>
<tr>
<td>30/6/2014</td>
<td>39,310</td>
<td>78.4</td>
<td>9,284</td>
<td>18.5</td>
<td>1,171</td>
<td>2.3</td>
<td>373</td>
<td>0.7</td>
<td>50,138</td>
</tr>
<tr>
<td>30/6/2015</td>
<td>40,455</td>
<td>79.2</td>
<td>8,046</td>
<td>15.8</td>
<td>2,008</td>
<td>3.9</td>
<td>541</td>
<td>1.1</td>
<td>51,050</td>
</tr>
<tr>
<td>30/6/2016</td>
<td>41,076</td>
<td>80.1</td>
<td>5,701</td>
<td>11.1</td>
<td>3,802</td>
<td>7.4</td>
<td>691</td>
<td>1.3</td>
<td>51,270</td>
</tr>
<tr>
<td>30/6/2017</td>
<td>41,721</td>
<td>79.1</td>
<td>5,710</td>
<td>10.8</td>
<td>4,649</td>
<td>8.8</td>
<td>684</td>
<td>1.3</td>
<td>52,764</td>
</tr>
</tbody>
</table>

Table 3.2, however, shows that early childhood teachers in early education and care services are much less likely to have full registration. These teachers have only been required in such services since January 2014\(^2\) and their obligation to obtain teacher registration did not come into effect until December 2014.\(^3\)

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\(^1\) Data sourced from Teacher Registration Board annual reports.

\(^2\) *Education and Care Services National Regulations 2012*, regulation 379(1).

\(^3\) In accordance with the transitional provision in the *Teacher Registration Act 2012*, section 137.
Table 3.2 – Registered teachers by category and sector – February 2018

<table>
<thead>
<tr>
<th>Sector</th>
<th>Full registration</th>
<th>Provisional registration</th>
<th>Limited registration</th>
<th>Non-practising registration</th>
<th>Total in sector</th>
</tr>
</thead>
<tbody>
<tr>
<td>Government schools</td>
<td>22,955 (90%)</td>
<td>1,711 (7%)</td>
<td>314 (1%)</td>
<td>679 (2%)</td>
<td>25,659</td>
</tr>
<tr>
<td>Catholic schools</td>
<td>5,720 (90%)</td>
<td>392 (6%)</td>
<td>68 (1%)</td>
<td>141 (3%)</td>
<td>6,321</td>
</tr>
<tr>
<td>Independent schools</td>
<td>5,997 (88%)</td>
<td>427 (6%)</td>
<td>178 (3%)</td>
<td>195 (3%)</td>
<td>6,797</td>
</tr>
<tr>
<td>Education &amp; care services</td>
<td>159 (49%)</td>
<td>46 (14%)</td>
<td>87 (27%)</td>
<td>34 (10%)</td>
<td>326</td>
</tr>
<tr>
<td>Multiple sectors *</td>
<td>611 (85%)</td>
<td>57 (8%)</td>
<td>4 (0.5%)</td>
<td>42 (6.5%)</td>
<td>714</td>
</tr>
<tr>
<td>Not identified</td>
<td>7,951 (52%)</td>
<td>3,645 (24%)</td>
<td>0</td>
<td>3,723 (24%)</td>
<td>15,319</td>
</tr>
<tr>
<td><strong>Total in category</strong></td>
<td><strong>43,393</strong></td>
<td><strong>6,278</strong></td>
<td><strong>651</strong></td>
<td><strong>4,814</strong></td>
<td><strong>55,136</strong></td>
</tr>
</tbody>
</table>

*In certain circumstances teachers have identified that they are teaching in various venues across sectors concurrently.

3.1.1 Full registration
Almost 80% of WA-registered teachers hold full registration. For full registration an applicant must establish that he or she:

(a) holds a teaching qualification from an accredited programme (that is, accredited in Australia) or one recognised by the Board as equivalent;
(b) meets the Proficient Standards\(^5\) or has done so within the past five years;
(c) is fit and proper to be a registered teacher; and
(d) has the prescribed English language skills.\(^6\)

3.1.2 Provisional registration
Just over one in ten WA-registered teachers hold provisional registration. This category is intended primarily for recent graduates. An applicant must establish that he or she:

(a) holds a teaching qualification from an accredited programme (that is, accredited in Australia) or one recognised by the Board as equivalent;
(b) meets the Graduate Standards or has done so within the past five years;
(c) is fit and proper to be a registered teacher; and
(d) has the prescribed English language skills.\(^7\)

For the reasons outlined below (section 3.1.4), the Review recommends the creation of two subcategories of provisional registration: one for recent Australian graduates and one for others including:

- teachers with non-teaching registration wishing to return to a teaching role;

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\(^4\) Data provided by the Director, Teacher Registration at the request of the Review. As it is not a requirement for employers to actively engage with the TRIP or for teachers to provide up-to-date information concerning where they are working, any data reported by sector is indicative only.

\(^5\) As currently approved by the Minister for Education, the Professional Standards for WA are adapted from the Australian Professional Standards (Graduate and Proficient) developed by the Australian Institute for Teaching and School Leadership (AITSL) and approved by Education Ministers nationally in December 2010.

\(^6\) Teacher Registration Act 2012, section 15.

\(^7\) Section 16.
• those with overseas qualifications found by the Board to be equivalent to an accredited qualification; and
• those with a teaching qualification and experience accepted by the Board as suitable for provisional registration.

We term these sub-categories (1) provisional registration (graduate teacher) and (2) provisional registration (returning teacher).

3.1.3 Limited registration
A very small number of teachers (684 (1.3%) of the 52,764 total on 30 June 2017) hold limited registration. To obtain limited registration, a person must be nominated by an intending employer. The eligibility criteria are set out in section 17 and require that the nominee:

(a) has an offer of a teaching position;
(b) is a fit and proper person;
(c) has the English language skills prescribed as suitable for a person with limited registration; and
(d) meets other requirements prescribed.

The 'other requirements' have the effect of creating five sub-categories of limited registration:

1. Holds a teaching qualification and meets the professional standards for full or provisional registration or has done so within the past five years.
2. Holds a qualification that, in the Board’s opinion, is relevant to the subject matter to be taught.
3. Has, in the Board’s opinion, expertise or skills relevant to the subject matter to be taught.
4. Is currently enrolled in an accredited programme delivered in a manner approved by the Board.
5. Has completed all course requirements in an accredited programme but has not yet received the qualification.\(^8\)

Broadly speaking, the five sub-categories were intended to cater for people in the following situations:

(a) A teacher with a three-year (or less) education qualification who is able to demonstrate having met the professional standards within the past five years.
(b) A subject matter expert with a relevant qualification. Examples include a maths graduate or a foreign language teacher.
(c) A subject matter expert without a university qualification but some other evidence of skills or expertise. An example may be a dance teacher.
(d) A university graduate accepted into an accredited programme which is delivered in a manner approved by the Board such as, for example, where the student teacher is teaching and studying at the same time.
(e) A pending graduate whose teaching degree is to be formally awarded within weeks or months.

Those in sub-categories (d) and (e) would be expected to qualify and apply for provisional registration when the accredited qualification is awarded in due course.

\(^8\) Teacher Registration (General) Regulations 2012, regulation 12(2)(a)-(d).
The Teacher Registration Board suggested collapsing categories (a)-(c) into one providing that “the nominee has, in the opinion of the Board, qualifications, expertise or skills in a subject relevant to the teaching position”. The Board advised that “the majority of applications ... are assessed against (c) ... which is considered to represent the minimum eligibility threshold”. The Review supports this proposal and recommends the proposed change to regulation 12(2) with the minor amendment of omitting the words ‘in a subject’. Removal of those words will more clearly enable a person whose skills or expertise are not necessarily in a particular curriculum subject, but rather in the administration of educational programmes, to be nominated for a school leadership position.

We further recommend that there should be only one fee applicable to an application for limited registration (other than for exchange teachers for whom no fee should be charged). This fee should be the lower of the two fees currently applicable: $220.

We note that some teachers who currently qualify only for limited registration in category (a) – holding a teacher qualification which is neither accredited nor equivalent – may qualify for provisional or full registration if the Review’s recommendation below (section 3.2) for adding an alternative qualification type is adopted.

It was submitted to the Review that the Australian Children’s Education and Care Quality Authority (ACECQA) does not accept all of the Western Australian limited registration categories. This means that early childhood services do not have the same staffing flexibility under the Teacher Registration Act as is available to school employers. This is an unfortunate situation but one which is outside the control of the Teacher Registration Act or Board policies. ACECQA’s decisions are governed by other legislation, the Education and Care Services National Regulations which were adopted in Western Australia in 2012.

Both the State School Teachers’ Union and the Professional Teaching Council expressed opposition to category (d) for limited registration which was intended to enable Teach for Australia ‘Associates’ to obtain registration while undertaking their teacher training ‘on the job’ if the Board approved of the way their training is delivered. The Board has not given its approval, however. Associates are granted limited registration under sub-category (c) instead.

The Review recommends retention of the fourth sub-category of limited registration despite the fact that the Board has yet to utilise it. It may become a useful adjunct in the future. We consider that the safeguards in regulation 12(2)(d) are sufficient to enable the Board to deal with significant problems with this category of nominee or this model of delivering teacher training. Paragraph (d) requires both an accredited initial teacher education programme and a manner of delivery approved by the Board itself.

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9 Submission 12, Teacher Registration Board of WA, page 20. This formulation is similar to the Queensland eligibility requirement for permission to teach: Education (Queensland College of Teachers) Act 2005, section 10.
10 Submission 12, Teacher Registration Board of WA, page 20
11 Teacher Registration (General) Regulations 2012, Schedule 1, item 3(c). Item 3(a) imposes a fee of $531 if the application involves the assessment of an overseas qualification.
12 Submission 10, Schools of Early Learning.
13 Submission 18, State School Teachers’ Union of WA, page 5; Submission 20, Professional Teaching Council of WA.
3.1.4 Non-practising registration

Just under one in ten WA-registered teachers holds non-practising registration.

The Western Australian College of Teaching Act 2004 created the category of associate membership. This category was abolished by the Teacher Registration Act (together with the concept of full membership). The category of non-practising registration is primarily intended to recognise the benefit to the profession of enabling qualified teachers to take on roles related to the profession, other than in an educational venue, without losing their entitlement to registration. The category is not currently limited to these teachers, however.

Non-practising registration:

- requires successful applicants to maintain their registration by paying the annual fee;
- exempts them from having to apply for renewal of registration;
- exempts them from undertaking professional learning and professional engagement;
- may continue indefinitely; and
- enables them to return to teaching for a period of up to two years before transitioning to that category of registration – full or provisional – for which they can then establish eligibility.

Section 18 creates two types of non-practising registration. Type (a) is for a registered teacher who does not intend to teach in an educational venue for some time, for whatever reason. Type (b) is for a person who intends to commence teaching and satisfies all requirements for either provisional or full registration with the exception of the professional standards requirement.

Non-practising registration therefore applies to three quite different kinds of teachers:

1. those taking an extended break from teaching;
2. those with non-practising registration who return to or wish to commence teaching; and
3. those without registration, including graduates and applicants with overseas qualifications, who cannot demonstrate to the Board that they meet the professional standards on application or within the five years before.

3.1.4a) Teachers taking leave

For the first group the label is essentially accurate and the category delivers significant benefits. Non-practising registration of this type continues indefinitely and does not need to be renewed. There is no obligation to maintain professional competency by participating in professional learning activities. The only requirement is to continue paying the annual fee.

The label ‘non-practising’, however, is unpopular with teachers, particularly those who consider that their work and/or learning as university lecturers and tutors, post-graduate students, school advisers and consultants, or teacher union officers amount to practising in the education sphere. It has been described as “insulting” and “problematic”. The Review considers it could be more precisely labelled.

The Review recommends that non-practising registration be re-named ‘non-teaching registration’, since teaching is precisely defined in the Act.

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14 Submission 20, Professional Teaching Council of WA.
15 Submission 18, State School Teachers’ Union of WA, page 7.
16 Submission 16, Association of Independent Schools of WA, page 2, paragraph 9.
3.1.4b) Returning to teach and new applicants

It is generally agreed that the second and third groups are somewhat disadvantaged by the label ‘non-practising’ in trying to find a teaching position. Moreover, they are inaccurately described as non-practising and would also be inaccurately described as non-teaching. As shown in Table 3.3, almost one-third of teachers with non-practising registration are actually teaching.

Table 3.3 – Teachers with non-practising registration by teaching/not teaching and year\textsuperscript{17}

<table>
<thead>
<tr>
<th></th>
<th>Not known to be teaching *</th>
<th>% of total non-practising</th>
<th>Known to be teaching *</th>
<th>% of total non-practising</th>
<th>Total registered non-practising</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dec 2015</td>
<td>2,469</td>
<td>77.47</td>
<td>718</td>
<td>22.53</td>
<td>3,187</td>
</tr>
<tr>
<td>Dec 2016</td>
<td>3,317</td>
<td>71.24</td>
<td>1,339</td>
<td>28.76</td>
<td>4,656</td>
</tr>
<tr>
<td>Dec 2017</td>
<td>3,273</td>
<td>67.49</td>
<td>1,576</td>
<td>32.51</td>
<td>4,849</td>
</tr>
</tbody>
</table>

\textsuperscript{*} It is a condition of non-practising registration that the teacher must notify the Board of his or her return to teaching within 14 days\textsuperscript{18}

The category label ‘non-practising’ was strongly criticised in submissions to the Review.

The name ‘Non-Practising Registration’ for a category of registration which allows a teacher to practice without limitation is illogical and confusing, and has been the source of much concern across a variety of stakeholders\textsuperscript{19}.

The Non-Practising category is suitable for those choosing not to teach whilst still paying annual fees, however, once they have returned to teaching, this nomenclature is not suitable. Those returning to teaching should be granted Provisional Registration once they notify the TRBWA that they have recommenced teaching\textsuperscript{20}.

The Australasian Teacher Regulatory Authorities (ATRA) described the situation as an “incongruity” and recommended it be addressed. The South Australian practice was proposed as an alternative.

In South Australia, teachers who have not met the “professional standards” requirements have the fact that they have not met the “professional practice” requirement noted on their Certificate of Registration, but are still able to maintain FR [Full Registration] with this condition\textsuperscript{21}.

The Review notes that the Western Australian Act makes meeting the professional standards an essential requirement for obtaining full registration and that no change to that requirement is recommended in this report, although we recommend the Board revise the applicable standards\textsuperscript{22}.

The Teacher Registration Board proposed re-categorising the second group ‘Provisional (Continuing Teacher)\textsuperscript{23}’. This category would be for teachers transitioning from a period of non-practising registration without having demonstrated the Proficient Standards within the previous five years. In this respect it is different from the current provisional registration, which the Board suggests be

\textsuperscript{17} Data supplied by the Director, Teacher Registration at the request of the Review.
\textsuperscript{18} Teacher Registration (General) Regulations 2012, regulation 18.
\textsuperscript{19} Submission 12, Teacher Registration Board of WA, page 16. See also Submission 7, Maria Doolan.
\textsuperscript{20} Submission 24, Director General, Department of Education, page 1.
\textsuperscript{21} Submission 8, Australasian Teacher Regulatory Authorities (ATRA), page 1, paragraph 7.
\textsuperscript{22} We note in passing that, although the Board is authorised to issue registration cards, though not certificates (see regulation 20), it has chosen not to do so.
\textsuperscript{23} Submission 12, Teacher Registration Board of WA, page 19.
renamed Provisional (Graduate Teacher), which should continue to require the Graduate Standards to have been met within the previous five years. The Teacher Registration Board submission indicated that this recommendation is broadly consistent with practice in other Australian jurisdictions which:

... generally grant Provisional Registration not just to graduates of accredited programmes, but also to teachers with overseas qualifications who have yet to practise as a teacher in Australia or New Zealand, and to teachers without accredited initial teacher education qualifications who are returning to teaching after a leave of absence.24

The Review recommends that a teacher registered non-practising (or 'non-teaching' as proposed) should be prohibited from teaching and that non-practising registration should no longer be available as an initial registration category. Only a teacher eligible for full or provisional registration and so registered should be able to transition to non-practising (or non-teaching) registration. Such a teacher should be required to apply for transition to provisional (returning teacher) or full registration before taking up a teaching position.25

The Review recommends further that teachers transitioning from non-teaching registration who are able to demonstrate their proficiency on application or within the previous five years should be eligible for full registration while those unable to do so should be eligible for the proposed new sub-category of provisional registration (returning teacher). In either case a new English language test may also be required, such as where the person has not been using English professionally while holding non-teaching registration.

3.1.4c) School leaders
The State School Teachers’ Union was critical of an alleged requirement that school principals and other school leaders must transition to non-practising registration because they are not engaged in face-to-face teaching.26 The current renewal requirement that the proficient standards be re-established each time may present difficulties for principals and other administrators because they are classroom practice-based. Under the Review’s recommendation for abolishing the category of non-practising registration for teachers actually teaching, principals and other school leaders, as administrators, would be forbidden to continue their work in a school unless holding and maintaining provisional or full registration. However, our recommendation for removing the professional standards requirement for renewal (section 4.2.2) will alleviate the current difficulty for school leaders.

3.2 Qualification requirements
A small number of applications received by the Board each year are refused as shown in the following table. In the following sections of this chapter, each of the registration requirements is explained and evaluated.

注释:
24 Submission 12, Teacher Registration Board of WA, page 16.
25 Limited registration may also be available if needed.
26 Submission 18, State School Teachers’ Union of WA, page 10.
Table 3.4 - Applications refused by reason and year

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<td>Qualifications, English and/or professional standards/engagement</td>
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<td>33</td>
<td>34</td>
<td>44</td>
<td></td>
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<td>2</td>
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<td></td>
</tr>
<tr>
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<td>Not reported</td>
<td>46</td>
<td>35</td>
<td>35</td>
<td>45</td>
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Currently the same qualification requirement is common to provisional, full and non-practising registration. This requirement stipulates that the teaching qualification held by the applicant must be from an accredited programme or one recognised by the Board as equivalent.

In order to be accredited, a qualification must provide either four years of teacher training at university level or equivalent or an additional two years of teacher training after a three-year undergraduate degree. A minimum number of days of supervised practicum experience must be included: at least 80 days in an undergraduate degree and at least 60 days for graduate entry. Only Australian qualifications can be ‘accredited’, however Board policy treats qualifications approved by the New Zealand Educational Council in the same way in all relevant respects.

Teaching qualifications gained outside Australia or New Zealand are assessed by the Board for equivalency. People contemplating applying for registration but who are uncertain as to the status of their qualification may seek advice from the Board before applying as to whether their qualification meets the requirements for registration.

While the Board will consider a Skills Assessment Certificate from the Australian Institute for Teaching and School Leadership (AITSL) undertaken for Department of Immigration and Border Protection purposes, which states a qualification meets that Department’s requirements for the nominated occupation of early childhood, primary school, middle school, or secondary school teacher, it will nevertheless make its own assessment as to whether the qualification is equivalent to an accredited initial teacher education programme.

An ‘equivalent’ qualification may be an Australian teaching qualification undertaken before accreditation was introduced or a qualification obtained overseas. The Board defines equivalence

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27 Data sourced from Teacher Registration Board annual reports.
28 The Review notes that the accreditation requirement for a two-year postgraduate teaching qualification is at odds with the registration requirement for a one-year postgraduate teaching qualification. This state of affairs in Western Australia is consistent with the nationally agreed programme accreditation standards and the nationally agreed teacher registration requirements both of which have been adopted in WA albeit as somewhat adapted for the WA context.
29 'Teacher Registration (Accreditation of Initial Teacher Education Programmes) Regulations 2012, regulation 4.'
30 'Teaching Qualifications – Full, Provisional and Non-Practising Registration', page 1: TRBWA Policy issued 2 December 2015.
31 Teacher Registration (General) Regulations 2012, regulation 19.
32 In the Northern Territory the test is "substantially equivalent": Teacher Registration (Northern Territory) Regulations, regulation 4. Elsewhere the requirement is the same as in WA: for example, Education (Queensland College of Teachers) Regulation 2016, regulation 5.
33 The registration fee is the same whether the qualification relied on is accredited or an Australian or New Zealand qualification claimed to be equivalent: Teacher Registration (General) Regulations 2012, Schedule 1, item 1(a) and (b). It is more than double when the qualification is from another overseas country: item 1(c).
for most applicants in terms of the length of the programme, its teacher training component and its supervised practicum experience component. However, the Board also treats anyone who was previously registered with either the Board itself or its predecessor the Western Australian College of Teaching (WACOT) as having a qualification ‘equivalent’ to an accredited qualification. Some previous registrants benefitted from transition provisions which automatically granted them registration when each Act was introduced and have never had their qualifications assessed. A small number may not have a teaching qualification.

An alternative definition for equivalence may have been that the qualification equips the applicant with the knowledge and understanding set out in the Graduate Standards. These Standards are further discussed below (section 3.3.1). However, it is noted here that the Board did not choose to define equivalence by reference to the Standards despite deeming all graduates from an accredited programme to meet the Graduate Standards. It seems clear that an inquiry into the coverage of the Graduate Standards (there are seven with a total of 37 focus areas or descriptors) in each and every qualification claimed to be equivalent to an accredited qualification in every jurisdiction throughout the world would be prohibitively onerous and in many cases effectively impossible. Currently, too, the Act makes the qualification requirement separate from the professional standards requirement for provisional registration. This is another reason for not conflating the two.

The Review agrees with the Teacher Registration Board that the current qualification requirement is too restrictive and “does not appear to allow the Board to take into account other relevant factors not necessarily related to the actual qualifications themselves”. More discretion should be given to the Board to take into account an applicant’s prior experience in addition to his or her qualification, in the event the qualification cannot genuinely be deemed equivalent to an accredited qualification.

The Review recommends that an additional type of qualification requirement be added to section 15 (for full registration): a teaching qualification and experience considered by the Board to be suitable for full registration. A registration fee commensurate with that currently applicable to an applicant with an overseas qualification would be appropriate.

For provisional registration (graduate teacher) the only acceptable qualification should be one from an accredited initial teacher education programme.

The qualification requirement for provisional registration (returning teacher) should be either a qualification considered by the Board to be the equivalent of an accredited qualification or a teaching qualification and experience considered by the Board to be suitable for registration in

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34 ‘Teaching Qualifications – Full, Provisional and Non-Practising Registration’: TRBWA Policy issued 2 December 2015.
35 Excluding Limited Authority to Teach and Limited Registration.
36 Section 16(a) stipulates the qualifications requirement while paragraph (b) stipulates the professional standards requirement.
37 Submission 12, Teacher Registration Board of WA, page 15.
38 Submission 12, Teacher Registration Board of WA, page 15.
39 This proposal is similar to the discretionary alternative to a prescribed qualification in the ACT: “the person’s education, demonstrated abilities, experience, knowledge and skills establish that the person meets the requirements for professional practice prescribed by regulation for full registration”: ACT Teacher Quality Institute Act 2010, section 32(1)(a)(ii). Tasmania has a similar alternative: “has contributed to educational practice and has the education and experience that, in the opinion of the Board are sufficient to warrant registration”: Teachers Registration Act 2000 (Tas), section 13(2)(a)(ii).
40 Currently $475: Teacher Registration (General) Regulations 2012, Schedule 1, item 2(c).
that category. A registration fee commensurate with that currently applicable to an applicant with an overseas qualification would be appropriate.41

3.3 Professional standards requirements
An additional requirement for both provisional and full registration is that an applicant “meets the professional standards approved by the Board [for provisional or full registration as the case may be] or has done so within the previous 5 years”.42 Currently an applicant otherwise eligible but unable to satisfy the professional standards is registered non-practising and permitted to commence teaching at once. We recommend above (section 3.1.4b) that this option should be abolished.

The Board is required to approve professional standards for registration purposes.43 The Board adopted the professional standards developed by the Australian Institute for Teaching and School Leadership (AITSL) with minor wording changes to recognise that, in Western Australia, teachers in early childhood services other than schools must also be registered.44 Once the Minister had approved the standards, the Board approved those at the Graduate career stage for provisional registration (Graduate Standards) and those at the Proficient career stage for full registration (Proficient Standards).45

3.3.1 Professional standards for provisional registration
Board policy is that only graduates of an accredited programme (in Australia) or a programme approved by the New Zealand Educational Council can demonstrate that they meet the Graduate Standards.46 This means therefore that, even if their qualification is equivalent to an accredited qualification, other graduates cannot qualify for provisional registration.

The Review accepts that it would be unduly onerous for the Board to be required to inquire into the knowledge and understanding of every applicant without an accredited qualification in order to determine whether the Graduate Standards have been met. According to the Teacher Registration Board, other Australian jurisdictions grant provisional registration to applicants with overseas qualifications whereas, due to the professional standards requirement in the WA Act, the Board is unable to do so.47

The Review recommends that the Graduate Standards be retained as an eligibility requirement for provisional registration (graduate teacher) but omitted for provisional registration (returning teacher) and that a graduate must have achieved the Graduate Standards within the five years preceding his or her application for provisional registration (graduate teacher).

41 Currently §443: Teacher Registration (General) Regulations 2012, Schedule 1, item 1(c).
42 Section 16(b) for provisional registration; section 15(b) for full registration. There is no professional standards requirement for non-practising registration: section 18.
43 Section 20.
44 In addition, embedded in the WA version of the Proficient Standards is a requirement that the person has taught in a WA educational venue or a school elsewhere in Australia or in New Zealand for at least 100 days in the five years immediately preceding the application: ‘Professional Standards Policy’, page 6: TRBWA Policy issued 1 December 2015 .
45 The Graduate Standards are also the touchstone for accreditation of initial teacher education programmes (as detailed in Chapter 11).
47 Submission 12, Teacher Registration Board of WA, page 16.
3.3.2 Professional standards for full registration

The Review recommends retention of a professional standards requirement for the purposes of obtaining full registration. Teaching proficiency as demonstrated by recent practice should remain the critical distinction between a person with provisional registration and one with full registration.

All other Australian jurisdictions require proficiency or competence to be established for full registration.

Four questions arise:

1. How recently must an applicant’s proficiency have been demonstrated?
2. Should the test of proficiency be one of meeting the Proficient Standards or a different set of standards?
3. Should a minimum number of days teaching practice be required?
4. How should an applicant demonstrate that he or she is proficient?

3.3.2a) Recency

Although the Act currently requires a provisionally registered teacher (absent exceptional circumstances) to transition to full registration after three years, the requirement for full registration is that the applicant meets the professional standards approved by the Board or has done so within the past five years. This timeframe disjunction will be removed if the Review’s recommendation for extending provisional registration up to five years is adopted (section 4.1.2).

The Review recommends retention of the requirement that the professional standards for full registration (either initially or on transition, but not for renewal), whatever they are ultimately established to be, must have been met within the previous five years.

3.3.2b) Which test should be adopted?

The Review acknowledges that the AITSL professional standards are accepted and adopted across all Australian States and Territories. They remain a sound reference point for teacher professional development and learning. Submissions to the Review were strongly critical, however, of the use of the Proficient Standards as the threshold test for full registration, particularly the requirement that all 37 focus areas or descriptors must be demonstrated.

The Northern Territory test requires that the applicant “is competent to teach” and “has the prescribed professional experience and currency of practice for full registration.” The competency requirements are that the applicant “is able to teach in accordance with the professional teaching standards” and “is proficient in the English language.” The experience and currency requirements are either:

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48 Section 22(3).
49 Section 15(b).
50 The Association of Independent Schools of WA argued against this: Submission 16, page 1, paragraph 7. However, we note that the Review’s proposal is that proficiency need only be established on initial application for full registration or for transition into that category. It should not have to be re-established every five years. Five years aligns with the nationally-consistent teacher registration requirements.
51 School principals and other leaders, however, will more usually reference the Highly Accomplished and Lead standards for their professional learning.
52 Teacher Registration (Northern Territory) Act, section 30.
53 Teacher Registration (Northern Territory) Regulations, regulation 5.
1) the completion within the 5 year period immediately before the application date, of at least 180 days full-time service (or the equivalent part-time service) as a principal or teacher at a school in Australia or New Zealand; or

2) the same at a place other than a school but undertaking duties that include:
   a) the delivery of an educational program designed to implement an approved curriculum; or
   b) the assessment of student participation in an educational program designed to implement an approved curriculum; or
   c) the administration, at any level, of an educational program designed to implement an approved curriculum.54

Tasmania also requires that an applicant “has demonstrated teaching competence” in order to move from provisional to full registration.55 To demonstrate teaching competence a provisionally registered teacher is required (in accordance with the Tasmanian Board’s policy) to provide:

- evidence of student learning,
- principals/supervisors comments from observation of the applicant’s learning,
- evidence of planning and assessment processes, and
- engagement in professional learning.56

i) Limitations of the AITSL standards

The use of the AITSL standards, as adapted for Western Australia, was criticised in a number of submissions.57 The Schools of Early Learning submitted that early childhood teachers’ competencies do not align fully with those set out in the professional standards.

The emphasis in early childhood education and care is on observing children’s learning and development and the processes of learning rather than on delivering content and assessing children’s assimilation of it. This means that, at best, the competencies require translation and interpretation and the support of skilful mentors and Educational Leaders who are well versed with the competencies to help teachers find evidence to demonstrate them.58

The Schools of Early Learning pointed to “a Competency Framework [modified] for use in early childhood settings [which] may provide a basis for a tool that is more relevant for educators in early education and care settings”.59

The Professional Teaching Council submitted in a similar vein:

Some of the members of PTCWA see a narrowing of the definition of teaching being imposed through the use of standards that emphasise subject disciplinary knowledge rather than a

54 Teacher Registration (Northern Territory) Regulations, regulation 6(1). The ACT also requires 180 days teaching or equivalent in the past five years: ACT Teacher Quality Institute Regulation 2010, regulation 9.
55 Teachers Registration Act 2000 (Tas), section 14(4)(c).
56 Teachers Registration Board Tasmania, Full and Provisional Registration, Board Policy, 8 March 2017, page 5.
57 The State School Teachers’ Union of WA, Submission 18 on page 7, and the Level 3 Classroom Teachers Association, Submission 3, both criticised the AITSL standards on the ground, among others, of the makeup of AITSL itself.
58 Submission 10, Schools of Early Learning.
59 Submission 10, Schools of Early Learning.
passion for learning. We note that there are other frameworks which could have been used and would be more useful, such as the Competency Framework, in which a great deal of work was invested by WA teachers.60

The State School Teachers’ Union (SSTUWA) opposed the use of the AITSL standards because “they were not intended for use in performance management and, more particularly, substandard performance processes. However, they are now being adopted as the sole professional determinant in regulating teacher registration”.61

If the Board is minded to embed AITSL standards as the sole professional benchmark then we believe that a review of the standards is necessary, given that their original purpose was not one of registration.62

Moreover,

The SSTUWA has had concerns raised from the membership that it is almost impossible for them to be properly assessed across all seven standards and all strands within those standards, particularly as graduate, relief or part time teachers in order to move from provisional to fully registered. This is particularly an issue for relief teachers, part time teachers, women returning from maternity leave and specialist teachers such as PE or instrumental teachers.63

Meredith van der Klip submitted from her own experience as a relief teacher:

... in this capacity I move from classroom to classroom delivering lessons left for me by absent classroom teachers and filling gaps as required. Occasionally I get a run of days in one classroom with the capacity to do some personal preparation and planning however it is actually impossible for me to provide evidence of competency in several of the focus areas as a relief teacher. There are certain aspects of the professional standards that I simply do not see as a relief teacher. There is a particular set of skills that proficient relief teachers demonstrate that are not taken into account in the existing standards and as stated, a number of skills that can’t possibly be demonstrated by a relief teacher.64

The Review considers that the current requirement that an applicant for full registration be able to demonstrate having met all 37 focus descriptors of all seven Proficient Standards is:

- unduly onerous;
- unnecessary to establish proficiency;
- unfair to those whose teaching context does not enable them to experience all of the different aspects as outlined in the standards whether because they teach in an early childhood service or because they are casual relief teachers or for another reason; and
- inconsistent with a recognition of the diversity of the teaching workforce.

60 Submission 20, Professional Teaching Council of WA. The Review notes in passing that “passion for learning” would be impossible to quantify, measure and assess as a registration requirement.
61 Submission 18, State School Teachers’ Union of WA, page 8.
63 Submission 18, State School Teachers’ Union of WA, page 8. See also Submission 21, Helen Dempsey.
64 Submission 4, Meredith van der Klip, page 2. See also Submission 1, L F (jigs) Bootsma.
**ii) Alternative standards**

Although the AITSL Standards were agreed to by Education Ministers throughout Australia as part of nationally consistent teacher registration requirements, a number of alternative measures of proficiency may be identified.

The 2004 Competency Framework for Teachers offers a three-stage development process and, arguably, could deliver:

- a set of minimum standards (labelled ‘Phase 1’) for full registration; and
- ready or readier contextualisation across the diversity of both school and early childhood service teaching practice.\(^{65}\)

However, the Competency Framework was not developed or designed to guide the registration process.

The Productivity Commission has adopted a set of indicators for measuring teachers’ effectiveness. Effective teachers:

- create an environment where all students are expected to learn successfully;
- have a deep understanding of the curriculum and subjects they teach;
- have a repertoire of effective teaching strategies to meet student needs;
- direct their teaching to student needs and readiness;
- provide continuous feedback to students about their learning; and
- reflect on their own practice and strive for continuous improvement.\(^{66}\)

Other measures include the AITSL Classroom Practice continuum which, instructively, divides the proficient career stage into two (level 2 and level 3),\(^{67}\) and the Gates Foundation Measures of Effective Teaching.\(^{68}\)

**iii) A separate category?**

Another suggestion in the submissions was the creation of a separate registration category for casual relief teachers with different or fewer professional standards applying.

*One way to retain those [casual relief teachers or ‘CRTs’] that are good is to recognise them as such; encourage their development in a manner that is relevant and achievable in a time frame that reflects their working hours: Develop the Standards that are achievable and directly related to the work they do, encouraging them to excel as Relief Teachers.*

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My proposal is that another level of registration is worked out with Focus Areas within the Standards that apply to and are achievable by CRTs.\textsuperscript{69}

The Review opposes setting a lower or lesser requirement for any particular class of teacher, such as casual relief teachers. Reasons include the potential for stigmatising these teachers, the incentive it would present to take on only casual relief teaching and the difficulty for the Board in monitoring who has and who has not worked solely or primarily in a casual relief role. In Chapter 4 the Review makes other recommendations to ease transition to full registration for casual relief and part-time teachers with provisional registration, including extending the time they have, in common with all provisionally registered teachers, to demonstrate their proficiency.

iv) Recommendation
It is the Board’s responsibility to develop standards for the Minister’s approval. Once standards have been so approved, the Board cannot pick and choose among them for the purposes of considering registration applications. In our view the current standards are not fit for purpose. The Review recommends that the current professional standards for determining a teacher’s proficiency be reviewed in consultation with all stakeholders, including the early childhood services sector, and taking into account the diversity of the teaching workforce, and that revised standards be submitted for the Minister’s approval.

Two principal options for reform may be considered:

1) a different set of standards, such as those set out in the 2004 Competency Framework or the Productivity Commission’s indicators;
2) a sub-set of core essential standards from among the Proficient Standards which proficient teachers in all contexts must be able to meet and implement in order to be fully registered.

3.3.2c) Minimum days teaching
The Proficient Standards currently require a minimum of 100 days’ teaching in an Australian educational venue before a person can apply to have his or her proficiency accepted by the Board.\textsuperscript{70}

The Review accepts that proficiency can only be demonstrated in practice. It is practice which distinguishes a proficient teacher (who is eligible for full registration) from a qualified teacher (who is eligible for provisional registration). The stipulation for 100 days, however, is inflexible and in excess of the agreed nationally consistent minimum of 80 days.

The Review recommends that the revised standards submitted for the Minister’s approval should not include any requirement for a minimum number of days’ teaching. This should be left to Board policy. Subject to one recommendation referred to below and explained in Chapter 4, a minimum of 80 days’ teaching in a Western Australian educational venue, or any school in another Australian State or Territory or in New Zealand,\textsuperscript{71} or a combination of these, should be the standard requirement for a teacher to be in a position to demonstrate proficiency as required for full registration.\textsuperscript{72} The Board’s policy should, however, enable it to accept fewer days teaching in

\textsuperscript{69} Submission 1, L F (Jigs) Bootsma. See also Submission 4, Meredith van der Klip; Submission 13, M.C.; Submission 15, John Calvin Schools.


\textsuperscript{71} We note that, as other jurisdictions introduce a requirement that early childhood service teachers must be registered, these services should also be recognised as Australian educational venues for this purpose.

\textsuperscript{72} The ACT legislation requires 100 days in the past 5 years, including 20 days in the past 12 months: ACT Teacher Quality Institute Regulation 2010, regulation 9. The Queensland requirement is 6 months in the past 5 years or equivalent: Education (Queensland College of Teachers) Act 2005, section 29.
situations where it considers sufficient reasons exist. In Chapter 4 we further recommend a variation to this requirement for some people transitioning from non-teaching registration, namely those whose work in school, teacher and/or student support roles is accepted by the Board, in combination with fewer days teaching, as sufficient to demonstrate their proficiency (section 4.3.2).

3.3.2d) Demonstrating proficiency
The transition from provisional to full registration should remain centred on the teacher being able to demonstrate that he or she is a proficient teacher, or proficient again in the case of a returning teacher. As recommended below (section 4.1.2), proficiency should not have to be achieved within the first three years after graduation or admission to provisional registration, although many will be ready to transition much more quickly than the proposed new maximum of five years (renewable).

3.4 Fitness and propriety requirement
The matters the Board is required to take into account when considering whether an applicant or nominee for registration is a fit and proper person are:

- the person’s compliance with the Act or a teacher registration Act in another State or Territory or New Zealand;
- any previous refusal of registration or renewal or suspension or cancellation;
- the person’s criminal history;
- any behaviour which either does not meet the standard generally expected of a teacher or shows the person is not of good character;
- whether the person has contravened an order of the Board, a disciplinary committee or the State Administrative Tribunal or similar in another jurisdiction;
- whether the person has failed to pay any costs, expenses or fines for which the person is responsible under the Act; and
- any other matters the Board considers are appropriate.

All applicants are required to consent to a criminal record check. Failure to do so will result in automatic cancellation of any registration already held unless the Board is of the opinion that there were extenuating circumstances excusing the failure.\(^{73}\)

In addition, the Board requires all applicants who have resided as an adult in a country other than Australia for a cumulative period of 12 months or more in the ten years prior to making an initial application to provide a certified copy of an overseas criminal record check from that country with their application.\(^{74}\) In 2016-17 the Board considered 1,343 criminal record checks from other countries.

3.4.1 Physical and mental fitness
The Board has interpreted the final item — “any other matters the Board considers appropriate” — as entitling it to question applicants about their mental and physical fitness to teach: “the Board may consider medical conditions and impairments as part of the fit and proper assessment”.\(^{75}\) The Board recommended that the following item be explicitly added to the list of matters it is required to take

\(^{73}\) Section 27(2)(c) and (3)(c).

\(^{74}\) An overseas criminal record check for an applicant for renewal of registration will be required if the applicant spent a cumulative period of 12 months or more in one overseas country during the current registration period.

\(^{75}\) Submission 12, Teacher Registration Board of WA, page 25.
into account: “any serious medical condition, or mental or physical impairment, that adversely affects, or is likely to adversely affect, the person’s ability to practise as a teacher”.76

The Acting Equal Opportunity Commissioner for WA drew attention to the requirements in WA’s Equal Opportunity Act 1984 for registration decisions to take account of employers’ obligations to make reasonable accommodations for teachers’ disabilities and only to refuse registration when the disability, even with a reasonable accommodation, will prevent the person from performing the inherent requirements of the position.77 The Commissioner noted the difference between the definitions of impairment in the Equal Opportunity Act and the Teacher Registration Act.78

The Review considers that the definitions of impairment in the two WA Acts should be consistent. We recommend below (section 8.1.3) that the definition in the Teacher Registration Act be replaced with that in the Equal Opportunity Act.

The State School Teachers’ Union argued that the Board must avoid breaching disability discrimination laws.79 It is possible that a “serious medical condition” may not amount to an impairment leaving open the possibility that the Board may discriminate against an applicant in a way which is inconsistent with the Equal Opportunity Act. As outlined in Chapter 8, any inconsistency between the two Acts would be justified by the overarching concern of the Teacher Registration Act for the best interests of children in schools and other educational venues. However, it is also noted there that a condition or impairment that adversely affects a person’s ability to practise as a teacher does not necessarily require that the person’s application for registration should be declined. The Board has the power to impose a condition on registration with a view to overcoming the adverse effect of that condition or impairment if possible. By seeking information about an applicant’s medical condition or impairment and then imposing a condition in an appropriate case, the Board is acting consistently with the Equal Opportunity Act. Only in the case where a person’s impairment renders the person unable to perform the work required of a teacher would the Board be justified in refusing his or her application for registration (or transition or renewal).

Moreover, a person’s physical and mental capacity to undertake a vocation or role is an essential element of a fitness and propriety assessment.80 The Board is required to be satisfied that each applicant is a fit and proper person to be registered and cannot neglect its duty to consider all elements of this matter. The term ‘fit and proper’ has a long history in English and Australian common law and the Parliament must be taken to have intended the accepted content of that term to have been incorporated into the Teacher Registration Act.

The Review therefore recommends that the following item be added to the list of fit and proper considerations in section 24: whether the person has a serious medical condition or an impairment that adversely affects, or is likely to adversely affect, the person’s ability to work as a teacher.

76 Submission 12, Teacher Registration Board of WA, page 25.
77 Submission 14, Acting Commissioner for Equal Opportunity.
78 Submission 14, Acting Commissioner for Equal Opportunity. We note that the Commissioner was commenting on the impairment review provisions in the Act rather than on fitness and propriety more generally.
79 Submission 18, State School Teachers’ Union of WA, page 11.
80 ‘Ability’ as an essential component of ‘fitness’ for an office, together with honesty and knowledge, can be traced back at least to Griesley’s Case (1588) 77 ER 530. In Teachers Registration Board v Edwards (2013) 117 SASR 246 the court concluded that ‘The [South Australian] Board in discharging its obligations is directed to give primary consideration to the welfare and best interests of children. In granting registration the Board should, in the discharge of its duty, be satisfied that an applicant has the physical ability to address the welfare and best interests of children’ (per Gray J at 259).
3.4.2 Working with Children check

The Review invited submissions as to whether holding a current Working with Children Card should be a pre-requisite for registration or a replacement for the current criminal record check. While some submissions supported changes of this kind, the Review finds that neither change is appropriate or practical. We agree with the Acting Director General of the Department of Communities that:

A significant difficulty in making a WWC Card a prerequisite to registration as a teacher is that a person cannot apply for a WWC Check unless they are or are proposed to be carrying out child-related work. In other words, they need to have at least been offered employment in child-related work before they can apply for a WWC Check.

A requirement to have a WWC Card as a prerequisite to registration could, therefore, mean that persons would be applying who are not employed, or have not been offered employment, in child-related work. This would be inconsistent with the scope and purpose of the WWC Act.

This requirement also explains why a teacher with non-practising registration will not be able to apply for, or seek to have renewed, a Working with Children Card while no longer teaching unless, of course, he or she is undertaking child-related work of a different kind.

[The Working with Children Check] is only one aspect of a holistic approach to the protection of children. The criminal record check that is completed for the purposes of a WWC Check is not a suitability or probity check and was never intended to replace those checks that should be properly conducted. For example, someone with numerous dishonesty convictions or disciplinary proceedings for inappropriate behaviour that never resulted in criminal charges is likely to be issued with a WWC Card.

While the WWC Check includes continuous criminal record checking and compliance activities, this is presently limited to Western Australia. Updates of criminal records, if they occur outside of the jurisdiction, are not routinely received. An important consideration, therefore, is the currency of the national criminal history information.

3.4.3 Nominees without checks

Currently nominees for limited registration may work in a school or early childhood service for five days without a Working with Children check, without a fitness and propriety assessment by the Teacher Registration Board and without having consented to a criminal record check.

Under the current Limited Registration provisions, a person may commence work as a teacher, after having submitted a Notice of Intention to Apply for Limited Registration, without having met Board ‘fit and proper’ requirements and without holding a Working with Children card. This is a consequence of a scheme which allows, upon application from an employer, for the

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81 Submission 18, State School Teachers’ Union of WA, page 11; Submission 19, Australian Secondary Principals’ Association and Western Australian Secondary School Executives Association. Submission 17, WA Council of State School Organisations, submitted, apparently in the alternative, that evidence of having applied for a WWCC should be required prior to registration.

82 Submission 11, Department of Communities, page 3. See also Submission 12, Teacher Registration Board of WA, page 25, which is in agreement.

83 Submission 11, Department of Communities, page 2.
immediate authorisation of teachers to commence teaching. From a child protection perspective, this is considered to represent a degree of risk.84

The Australasian Teacher Regulatory Authorities (ATRA) submitted that this situation poses an unacceptable risk to children. From a child protection perspective, this is a serious risk and ATRA would advocate that any applicant for “limited registration” should require a fitness and propriety check prior to beginning a teaching role.85

The Teacher Registration Board addressed this concern by proposing:

That a Form 1 – Notice of Intention to Apply for Limited Registration – must be accompanied by either evidence that a nominee has applied for a Working with Children card or that the nominee holds a valid Working with Children card.86

While it is an offence for an employer to employ a person in child-related work and for the employee to work in child-related work without having applied for a Working with Children Check,87 it is a defence to a charge of committing such an offence that the work was only undertaken for five days or fewer in a calendar year.88 The defence, however, cannot be relied on by everyone. For example, the five day period does not apply at all to employees in early childhood education and care services.89 Other exceptions are more complex, requiring a careful interpretation of the WWC Act, and the Acting Director General, Department of Communities, warned against relying on the five day period:

Caution should be exercised by employers or education providers in utilising the five-day period with regard to employees or students. An employer or education provider cannot be certain that an employee or student has not utilised that period with another organisation. Further, this is a defence under the WWC Act and is not an exemption. The five-day period was introduced to provide, in some cases, reasonable flexibility and allow for emergency and unforeseen circumstances.90

The Review agrees that the 2012 Act and Regulations have struck the wrong balance in respect of limited registration.91 While the category of limited registration and its requirements work well for employers suddenly facing the need for a teacher but unable to engage a qualified teacher, its flexibility and agility are achieved at the cost of putting students at risk.92 Greater protections are needed.

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84 Submission 12, Teacher Registration Board of WA, page 21.
85 Submission 7, Australasian Teacher Regulatory Authorities (ATRA), page 2, paragraph 11.
86 Submission 12, Teacher Registration Board of WA, page 22.
87 Working with Children (Criminal Record Checking) Act 2004, sections 22 and 24.
88 Working with Children (Criminal Record Checking) Act 2004, section 25(3).
90 Submission 11, Department of Communities, page 5.
91 The same is true of the current non-practising registration which allows a person to return to teaching provided only that he or she notifies the Board within 14 days. The returning teacher also avoids a criminal record check. This risk will be eliminated if the Review’s recommendation for requiring transition to another category before a teacher who previously held non-teaching registration can re-commence teaching is implemented.
92 The same may be said of non-practising registration when the registrant returns to teaching as discussed below (section 3.7). However, the Review proposes that a non-teaching registrant should be prohibited
The Review recommends that, without offending the Working with Children (Criminal Record Checking) Act 2004, the Teacher Registration Board considers requiring at least one of the following with a notice of intention to apply for limited registration:

- the nominee’s Working with Children application receipt number and date;
- a declaration by the nominee that he or she has not been issued with a negative notice, or an interim negative notice which has not been withdrawn, in Western Australia or any other jurisdiction;
- a full fit and proper declaration by the nominee such as is currently required in each registration application;
- the nominee’s consent under section 44 for the Board to obtain a criminal record check;
- the employer’s declaration that a fit and proper assessment has been undertaken in respect of the nominee.

3.5 English language requirements

The English language criteria for full and provisional registration generally require satisfactory achievement on the International English Language System (Academic) test or the Professional English Assessment for Teachers (PEAT) test, or by having undertaken their teacher training in named English-speaking countries.93

Alternatively, the Board may register an applicant who does not satisfy those requirements where exceptional circumstances exist and the applicant’s written and oral English language skills are suitable.

_The exceptional circumstances provision is intended to address circumstances where to require a person to undertake a formal test of English proficiency would be unreasonable having regard to the applicant’s [or nominee’s] native, near native or fluent level of English_.94

The Board’s ‘exceptional circumstances’ policy requires evidence of proficiency such as an earlier test result, evidence of studies in English, references and, if considered necessary, an interview.95

A nominee for limited registration may also be registered despite not meeting the same requirements if registration is sought for the person to teach a language other than English (LOTE) or an indigenous language.96 The LOTE nominee must have taken a language test within the past two years and may be registered despite not having achieved results at the prescribed standard. The indigenous language teacher must be an Aboriginal or Torres Strait Islander person whose proposed employer is satisfied that his or her English language skills are suitable for the position.

The Teacher Registration Board pointed out that one of the prescribed tests (PEAT) is now no longer available.97 The Review is aware that other jurisdictions use a test which the Board is prevented from relying on. We note, too, that other tests may be developed over time and grading criteria in existing...
tests may be revised. The Review recommends that neither named English language tests nor stipulated results should be prescribed. Instead, both the acceptable tests and the required minimum grades should be left to be determined by Board policy.\textsuperscript{98} We agree that a higher standard of English than the minimum requirement for living and working in Australia should be required for teachers.\textsuperscript{99} We note that, should a future Board unacceptably reduce English language expectations, the Minister has a power to direct the Board to revise its policy.\textsuperscript{100}

There is one area of current Board policy which, in the opinion of the Review, does need correction. This is the denial to nominees for limited registration under regulation 12(2)(c) of the exemption from having to take a test despite having developed the expertise or skill they rely on for registration in an English-speaking country. The Board limits this exemption to people with a higher education qualification whereas it was intended to benefit anyone who “undertaken all of the components of a requirement under regulation 12(2) in English” in one of the named countries.\textsuperscript{101} The Review recommends that the applicable regulation be amended to more clearly express the intention that all limited registration nominees whose relevant qualification, expertise or skill was undertaken or developed entirely in English in an English-speaking country as listed should be entitled to benefit.

3.6 Additional requirements for limited registration

The applicant for limited registration is not the teacher but the employer who has made the offer of employment referred to in section 17(a); the teacher is called a ‘nominee’.

One employer submitted that the employer should not have to be the applicant and should not be responsible for the registration fee.

\[\ldots\] the responsibility of application and the cost of the registration fee should not be borne by the employer. Consistent with the overarching principle that a Teacher is individually responsible for establishing and maintaining their registration with the Board, they should be responsible for the application and bear the cost, regardless of the type of registration.\textsuperscript{102}

The Association of Independent Schools (AISWA), on the other hand, representing employers in the Independent school sector, supported the status quo, and further noted that “Independent Schools report little difficulty or confusion around this category of registration”.\textsuperscript{103}

The Review considers no change is needed in this respect. Employers are expected, where possible, to engage fully qualified teachers. The requirement that the employer both apply for limited registration and pay the applicable fee operates as a brake on the flouting of this fundamental principle. It also operates to commit the employer to limiting the educational venue(s) and teaching

\textsuperscript{98} This proposal mirrors the position in Tasmania: an applicant “in the opinion of the Board, is sufficiently proficient in the English language”: Teachers Registration Act 2000 (Tas), section 13(2)(d). The ACT Regulation stipulates the IELTS test and nominated minimum results but also enables the Institute to accept a proficiency test and results it is satisfied are equivalent: ACT Teacher Quality Institute Regulation 2010, regulation 10. Although the three tests are listed for the Northern Territory, the minimum scores are not: Teacher Registration (Northern Territory) Regulations, regulation 5.

\textsuperscript{99} Submission 19, Australian Secondary Principals’ Association and WA Secondary School Executives Association; Submission 20, Professional Teaching Council of WA.

\textsuperscript{100} Teacher Registration Act 2012 (WA), section 93.

\textsuperscript{101} Teacher Registration (General) Regulations 2012, regulation 11(3).

\textsuperscript{102} Submission 23, Acting Executive Director, Catholic Education WA. The employer is also the applicant in the Northern Territory: Teacher Registration (Northern Territory) Act, section 41.

\textsuperscript{103} Submission 16, Association of Independent Schools of WA, page 1, paragraph 8.
duties of the nominee to those applied for. The Review recommends that no change be made to the requirement that the applicant for limited registration is the employer.

The employer must submit a Notice of Intention to Apply for Limited Registration and then make the application within five days. Once the application is submitted, registration is deemed to have been granted on the date of the notice. This means that the nominee may commence teaching on the date the notice is submitted and before an application for registration has been made. The objective of this arrangement was to enable employers to respond to unforeseen staffing needs promptly. However, the teacher is not registered during the first five days and his or her name does not appear on the register.

As the Teacher Registration Board’s submission outlined, the current provision is inconsistent with the section 6 and 7 requirements that a person is not to teach and not to be permitted to teach without registration. The Review supports the Board’s proposal that the Act be amended to deem registration as soon as a notice of intention is received.

Under this alternative approach, a person is deemed to be registered once a Notice of Intention to apply is lodged. The applicant then has a period ... within which to lodge the full application. Failure to lodge the application within this timeframe may lead to the cessation of the deemed registration. When an application is lodged within this timeframe, registration is deemed to continue until a decision is made on the application.

The concern that a nominee for limited registration may commence teaching as from the date of the employer’s notice to the Board without having any fitness and propriety checks completed has been addressed above in the wider context of fitness and propriety (section 3.4.3). If the Notice of Intention to Apply is amended as proposed to give some assurance of the nominee’s fitness and propriety from the outset, it would be safe to permit a longer lead time between submission of the Notice and submission of an application. A delay of 14 calendar days or 10 business days would be fairer to employers in regional and remote areas with less reliable internet and slower postal services.

The Review recommends that a nominee in respect of whom the Board has received a Notice of Intention to Apply for Limited Registration should be deemed to be registered from the date the Notice is submitted. We note that this change should effectively address any employer policies which require all teachers to be registered from the date of commencement.

We recommend, further, that failure on the part of the applicant employer to submit an application within 14 days of the Notice should result in automatic expiry of the registration.

As to the form of the notice itself, the current Form 1 on which the notice must be submitted is the only form whose format and content are dictated by the Regulations. Section 23(3)(a) requires the form to be prescribed. The Teacher Registration Board argued for being allowed to develop its own form. As all other forms are as ‘approved by the Board’ itself, and as there is no sound...
reason for this form to be treated differently, the Review recommends that section 23(3)(a) of the Act be amended to require the Notice of Intentional to Apply to be submitted in writing ‘in the form approved by the Board’ and that Form 1 be deleted from the Teacher Registration (General) Regulations 2012.

3.7 Additional requirements for non-practising registration

It is a condition of non-practising category that the teacher must notify the Board within 14 days if he or she returns to teaching.109 Concerns have arisen as to the lack of a fit and proper assessment for such a person before he or she returns to the classroom or indeed at any time until the teacher is required to transition to another registration category (currently within two years). The Teacher Registration Board addressed this concern by proposing:

That teachers holding Non-Practising Registration, who wished to return to teaching, would be required to apply to return – and would be subject to ‘a fit and proper’ assessment.110

If the Review’s recommendation for abolishing non-practising registration for those intending to teach or returning to teaching is not adopted, this gap will need to be addressed. However, the Review’s strong preference is that a non-practising (or non-teaching as proposed) registrant wishing to return to teaching will need to apply for and obtain either full or provisional registration before commencing to teach. If this recommendation is adopted then the risk to children will be mitigated by the Board’s fitness and propriety assessment being undertaken before the registration is granted.

In order to give force to the Review’s recommendation regarding non-teaching registration it will be necessary for the Act (or regulations) to impose a condition on all those holding non-teaching registration to the effect that they are not permitted to teach. This will not prevent such a person from holding a paid position in a school or early childhood service other than teaching as defined in the Act, for example, as an educator other than the teacher in a service or as an education assistant in a school. However, anyone holding non-teaching registration who teaches in contravention of the proposed condition will be committing an offence.111

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109 Teacher Registration (General) Regulations 2012, regulation 16.
110 Submission 12, Teacher Registration Board of WA, page 20.
111 Section 8.
Chapter 4 – Renewal and transition

4.1 Duration of registration

4.1.1 Duration of full registration

Full registration is currently always for five years from the day it is granted or renewed.\(^1\) The Teacher Registration Board argued for a discretion to grant a shorter period as occasion requires.

> It is considered that there may be some situations, where such a discretion may be appropriate, and the proposed approach would align with the legislative discretion afforded in respect of the duration of the other categories of registration.

One such example is in respect of renewal of Full Registration. In cases where an applicant may ... be unable to demonstrate the requirements for renewal, the Board may determine that it is fair and reasonable to grant renewal, albeit for a shortened period, to allow the applicant additional time to fully demonstrate the requirements. Under the current legislative framework, this would not be possible, and should the Board decide to renew registration, it is legislatively obliged to renew for the full five year period.\(^2\)

The Review recommends this change as a reasonable adjustment which will principally operate to the advantage of applicants for renewal. Full registration should be for five years or such shorter period as is approved by the Board.

4.1.2 Duration of provisional registration

 Provisional registration is currently for three years, or such shorter period as is approved by the Board, from the day it is granted or renewed.\(^3\) The three-year period, coupled with the fact that provisional registration is generally non-renewable, has caused significant problems for many teachers with provisional registration and for their mentors and school leaders, particularly in the case of teachers working casually and/or part-time. The State School Teachers' Union recommended:

> That the Teacher Registration Act be amended to provide for a period greater than three years for a graduate teacher to move from provisional to full registration where the graduate teacher has not been in full time teaching employment.\(^4\)

The Schools of Early Learning submitted that a teacher qualification inadequately prepares teachers for the early childhood setting. As a result, graduates in this sector take longer to establish proficiency than those in the school setting.

> New graduates are, despite their university qualification and practicum experience, challenged by early education and care settings where learning occurs in everything the children are doing: from arrival to departure and through care routines, play-based learning and intentional teaching situations. Our experience is that it takes approximately two years for a teacher to understand the early education and care setting and requirements, leaving them only one more year to demonstrate proficiency in our contexts in order to achieve Full Registration.\(^5\)

\(^1\) Section 23(1).

\(^2\) Submission 12, Teacher Registration Board of WA, page 28.

\(^3\) Section 23(2).


\(^5\) Submission 10, Schools of Early Learning.
The Schools of Early Learning called for the extension of the time permitted to provisionally registered teachers to achieve full registration from three years to four years. Provisionally registered teachers have four years to transition in the Northern Territory, with the possibility of a once-only extension of two years. In Queensland a provisionally registered teacher has two years to transition with the possibility of one two-year extension. In Tasmania full and provisional registration may both be granted for up to five years.

The Review recommends that the duration of provisional registration should be the same as for full registration: five years or such shorter period as is approved by the Board.

4.1.3 Duration of limited registration
Limited registration is for a maximum of three years which is generally taken to commence on the date on which the Notice of Intention to Apply was submitted. No change to duration is proposed for limited registration.

4.1.4 Duration of non-teaching registration
Non-practising registration commences on the day it is granted and continues indefinitely unless the person commences teaching. If the person does commence teaching, the period of non-practising registration ends on the second anniversary of the day they commenced, or on a later day approved by the Board because of exceptional circumstances. The person may continue teaching after that date if granted full or provisional registration.

Both the Teacher Registration Board and the Director General of Education proposed that the time to transition for a non-practising teacher should be as long as for a provisionally registered teacher. As the Review recommends above (section 3.1.4b) that teachers with non-practising registration (or ‘non-teaching’ as proposed) should be prohibited from teaching at all, there is no need for any provision stipulating the time in which they must achieve an appropriate teaching registration category. Returning teachers will apply first for either provisional or full registration and the same transition and renewal requirements will apply to them as to others, including that they will have five years’ registration or such shorter period as is approved by the Board.

4.2 Renewal of registration
Section 22 stipulates that:

- a renewal application must be made at least 28 days before expiry of the current period of registration;

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6 Submission 10, Schools of Early Learning.
7 Teacher Registration (Northern Territory) Act, sections 36 and 39; Teacher Registration (Northern Territory) Regulations, regulation 7(2).
8 Education (Queensland College of Teachers) Act 2005, sections 34 and 35.
9 Teachers Registration Act 2000 (Tas), section 16.
10 Section 23(2) and (3).
11 The current maximum duration for limited registration in WA is more generous than in some other States: up to one calendar year is the limit in the Northern Territory; up to two years is the maximum in Queensland and Tasmania.
12 Teacher Registration (General) Regulations 2012, regulation 16.
13 Teacher Registration (General) Regulations 2012, regulation 15.
14 Submission 12, Teacher Registration Board of WA, page 16; Submission 24, Director General, Department of Education, page 1.
the Board may renew the registration if it is satisfied that: the teacher still meets the eligibility requirements for the relevant category; the teacher is complying with any conditions on registration; and the teacher has met any relevant prescribed requirements; however, provisional registration may only be renewed if, in the opinion of the Board, there are exceptional circumstances.

The prescribed renewal requirements relate to minimum professional engagement (i.e. working as a teacher) and professional learning (i.e. professional development) activities. The requirement for each is expressed as an at-least-amount: working days for professional engagement and hours for professional learning activities.15

4.2.1 28 day rule
Provided an application for renewal of registration is submitted at least 28 days before the expiry of the current period, registration will continue until the Board makes a decision on the application.16 If this is not done, the applicant risks the expiry of his or her registration if the Board cannot make its decision within the shortened timeframe.17

The Professional Teaching Council drew one issue with the timeframe to the attention of the Review.

The system assumes that all schools and workplaces are connected to the internet, that the speed of the connection will accommodate a web site or that forms can be completed in limited time. Teachers report slow connections, emails that do not work, the small capacity of email inboxes meaning teachers do not receive notifications. One day out of the Re-registration processes results in instant dismissal.18

Despite these difficulties, the Review considers that teachers are reasonably expected to be continuously documenting their professional engagement days and professional learning hours throughout their current period of registration, receive reminders 6 months, 3 months and 6 weeks before their renewal application is due and have ample time to submit their renewal application. The Board’s reliance on online applications, nevertheless, may be relaxed to ensure that all teachers can complete their applications in a timely manner regardless of remoteness, slow internet speeds, hospitalisation and other reasons.

4.2.2 Continues to meet eligibility requirements
Currently section 22(2)(a) of the Act requires the Board to be satisfied that an applicant for renewal still has an accredited or equivalent qualification, still meets the relevant professional standards and still has the required English language skills. These requirements should not need to be established again by a teacher whose provisional or full registration has been ongoing. The professional learning and professional engagement (teaching) requirements serve to maintain professional currency and proficiency.

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15 Teacher Registration (General) Regulations 2012, regulation 13.
16 Section 22(1) and 23(5).
17 Section 23(4)(a).
18 Submission 20, Professional Teaching Council of WA.
The Review recommends that section 22(2)(a) of the Act be amended to require only that the Board may renew registration if satisfied that the teacher continues to be a fit and proper person to be a registered teacher in addition to the matters at paragraphs (b) and (c).19

This means that there is no need for either a declaration or, as proposed by the Director General of Education,20 principal’s confirmation that the teacher continues to meet the professional standards for full registration at every renewal.

We note that this recommendation appears to be consistent with the situation prevailing in other jurisdictions:

Most ATRA [Australasian Teacher Regulatory Authorities] members have similar requirements for the renewal of FR [full registration]. These include:

- professional engagement (i.e. days working as a teacher)
- professional learning (i.e. hours of professional learning activities related to the APST [Australian Professional Standards for Teachers])
- regular fitness and propriety clearances.21

4.2.3 Professional engagement

The professional engagement requirement for renewal of full registration is at least 100 full working days (or equivalent) over the five-year registration period; for provisional and limited registration it is at least 60 days or equivalent over a three year registration period or pro-rated if the period is shorter.22

The professional engagement requirement was particularly criticised on the grounds that:

- part-time and casual relief teachers have more difficulty satisfying the requirement, particularly those in remote and isolated locations;23 and
- the Board has no discretion to accept reduced professional engagement days.

In our situation female teachers generally take time out when they start a family, they do not want to maintain a regular teaching commitment but they are happy to be available for relief teaching. Maintaining the minimum hours required to keep up their registration is quite difficult and, as a result, they are inclined to drop their registration, and we then can’t continue to use them for relief purposes. We accept that a minimum number of hours needs to be maintained but would be happy to see that minimum number halved in order to be able to retain the services of teachers who only want to be available for relief teaching purposes.24

I did ask for extenuating circumstances in the renewal process in 2016, which included the reasons of two Maternity Leaves and the death of my father after [a battle with cancer], and living remotely and a lack of availability of teaching hours [in an extremely isolated location]. Extenuating Circumstances could not be considered because I had not obtained enough teaching hours.

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19 Paragraph (b) requires that the teacher is complying with any conditions of registration; paragraph (c) requires that the teacher meets any other renewal requirements prescribed. The prescribed requirements relate to professional engagement and professional learning.
20 Submission 24, Director General, Department of Education, page 1.
21 Submission 7, Australasian Teacher Regulatory Authorities (ATRA), page 2, paragraphs 14-15.
22 Teacher Registration (General) Regulations 2012, regulation 13.
23 Submission 13, M.C.
24 Submission 15, John Calvin Schools.
While I had not met the hours of teaching in those 5 years, the amount of time I have provided to the school and community as a volunteer, at the school (which benefits the school and my children at the school), actively participating on the P&C committee and the School Council and leading our Playgroup as President, would far outweigh the amount of time required for Registration.25

Having to meet the requirement therefore of 100 hours of professional learning and 100 days of professional engagement over five years for a relief teacher is difficult. ... The SSTUWA believes that a pro rata time period for professional development and professional engagement be applied for relief teachers when renewing their registration.26

The Board currently has no flexibility to accept fewer teaching days in extenuating circumstances.

The Review makes the following recommendations for the alleviation of these concerns:

1. The same discretion as enables the Board to accept fewer professional learning hours should also enable it to accept fewer professional engagement days.

2. That discretion should be expressed as requiring only sufficient reasons in the opinion of the Board.27

Teaching overseas is not counted towards the minimum number of days teaching per calendar year, regardless of teaching context, such as teaching at an international school. Whilst there may be a different curriculum, many other aspects of the AITSL Standards are still addressed in these diverse teaching situations.28

By virtue of the roles undertaken by teachers and school leaders who are appointed or elected as union organisers or senior officers, their positions directly influence teaching practice and therefore student learning in classroom situations.

Teacher unionists continue to undertake professional development during their employment with the SSTUWA which has direct connections to their work as a teacher, and as such, should be able to count towards their professional development and professional engagement as part of their registration.29

The Review recommends below (section 4.3.2) that the Board should consider taking educational involvement other than teaching as defined in the Act into account when considering whether a person has met the professional standards for full registration, including perhaps educational research, lecturing in an accredited initial teacher education programme, school teaching overseas, consulting or advising in schools and others. Nothing in the legislation prevents this.

For renewal of registration, however, a minimum engagement in teaching in Western Australia as defined in the Act, as well as professional learning, are essential in our view.

25 Submission 13, M.C.
26 Submission 18, State School Teachers’ Union of WA, page 13. See also Submission 4, Meredith van der Klip.
27 As recommended by the Teacher Registration Board of WA, Submission 12, page 30. See also Submission 7, Maria Doolan.
28 Submission 21, Helen Dempsey.
29 Submission 18, State School Teachers’ Union of WA, pages 5-6.
4.2.4 Professional learning

The professional learning requirement for renewal of full registration is at least 100 hours over five years. For renewal of provisional or limited registration it is at least 60 hours over a three year registration period, or pro-rated if the period was shorter. The professional learning requirement was criticised on a number of grounds:

- part-time and casual relief teachers are disadvantaged financially and have reduced access to school-based professional development;
- the quality of professional learning provision is not always high and availability is patchy; and
- teachers in rural and remote areas face particular difficulties in accessing professional learning.

In reviewing the submissions quoted below it is important to appreciate that the Board’s professional learning policy does not require all learning hours to be spent in courses paid for by the teacher himself or herself. The policy requires:

- “a roughly balanced range of learning activities across all three Domains of the Professional Standards” [i.e. Professional Knowledge, Professional Practice and Professional Engagement];
- “both formal and informal learning activities”; and
- both formal and informal activities in each Domain.

Formal activities include school-based professional development activities, workshops and courses. Informal activities include professional reading and meetings.

4.2.4a) Extenuating circumstances

An applicant who cannot demonstrate the required number of hours of professional learning may request the Board to consider ‘extenuating circumstances’. This enables the Board to take into account mitigating circumstances which genuinely justify a failure to comply in full with a requirement. Despite the availability of this exception, submissions argued that the legislation should not require a casual relief or part-time teacher to undertake the same number of hours as a permanent full-time teacher.

One hundred hours [of professional learning over five years] is the equivalent of approximately 17 full time work days. My full time colleagues are paid to complete their 20 hours of PD per year. Some is completed during staff development days while the remainder is covered through PD opportunities often run during the course of the working week. Attendance for these courses is generally paid for by the school and relief is obviously provided so that they can attend. Part time teachers occasionally land some professional development on the days they are paid to

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30 The same requirement applies elsewhere in Australia. See for example, Education (Queensland College of Teachers) Act 2005, section 29; Teacher Accreditation Regulation 2015 (NSW), regulation 5.
31 Submission 4, Meredith van der Klip. See also Submission 16, Association of Independent Schools of WA, page 2, paragraph 11.
32 Submission 5, Michael Armstrong; Submission 20, Professional Teaching Council of WA.
33 Submission 13, M.C.
35 Id, page 2.
36 Regulation 13(5).
37 Extenuating circumstances are reasonably unforeseeable mitigating factors: ‘Consideration of Extenuating and Exceptional Circumstances for Registration Policy’, TRBWA Policy issued 6 August 2015.
work and must supplement the remainder at their own time and expense. Relief teachers, such as myself, must complete all professional development in their own time and at their own expense. I have been invited by the school where I do all my relief teaching to attend their professional development days, for which I am grateful, but I do so in unpaid capacity. As stated, 100 hours represents approximately 17 full time work days. At my current rate of pay (top tier of level two teaching) that amounts to almost $7,000 that I can’t earn because I am volunteering my time to gain PD hours, in addition to costs incurred for attending training. Twenty hours of on-going PD per year amounts to 3.5 working days ($1,400 in income.) My question is whether the TRB again can develop a tier of registration for relief staff with a reduced Professional Development requirement to address the inequity issue. A level of professional development to keep abreast of current policy and terminology and specific school programs is an absolute requirement. Another solution is to make PD requirements on a pro rata basis for part time staff. The current requirements of the TRB are inequitable and untenable.38

The SSTUWA pointed out the potential for unlawful discrimination in the current arrangements:

The SSTUWA believes that it is highly inappropriate for a teacher on parental leave or other approved leave to have to apply to the TRBWA for “extenuating circumstances” in relation to their renewal.

This could also be characterised as discriminatory given that a significant number of extended leave applications are on the basis of child rearing.39

The Review recommends that the extenuating circumstances exception should be amended to enable the Board to exercise more discretion, not only in the case of part-time and casual relief teachers but also for those who took leave due to parenting, illness or family responsibilities. The exception should enable the Board to accept reasons which are sufficient in its opinion.

An argument was made for more flexibility in the accounting for each of professional learning (20 hours per year) and professional engagement (20 days per year), particularly in consideration of the situation of casual relief teachers whose professional learning is typically self-funded and possibly done during hours they could otherwise be earning both professional engagement hours and wages.40 The desired flexibility could involve a degree of ‘cross-counting’ whereby some professional engagement days can be counted towards professional learning hours. The Review considers that this would be very cumbersome for the Board to administer. It is, however, entirely up to the Board what it requires by way of professional learning41 and such an approach may be considered in future. What would not be possible without amendments to the regulations is the adoption of a provision along the lines of that applicable in Queensland where the professional learning obligation does not apply at all in any year when professional engagement has been under the minimum (pro-rated) 20 days.42 We consider that emulating this provision would go a considerable distance towards redressing the unfairness currently experienced by casual relief teachers and others.

38 Submission 4, Meredith van der Klip. See also Submission 7, Maria Doolan; Submission 18, State School Teachers’ Union of WA, page 13.
40 Submission 7, Maria Doolan; Submission 18, State School Teachers’ Union of WA, page 13.
41 Teacher Registration (General) Regulations 2012, regulation 9.
42 Queensland College of Teachers, Continuing Professional Development (CPD) Requirements, made under section 29(2)(d) of the Education (Queensland College of Teachers) Act 2005.
The Review recommends that there should be no requirement to undertake professional learning in any year in which professional engagement was less than 20 days (or equivalent worked part-time). In calculating the reduced professional learning requirement at renewal, the obligation should be taken to be 20 hours per year in which the applicant taught for at least 20 days and zero hours per year in which the applicant taught for fewer days.

4.2.4b) Deemed currency of professional learning

The Review does not agree with the State School Teachers’ Union’s proposal for putting the professional engagement and learning requirements ‘on hold’ indefinitely while a registered teacher is on parental or other approved leave.43 Non-teaching registration during the period of leave is readily available and, if the Review’s proposals are adopted, provisional registration will be granted on return to teaching provided their continuing fitness and propriety and English language skills are established.

All regulated professions are required by their registration bodies to maintain and update professional knowledge by participating in professional learning.44 No argument was put to the Review as to why members of the teaching profession should be exempt from the obligation to maintain and update professional knowledge.45

The question remains how professional learning at the required rate and of the required type should be demonstrated.

Some submissions supported reliance on school-based performance management processes to satisfy professional learning requirements.

If we are to be treated as the professionals we are, surely this process [renewal] could be handled at a school level where professional growth can be measured through our Performance Management.46

At least three concerns oppose this suggestion: (1) the school-based process has a different purpose (employment-related) from that of the Board (registration-related); (2) it would not be possible to achieve fair and reasonable consistency across school-based processes; and (3) some, perhaps most, casual relief teachers and early childhood service teachers would not have access to a school-based process. On the other hand, it is clear that an employer, as part of performance management, should

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43 Submission 18, State School Teachers’ Union of WA, page 13. We note that the NSW legislation permits a leave of absence from between six months and five years and suspension of the period in which the person is required to satisfy conditions for continuing accreditation: Teacher Accreditation Act 2004 (NSW), section 24D. This is similar to WA’s non-practising registration.

44 An architect’s name may be removed from the register if he or she “has not practiced architecture in the preceding period of 5 years and has not maintained current knowledge and skills in architecture at a level considered by the Board to be satisfactory”: Architects Act 2004, section 49(1). Doctors, nurses and other health professionals are required to undertake profession-specific continuing professional development: Health Practitioner Regulation National Law (WA) Act 2010, section 128. Local legal practitioners require 10 continuing professional development points to be earned annually in accordance with the Legal Profession Rules 2009, rule 13B.

45 We note that engagement in professional learning at the rate of 20 hours per annum has been agreed to by all State and Territory Education Ministers as part of nationally-agreed teacher registration requirements.

46 Submission 5, Michael Armstrong. See also Submission 3, Level 3 Classroom Teacher Association; Submission 4, Meredith van der Klip.
work with the teacher to support his or her professional learning, including for the purposes of obtaining renewal of registration in due course.

### 4.2.5 Restriction on renewal of provisional registration

A key criticism of the current legislative arrangements for provisional registration was the difficulty of renewing this category of registration at all. Section 22(3) stipulates that the Board may renew provisional registration only if, in its opinion, exceptional circumstances exist. The expectation is that, within three years of registration, these teachers must be in a position to establish that they meet the Proficient Standards.

The restriction on renewal was considered by the Teacher Registration Board to be one factor in a significant increase in teachers moving to full registration under the Board than was the case under its predecessor, the Western Australian College of Teaching.

Substantially more teachers (that is, 41% more) had successfully become fully registered in the most recent period [provisionally registered in 2013; registration category in 2016] compared to the previous period [progress from 2009-12].

At the same time, attrition of newly-registered teachers did not change (18% in the earlier period; 17% in the later). Table 4.1 shows that the majority, but by no means all, of provisionally registered teachers who apply for renewal are successful.

**Table 4.1 – Requests and approvals for renewal of provisional registration by year**

<table>
<thead>
<tr>
<th>Year</th>
<th>Request for renewal</th>
<th>Renewal approved</th>
<th>Percent successful</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>369</td>
<td>351</td>
<td>95.1%</td>
</tr>
<tr>
<td>2016</td>
<td>58</td>
<td>47</td>
<td>81%</td>
</tr>
<tr>
<td>2017</td>
<td>74</td>
<td>72</td>
<td>97.3%</td>
</tr>
</tbody>
</table>

Table 4.2 shows future pathways for provisionally registered teachers whose registration expired in the three years 2015-2017. Over that period only just over half of provisionally registered teachers transitioned to full registration within three years. A significant proportion in each year transitioned to non-practising registration which currently permits them to continue teaching but will not do so if the Review’s recommendations are adopted. As shown in Table 4.3, an even higher proportion, over one-fifth in those three years, left the profession, principally by allowing their registration to lapse.

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47 Submission 12, Teacher Registration Board of WA, page 13. Other factors mentioned were employer and teacher awareness of requirements, employer efforts to support transition, the perception that full registration affects career progression and the profession’s acceptance of the professional standards.

48 Submission 12, Teacher Registration Board of WA, page 13.

49 Data provided by the Director, Teacher Registration at the request of the Review.
Table 4.2 – Expiring provisional registration by path and year

<table>
<thead>
<tr>
<th>Year</th>
<th>Total expiring</th>
<th>Transition to full registration</th>
<th>Renewal of provisional registration</th>
<th>Transition to non-practising registration</th>
<th>Registration cancelled or lapsed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>2015</td>
<td>5,098</td>
<td>59.4%</td>
<td>3,086</td>
<td>351</td>
<td>629</td>
</tr>
<tr>
<td>2016</td>
<td>2,072</td>
<td>41.5%</td>
<td>859</td>
<td>47</td>
<td>511</td>
</tr>
<tr>
<td>2017</td>
<td>2,176</td>
<td>68.9%</td>
<td>1,499</td>
<td>72</td>
<td>227</td>
</tr>
<tr>
<td>Total</td>
<td>9,446</td>
<td>57.6%</td>
<td>5,444</td>
<td>470</td>
<td>1,367</td>
</tr>
</tbody>
</table>

Table 4.3 – Provisional registrations cancelled or lapsed by year

<table>
<thead>
<tr>
<th></th>
<th>Lapsed</th>
<th>Cancelled at request of teacher</th>
<th>Cancelled for fee arrears</th>
<th>Cancelled for negative notice</th>
<th>Cancelled on death of teacher</th>
<th>Total cancelled or lapsed</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>720</td>
<td>77</td>
<td>332</td>
<td>3</td>
<td>1,132</td>
<td></td>
</tr>
<tr>
<td>2016</td>
<td>410</td>
<td>43</td>
<td>200</td>
<td>1</td>
<td>655</td>
<td></td>
</tr>
<tr>
<td>2017</td>
<td>171</td>
<td>49</td>
<td>154</td>
<td>2</td>
<td>378</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>1,301</td>
<td>169</td>
<td>686</td>
<td>3</td>
<td>2,165</td>
<td></td>
</tr>
</tbody>
</table>

Consideration of exceptional circumstances in favour of renewing provisional registration enables the Board to alleviate, or mitigate, unforeseen or unconventional hardship in an individual case. However,

The circumstances CRTs [Casual Relief Teachers] find themselves in are neither “exceptional” nor “extenuating”.

A registration scheme which seeks to impose a requirement that all teachers should, within a minimum period of time, teach a minimum number of days and should meet a set of professional standards higher than that required for entry into the profession, is somewhat problematic – not least because if fails to acknowledge the diverse nature of the teaching workforce and the different modes under which teachers are employed.

The Review recommends that the exceptional circumstances exception should be amended to enable the Board to renew provisional registration if it is of the opinion that there are sufficient reasons for doing so.

4.3 Transition between categories of registration

Transition to a different category of registration is not recognised in the Act despite the intention that it would be treated as a type of renewal. ‘Renewal’ itself is not defined. The Board, on advice, interprets the Act to limit ‘renewal’ to re-registration in the same category. As a result, applicants for transition cannot benefit from the ‘28 day rule’ which states that, provided an application is

50 Data provided by the Director, Teacher Registration at the request of the Review.
51 Data provided by the Director, Teacher Registration at the request of the Review.
52 Exceptional circumstances are “particularly unusual or not typical and only likely to happen very infrequently”: 'Consideration of Extenuating and Exceptional Circumstances for Registration Policy', TRBWA Policy issued 6 August 2015.
53 Submission 1, L F (Jigs) Bootsma. See also Submission 21, Helen Dempsey, page 2.
54 Submission 12, Teacher Registration Board of WA, page 14.
submitted at least 28 days before the expiry of the current registration period, registration will continue until the Board determines the application.\textsuperscript{55}

One solution may be to define renewal as including transition between categories. The Review does not support such a change, principally because different requirements, assessments and fees already apply and, if the Review’s recommendations are adopted, there will be even more significant differences. The Review therefore recommends that a new application type – transition to a different category of registration – should be created and the ‘28 day rule’ extended to applicants for transition. Both ‘transition’ and ‘renewal’ should be defined in the Act.

4.3.1 Transition from provisional to full registration

The fundamental requirement for a teacher to move from provisional to full registration currently is to demonstrate he or she satisfies the Proficient Standards. In most cases he or she must do so within three years under the current Act.\textsuperscript{56}

... those Casual Relief Teachers who enjoy their work and want to continue working across a variety of schools with a variety of students at different levels on a day to day basis are unable to honestly meet all of the standards prescribed by the TRB [Teacher Registration Board] at the Proficient Level. This in effect means that a graduate’s teaching life as a relief is limited to three years.

... CRTs by the nature of the work they undertake do NOT have access to a mentor or “appropriate person”.

... The TRB... enables applicants to provide, independently of a workplace, evidence of meeting the standards. This process is difficult in that a very “long bow” must be drawn to even touch on some of the standards if you are a CRT.

... We do not generally, other than in a session by session basis; design or implement plans that are our own; we do not plan programmes; we are not in a position to track student achievement; we do not have access to feedback; nor to student assessment data; it is rare for us to be in contact with parents/carers; we do not assess student learning; we do not have opportunities to participate in moderation; and, we do not write reports.\textsuperscript{57}

The Review does not agree with submissions which proposed the creation of a separate category of relief registration\textsuperscript{58} or those which argued for the legislation to stipulate different requirements for casual relief teachers moving to full registration.\textsuperscript{59} However, our recommendations for a five year (maximum) duration for provisional registration (section 4.1.2) and for making renewal easier (section 4.2.5) will support casual relief and part-time teachers to be able to demonstrate their proficiency in time. Moreover, revised professional standards for proficiency regardless of teaching context should also make full registration more achievable (section 3.3.2b).

\textsuperscript{55} Section 23(5).
\textsuperscript{56} Section 22(2) and (3).
\textsuperscript{57} Submission 1, L F (jigs) Bootsma. Submission 4, Meredith van der Klip, also made this final point.
\textsuperscript{58} Submission 4, Meredith van der Klip; Submission 13, MC; Submission 15, John Calvin Schools.
\textsuperscript{59} Submission 7, Maria Doolan.
Currency of knowledge, skills, experience and practice across a common range of standards is the critical difference between being registered provisionally or non-practising (or ‘non-teaching’ as proposed) and being fully registered. The challenge is to determine an appropriate measure of proficiency for full registration and to enable an applicant to demonstrate this in a way which contributes to his or her classroom practice, professional development and future employment prospects without preventing or hindering any of these.

The current method whereby a principal or other school leader assesses the proficiency of an applicant for transition to full registration received criticism on a number of grounds:

- it is onerous for those principals and school leaders;
- there is no consistency among them in respect of expectations or requirements;
- there is no guidance from the Board as to what they should expect or require;
- some teachers, notably casual relief teachers, commonly cannot find a principal willing to make the necessary assessment.

The TRBWA currently defines “meeting the professional standards” for full registration as anticipating that the teacher will have satisfactorily completed “standards based performance management and development based on the Australian Teacher Performance and Development framework, on two separate occasions which demonstrates that the applicant meets all the professional standards at the proficient level taking into account each of the focus areas and proficient level descriptors under each standard.

This stipulation is unnecessary and somewhat condescending ... and demeans the role of the principal in the process.60

The combined submission from the Australian Secondary Principals’ Association (ASPA) and the WA Secondary School Executives Association (WASSEA) stated:

... the process of transitioning to full registration is both cumbersome and a time impost on individuals and schools.

... Some schools (especially small and remote schools) might not have an experienced mentor and schools can find it hard to release teachers/mentors for blocks of time in order to meet the requirements. In addition many country schools have a large turnover of teachers and have a high percentage of graduates – the workload for school leaders in relation to TRB requirements in these schools is very large ...

... The workload implications are huge and unwelcome. Consideration should be given to a more staged or streamlined process that spreads the workload and doesn’t result in a ‘cookie cutter’ type response due to time restrictions.61

This assessment was supported by the Professional Teaching Council:

Many schools find it impossible to schedule blocks of time for graduate teachers to have non contact, let alone to schedule time with a mentor as well.

Remote schools report a lack of skills in mentoring and assessing new graduates.62

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60 Submission 18, State School Teachers’ Union of WA, page 7.
61 Submission 19, ASPA & WASSEA.
62 Submission 20, Professional Teaching Council of WA.
The State School Teachers’ Union indicated it was “aware of some principals/school leaders expecting an unreasonable amount of evidence before signing off on proficiency”.63

ASPA & WASSEA noted that principals may be unable to make a reasonable assessment of their casual relief teachers.

[They are] essential to the system, but as they are not usually in any one school for an extended period, the principals are unable to make a fair judgement of the evidence provided because much of it will not relate to their school. [Even a teacher taking up a block of relief] does not necessarily allow the school to make a fair and accurate assessment of their suitability or allow time to guide them through an adequate upskilling and mentoring process.64

Helen Dempsey’s PhD research on early career casual teachers found few had access to a mentor while provisionally registered.65

In an early childhood service the early childhood teacher may be the most highly qualified employee. There is often no senior staff member with the qualifications and experience of a school principal, for example. As a result, mentoring is more difficult to obtain.

Someone working as the only teacher in an early education and care service is seriously disadvantaged by the current [professional standards] requirements. This disadvantage is compounded when the educator is working with babies and toddlers.66

The Review acknowledges the challenge for both teacher and principal presented by the Board’s current requirement that all 37 focus descriptors of the Proficient Standards must be demonstrated within the first three years of a graduate teacher’s employment. Three of our recommendations will alleviate these difficulties: the extension of provisional registration to five years (maximum) (section 4.1.2); enabling a teacher to renew provisional registration for sufficient reasons satisfactory to the Board (section 4.2.5); and revision of the standards applicable to a teacher seeking to demonstrate proficiency for the purpose of obtaining full registration (section 3.3.2b). We have not been able to identify any viable alternative to the current practice in which most provisionally registered teachers’ proficiency is evaluated by their principal or other school leader while a small minority are required to submit a portfolio of evidence to be evaluated by independent consultants to the Board.67

The Review recommends that, for transition from provisional registration to full registration, an applicant must satisfy the fitness and propriety requirement and the professional standards requirement but not the qualification and English language skills requirements. Such an applicant will, by definition, have established his or her eligibility for provisional registration (whether initially or on renewal) within the previous five years and should therefore be taken to have maintained the necessary English language skills.

63 Submission 18, State School Teachers’ Union of WA, page 8.
65 Submission 21, Helen Dempsey.
66 Submission 10, Schools of Early Learning.
67 The Board accepted 14 direct submissions in 2015, 15 in 2016 and 12 in 2017: data provided by the Director, Teacher Registration at the request of the Review.
4.3.2 Transition from non-teaching to full or provisional registration

The current requirements for transitioning from non-practising registration to either full or provisional registration following return to teaching were also criticised for several reasons:

- only two years are allowed absent extenuating circumstances;
- extenuating circumstances are difficult to establish;
- during those two years the teacher is not required to have a current criminal history clearance and is not required to undertake any professional learning activities;
- in order to demonstrate meeting the Proficient Standards the applicant must have taught for at least 100 days.68

The Review recommends that a teacher registered non-practising (or ‘non-teaching’ as proposed) should be prohibited from teaching. The teacher should be required to apply for transition to provisional or full registration before taking up a position (section 3.1.4b). As the person could not (in future) have obtained non-teaching registration without first having satisfied the requirements for either full or provisional registration and been so registered, the Review recommends that the only requirements for transition to provisional registration (returning teacher) should be that the teacher is (still) a fit and proper person to be a registered teacher and (still) has the requisite English language skills.69 For transition directly to full registration, there should be an additional requirement, namely that the teacher satisfies the Board as to his or her proficiency with recent evidence (i.e. within the previous five years).

If adopted, this proposal will eliminate concerns about the current two-year time limit on transition.

A number of submissions to the Review were critical of the requirements imposed on returning teachers seeking to move to full registration. Both under the Act at present and under the Review’s recommendations, this transition will require the person to demonstrate proficiency as at the date of application or within the previous five years.

The Proficient Standards require that the applicant must have worked in an Australian or New Zealand educational venue for at least 100 days within the previous five years in order to be in a position to demonstrate proficiency and that all 37 focus areas must be demonstrated.

One returning teacher complained of having her professional activities while away from teaching, including completion of a Master of Teaching degree and publishing standards-related articles, disregarded by the Board.70 This is consistent with the current Proficient Standards, as approved by the Minister, which require proficiency to be demonstrated by practice undertaken entirely in an educational venue.

Some submissions argued for a different transition process for non-practising teachers (intending to teach) who have already established their proficiency in the past from that applicable to graduate teachers moving from provisional to full registration.

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68 This last requirement is established by Board policy as set out in ‘Professional Standards for Teachers in Western Australia’, page 2: www.trb.wa.gov.au/SiteCollectionDocuments/Professional-Standards-for-Teachers-in-WA.pdf accessed 5 January 2018.

69 The Board should retain a discretion to require a new English language test for a returning teacher in circumstances where the level of skill achieved on initial registration may not necessarily have been maintained, such as where the person has not used English professionally while holding non-teaching registration.

70 Submission 7, Maria Doolan.
My question is whether the TRB can work into their registration requirements a two tier system – one for graduate teachers and one for returning teachers - that takes experience, references and immediate functionality into account for teachers returning to the workforce, while acknowledging that returning teachers will need to update their skills and knowledge in relation to current policy as a part of their return to work.71

The Level 3 Classroom Teacher Association recommended:

L3CT who have taken a leave of absence due to maternity, extended maternity, parental, family care giving duties should have their registration, professional learning and professional engagement requirements paused. That there is no limit on the paused period to cater for circumstances where children and parents need extensive after and/or ongoing care as a result of injury, trauma, disability and/or sickness postpartum.72

The Review appreciates that some teachers leaving the workforce for a period will, whether by virtue of their continuing roles in the education sector or personal interest, keep up-to-date with developments in curriculum, assessment, pedagogy, applicable legislation and policy. The Review does not accept that this can or ought to be assumed of all teachers in this situation. Nor would it be practicable to do so. Further, the Review does not support making changes which would benefit teachers only in one sector such as, in the case of Level 3 classroom teachers, the government school sector.

The Review does not favour deeming the proficiency of returning teachers who previously held full registration as suggested by several submissions.73 Such an approach would benefit a number of fully registered teachers whose proficiency has never been assessed against the professional standards for registration purposes because they were automatically fully registered by operation of transition provisions in either the Western Australian College of Teaching Act 2004 or the Teacher Registration Act 2012. Narrowing the deeming to Level 3 classroom teachers would benefit only teachers in the government school sector, and overlook highly proficient and experienced teachers in the non-government sector and in early childhood education and care services.

Most returning teachers will need to obtain provisional registration in the first instance. We note that, if other recommendations made by the Review are adopted, such a teacher will have up to five years to transition to full registration, with additional time permitted if the Board considers there are sufficient reasons for renewing provisional registration.

However, there should be some discretion enabling the Board to take into account certain workplace experiences and professional development undertaken while registered non-teaching as relevant to the demonstration of proficiency. The Review is persuaded that the nature of the work undertaken by some teachers currently registered non-practising is sufficiently aligned with teaching and student learning to contribute to the demonstration of proficiency for the purposes of full registration. In particular, the work of education consultants and advisers in supporting the professional development of teachers and school leaders necessarily requires them to have a close connection with the professional standards. The same may be said of lecturers and tutors in accredited initial

71 Submission 4, Meredith van der Klip.
72 Submission 3, Level 3 Classroom Teacher Association.
73 Submission 3, Level 3 Classroom Teacher Association; Submission 4, Meredith van der Klip; Submission 7, Maria Doolan; Submission 18, State School Teachers Union of WA, page 9.
teacher education programmes, teachers in at least some overseas countries and possibly others. This argument was put in a number of submissions.

There are many experienced, qualified teachers who are employed by or work with education providers such as Department of Education WA and Catholic Education, who are not directly housed in a school but do directly work with teachers and school leaders and directly influence the work of schools and the delivery of the curriculum.

... A good example is people in positions like association or union presidents/representatives or even those working in central office for a time. Our current legislation requires such people to move to non-practising registration even though they are clearly in their positions because of their teaching experience and expertise.74

At present, lecturers at university are unable to meet full registration requirements. These highly skilled people who maintain currency of educational knowledge and who might benefit themselves and schools through part time or contract work are not able to maintain registration. ... People working as consultants in the association of Independent schools office, Catholic Education Office or Education Department are involved in teacher education, modelling practice and mentoring teachers.75

However, the Review does not agree with those submissions which proposed expanding the list of educational venues and/or prescribed curriculums. The definition of an ‘educational venue’ would be more comprehensive and inclusive if it were expanded to include the offices of the Association of Independent Schools of Western Australia offices, and if they are agreeable, the Department of Education, the Catholic Education of Western Australia. The work carried out in these venues is ‘educational’ and is often concerned with curriculum and the delivery of educational programmes.76

The definition of ‘educational venue’ should be amended to include accredited tertiary institutions (enabling teaching in a tertiary setting to be recognised as a valid professional engagement opportunity). The list of prescribed curriculums should be amended to include accredited curriculums at educational venues.77

Educational venues and prescribed curriculums define ‘teaching’ under the Act. ‘Teaching’ without registration is an offence. The effect of such changes could be to require everyone working in these suggested additional venues to be registered. Yet the registration requirements would not entitle all of them to registration.

74 Submission 19, Australian Secondary Principals’ Association and Western Australian Secondary School Executives Association. The Review notes that the Act does not require registered teachers taking leave or moving out of an educational venue setting to move to non-practising registration; rather it allows them to do so. However, it is currently the case that teachers on leave will be unable to renew their registration, in which case moving to non-practising registration will be the only option for maintaining registration.

75 Submission 20, Professional Teaching Council of WA.

76 Submission 16, Association of Independent Schools of WA, page 1, paragraph 6.

77 Submission 7, Maria Doolan. See also Submission 19, Australian Secondary Principals’ Association and Western Australian Secondary School Executives Association; Submission 20, Professional Teaching Council of WA.
Taking into account our recommendation that the Board revise the professional standards for determining a teacher’s proficiency to be fully registered and in addition to the recommendation for reducing the minimum number of days’ teaching requirement to 80 with flexibility to accept fewer days for sufficient reasons (section 3.3.2c), the Review recommends that the Board’s policy on demonstrating proficiency should enable a person with provisional registration (returning teacher) to demonstrate his or her proficiency again with a combination of days’ teaching and days’ work in such educational activities in support of schools, education and care services and/or teachers in Australia or New Zealand as is acceptable to the Board.78

4.3.3 Transition to non-teaching registration
For most teachers holding provisional or full registration, the need to make this transition will not arise until their current registration is due to expire and they find they cannot satisfy renewal requirements which, as recommended above (section 4.2.2), should be limited in future to establishing the professional learning and professional engagement requirements set out in the Teacher Registration (General) Regulations. The only requirement for transition to non-teaching registration should be that the person holds full or provisional registration. Teachers holding limited registration should be not able to transition to non-teaching registration.

4.4 Conclusion
Both ATRA and the Teacher Registration Board submitted that the diversity of the teaching workforce is not adequately recognised or accommodated by the current Act and Regulations.79 The Review considers that the following changes recommended in this report will support the progression of casual relief and part-time teachers, and appropriately acknowledge the experience and expertise of registered teachers taking up education support roles, while maintaining the registration focus on probity, child safety and teacher quality:

- a longer duration for provisional registration (up to five years);
- easier renewal of provisional registration (i.e. if the Board considers there are sufficient reasons);
- removal of the requirement for a provisionally registered teacher to re-establish the Graduate Standards at each renewal;
- revision of the professional standards for full registration;
- acceptance of some professional activities undertaken other than in an educational venue as contributing to the minimum days required by policy to re-establish proficiency on return to teaching;
- easier acceptance of reduced professional engagement days and learning hours for renewal;
- removal of the requirement for professional learning hours in each year the person did not undertake at least 20 days' professional engagement; and
- removal of the requirement for a fully registered teacher to re-establish his or her proficiency at each renewal (other than by undertaking professional engagement and professional learning).

78 This is similar to the professional practice requirement for full registration in the ACT which also enables either 1 year of teaching at a school or experience that the institute is satisfied is equivalent: ACT Teacher Quality Institute Regulation 2010, regulation 8(1)(a).
80 Currently the applicant must declare that he or she continues to meet the professional standards.
Chapter 5 – The register and other information

The Teacher Registration Board collects information about registered teachers, principally from their application forms but also by way of criminal record checks, notifications and investigations into alleged misconduct and incompetence (see Chapters 6-8). The information is collected and used for various purposes under the Act:

- for inclusion on the register of teachers;
- for transmission to the Australian Criminal Intelligence Commission with a criminal record check request;
- for regulatory purposes (offences, disciplinary matters and impairment matters).

The raison d'être of the legislation is the protection of the public, especially children. This means that one of the Board's responsibilities is to protect the public, especially children, from incompetent or unethical practitioners. The register serves this primary purpose in so far as it contains information that it is in the public interest for the public generally or employers specifically to know, including information such as disciplinary history that some registrants would rather not have published. The questions for this Chapter are, therefore, what information should the Board be entitled to collect, where should it be held, and who should have access to it?

For the purposes of the following discussion we consider it useful to refer separately to the information kept on the register of teachers to which any member of the public may have access and the additional information which is only available for professional purposes. We therefore refer to 'the public register' and 'the professional register'.

5.1 The public register

The Board is required to keep an accurate and up-to-date register which can be inspected by anyone. It must contain each registered teacher’s name, category of registration, registration number and date of initial commencement of registration.1 Anyone may search for a registered teacher by name or number on the Board’s website.2 If a teacher’s name does not appear on the register then that teacher is not currently registered.

An acknowledged difficulty is that some names are very common and a member of the public may be unable to distinguish one teacher of that name from another. As others with responsibility for complying with the Act’s prohibition of unregistered teaching have access to more information enabling them to distinguish among people with the same name, the Review at this time does not support providing more information to the public by way of the public register.3

5.2 The professional register

5.2.1 Information included

The Board is also required to include on the register a range of additional information about each registered teacher which can be inspected by employers of teachers. The full register, the register information (professional) or ‘TRIP’, contains the following information about each registered teacher:

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1 Sections 36 and 37.
2 See https://app.trb.wa.gov.au/register-of-teachers/ This site does not provide access to register information (professional).
3 This position is supported by the State School Teachers’ Union of WA in Submission 18, page 16.
- the teacher’s name, category of registration, registration number and date of initial commencement of registration;
- the teacher’s date of birth and gender;
- the date of expiry of the teacher’s current period of registration;
- the date on which the Board last determined that the teacher was a fit and proper person to be registered, in accordance with section 24 of the Act;
- any conditions imposed on the teacher’s registration — (i) by the Board under section 26 of the Act; or (ii) by order made under Part 5 of the Act;
- the name of each educational venue at which the teacher is currently teaching, insofar as that information is known to the Board;
- the date on which the annual fee is next payable by the teacher;
- any order referred to in section 70(1)(f) of the Act made by a disciplinary committee or by the State Administrative Tribunal.4

The WA Council of State School Organisations (WACSSO) queried the requirement to record gender on TRIP.5

WACSSO questions the inclusivity of the [Act] and its compliance with our progressive society’s collective understanding of gender identity. We... would like to see the requirement for registered teachers to have their gender identified and listed reviewed.6

However, the Review finds that the inclusion of gender, together with date of birth, serves the essential purpose of enabling the employer to distinguish a particular staff member from others with the same name. In any event, each teacher’s sex and date of birth must be obtained by the Board for the purpose of requesting a criminal record check from the Australian Criminal Intelligence Commission.7 Currently the Board enables teachers and the TRIP to record one of three possible gender identities: female, male and unknown/other.8

The State School Teachers’ Union, concerned for both teachers’ privacy and information security, argued for removing all of the information on TRIP with the exception of that already contained on the public register.9 On the other hand, the Association of Independent Schools reported its members’ satisfaction with the value and ease of access of the TRIP.10 The Review is not persuaded...
that the information required to be provided on the TRIP should be reduced. Indeed, it has been argued that it should be expanded.

5.2.2 Additional child protective information

The recently-concluded Royal Commission into Institutional Responses to Child Sexual Abuse recommended the addition of a range of information to all teacher registration registers in Australia:

- the person’s former names\(^{11}\) and aliases;\(^ {12}\)
- the details of former and current employers;
- where relating to allegations or incidents of child sexual abuse:
  - current and past disciplinary actions, such as conditions on, suspension of, and cancellation of registration;
  - grounds for current and past disciplinary actions;
  - pending investigations;
  - findings or outcomes of investigations where allegations have been substantiated;
  - resignation or dismissal from employment.\(^ {13}\)

Much of this additional information is either already collected by the Board for different purposes or could be collected and retained.\(^ {14}\) However, while the Review does not question the child-protective value of collecting, retaining and sharing this information, we are not persuaded that current or prospective employers should have unlimited access to it. There are mechanisms other than the TRIP available to the Board to enable it to share such information with a teacher’s current employer and with all potential employers.

Section 45 requires the Board to consider whether it should advise a teacher’s employer about information contained in a notification (refer to Chapter 6) or criminal record check and the Review recommends that receipt of an employer’s notification should require the Board to consider whether it should advise others as well.

Sections 116 - 118 define ‘publish’, place restrictions on publishing for reasons of confidentiality and set out the circumstances in which the Board is authorised to publish information and to whom. ‘Publishing’ under the Act is not limited to publishing to the public but includes much more restricted information sharing such as in a document delivered to just one person or even verbally.\(^ {15}\)

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\(^{11}\) The following legislation provides for recording teachers’ former names: ACT Teacher Quality Institute Act 2010 (ACT), section 43; Education (Queensland College of Teachers) Act 2005 (Qld), section 288; Teacher Registration Act 2000 (Tas), section 25. As indicated above (section 5.2.1), ACIC requires this information in order to undertake a criminal record check.

\(^{12}\) The Royal Commission noted that “we have been told [in the NSW Government submission] that the teacher’s identity must be unambiguous because, in some instances, there is not enough information about the teacher to identify them, and the teacher can change their name”: Final report, Volume 13, Schools, 15 December 2017, page 249.

\(^{13}\) Final report, Volume 8, Recordkeeping and information sharing, 15 December 2017, Recommendation 8.9, page 25.

\(^{14}\) Former names and aliases must be listed on application forms and transmitted to ACIC for criminal record checking purposes. Employer details are obtained when an employer utilises TRIP effectively but, as this is not currently mandatory, the information is not complete. The Board has information about its own disciplinary proceedings and their outcomes but not currently about all employer actions and outcomes. In this case, the Review makes recommendations to ensure that in future the Board is notified about employer disciplinary actions when harm to a child has been caused or could be caused.

\(^{15}\) Section 116.
The Board may ‘publish’, in any form or manner it considers appropriate, information concerning the registration of teachers or, most relevantly, “matters that adversely affect or may adversely affect the interests of [students and children]”.

Information which may be published includes, but is not limited to, details of orders or decisions of the Board or a disciplinary committee or of orders made by the State Administrative Tribunal. Explicitly listed as among the potential recipients of such information are other Australian and New Zealand teacher regulatory authorities, the teacher’s professional association or trade union, the teacher’s employer ‘at the relevant time’ and any other person the Board considers should be made aware.

The only check on the Board’s publication power is the rule that it “must not publish … unless satisfied that it is in the public interest to do so”.

In the course of its work the Board will be called on from time to time to decide whether to publish information where a teacher’s interest – in privacy or natural justice - is at odds with the interests of children at risk of harm, or potentially at risk of harm, caused by the teacher. In these situations, how should the Board assess what is in the public interest and where should the balance lie? It is, in our view, indisputable that the best interests of children must be the paramount consideration in judging what is in the public interest.

A further information-sharing mechanism available to the Board is its inclusion in a statutory scheme for sharing child wellbeing information among public authorities and between public authorities and schools among other private bodies. ‘Child wellbeing’ is defined to include:

(a) the care of the child;
(b) the physical, emotional, psychological and educational development of the child;
(c) the physical, emotional and psychological health of the child;
(d) the safety of the child.

Child wellbeing information which may be shared freely among the authorities in the scheme and between an authority and a school is:

information that is, or is likely to be, relevant to —
(i) the wellbeing of a child or a class or group of children; or
(ii) the safety of a person who has been subjected to, or exposed to, family violence.

The Board has been included in this information-sharing scheme since July 2014.

The Review recommends that any additions to the information to be included on the TRIP should await the outcomes of Council of Australian Governments (COAG) discussions of the recommendations made by the Royal Commission on what should be held on the registers of teacher regulatory authorities across Australia.

We recommend further that the Board should be authorised to share any or all of the information held on the TRIP with other Australian and New Zealand teacher regulatory authorities, the WA Police, the Director of Public Prosecutions and child protection agencies in the interests of children.

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16 Section 118(1).
17 Section 118(2)(a).
18 Section 118(2)(b).
19 Section 118(3).
20 As stipulated in section 5.
21 Children and Community Services Act 2004, section 3.
22 Children and Community Services Act 2004, section 28A.
5.2.3 Access to TRIP

The register information (professional) or TRIP must be made available for inspection by registered teachers, employers of registered teachers, school principals, supervisors at education and care services and child care services, principals working at juvenile detention centres and people, acceptable to the Board, who are nominated by one of the others (apart from teachers).23

Registered teachers have access only to their own TRIP record. They may choose to add information about where they are currently employed, but are not obliged do so.

All others listed, known as ‘prescribed persons’ and ‘prescribed person’s representatives’, should have access to the TRIP record of each registered teacher on staff and, for a limited period, each prospective member of staff. Unfortunately, the Board has yet to comply with the requirement for providing TRIP access to supervisors at education and care services and child care services. However, upgrades to the system planned for 2018-19 should remedy that situation.24

All access is via a unique log-in and password which enables the Board to monitor usage of TRIP. The advantage for principals and their nominated representatives is that they have real-time and detailed information enabling them to avoid employing an unregistered teacher or employing a teacher contrary to any conditions on registration and to follow-up any teacher whose registration is about to expire or who is at risk of losing registration due to non-payment of the annual fee.

Elsewhere in this report the Review supports the provision of pertinent identifying information about registered teachers (over and above that available on the public register but perhaps less than that on the professional register) to the Director of Public Prosecutions and the Commissioner of Police at least in part for the purpose of enabling prompt notification to the Board of criminal proceedings being taken or having concluded against registered teachers (section 6.3.3).

5.2.4 Mandatory use?

Despite the obvious usefulness of TRIP as a risk management tool, not all schools have chosen to use it. As at 30 June 2016, 971 schools had accessed TRIP:

- 99% of Catholic system schools with a nominated prescribed person;
- 81% of Independent schools with a nominated prescribed person; and
- 84% of government schools with a nominated prescribed person.25

Not all schools have nominated a prescribed person as shown in Table 5.1, with take-up lowest in government schools.

<table>
<thead>
<tr>
<th>Sector</th>
<th>Prescribed person</th>
<th>No prescribed person</th>
<th>Total schools</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>Government</td>
<td>719</td>
<td>89.5%</td>
<td>84</td>
</tr>
<tr>
<td>Independent</td>
<td>135</td>
<td>90.6%</td>
<td>14</td>
</tr>
<tr>
<td>Catholic</td>
<td>150</td>
<td>91.4%</td>
<td>14</td>
</tr>
</tbody>
</table>

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23 Section 37 and Teacher Registration (General) Regulations, regulation 21B(2).
24 Submission 12, Teacher Registration Board of WA, page 44.
25 TRBWA annual report 2015-16. Access data were not included in the 2016-17 annual report.
26 Data supplied by the Director, Teacher Registration at the request of the Review.
In light of the significant number of schools in the different sectors which are not using the TRIP, and
the advantages for employers and the Board canvassed in its submission, the Board proposed that:

... the review group may wish to consider the advantages of mandating the use of the
professional register, both in the interests of compliance with the TR Act and in the best interests
of children.27

Strong arguments can be made for making use of the TRIP mandatory. Among others it could ensure
that the Board and public authorities such as the WA Police with which it is authorised to share
information would be in a position to locate a registered teacher at work at any time, greatly reducing
the time taken to remove a teacher putting children at risk from their place of work. Strong
arguments can be made to the contrary as well. The Board has, or should have, each registered
teacher’s current home address and this data set covers every registered teacher and not only those
currently working in a school. Defining the nature of the required ‘use’ would be impossible: what
requirement could be stipulated as to frequency of access, for example, the desirability of which may
vary substantially between schools. It would be necessary to excuse schools with poor internet
service and perhaps those with limited administrative resources. Finally, at present no requirement
can be imposed when a small but significant group of employers do not have TRIP access at all
(namely, the early childhood sector). The Review concludes that it is neither desirable nor possible
to mandate use of the register information (professional).

5.3 The Australian Teacher Workforce Data Strategy

In December 2016, the Council of Education Ministers agreed to fund the Australian Institute of
Teaching and School Leadership (AITSL), working with relevant organisations including teacher
regulatory authorities, to implement an Australian Teacher Workforce Data Strategy (Data Strategy)
by July 2021.

[The strategy] will provide an anonymised and complete picture of the teacher workforce across
all government and non-government sectors, enabling both jurisdictional and Commonwealth
governments to improve their individual and collective understanding about the teaching
workforce. The information collected will encompass who is being prepared to teach and how
effectively, who is teaching, where they are teaching, what they are teaching, and any gaps in
the availability of teachers for Australian student population needs.28

In its submission, the Teacher Registration Board acknowledged that at the present time there is no
data set of the kind envisaged by the Data Strategy and that there would be merits in having one for
workforce planning. The Board expressed two concerns, however: (1) whether what is proposed is
in keeping with the Board’s functions under the Act; and (2) whether the Act’s confidentiality and
information sharing provisions allow the Board to pass on the information sought under the Strategy.

It is the Board’s understanding that it cannot disclose any information where it is possible to
identify the individual who is the subject of the information. For example, the name of the
teacher should not be linked to any other demographic information that is to be provided to a
third party.

27 Submission 12, Teacher Registration Board of WA, page 46.
The Board holds concerns with respect to the provision of personal information to a national body without first seeking consent from the persons to whom the information relates (emphasis added). AITSL, in its submission, indicated its keenness to see the Act amended to deal with the Board’s concerns and thereby enable Western Australia to participate fully in the Data Strategy. To allay concerns the Review might have, AITSL submitted that:

The [Data Strategy] will not track teachers individually, but will look for trends in teacher supply and careers across the entire Australian teacher workforce. While the database will hold details about individual teachers and [Initial Teacher Education] students, the privacy of these individuals is paramount. They will not be identified in the database, and any reports based on their data will ensure teachers remain anonymous. Data will be managed by an accredited Commonwealth Linkage Authority, which will provide the highest possible degree of security and privacy protection.

The Review recommends that the Minister seek legal advice on an appropriate amendment to the Act to enable effect to be given to the undertaking at Ministerial Council level regarding the Australian Teacher Workforce Data Strategy and deal at the same time with legitimate privacy concerns.

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29 Submission 12, Teacher Registration Board of WA, page 46. The relevant section of the Act is section 117(2)(c) which says that the Board must not ‘publish’ information it gathers in the performance of its functions other than “with the written consent of the person to whom the information relates”. One of the Act’s definitions of ‘publish’ is “to include [information] in a document sent or delivered to any person or body” (section 116(f)). It appears that the Board remains concerned, notwithstanding section 117(3) which says that section 117(2)(c) would “not apply to the publication or use of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates”.

30 Submission 22, Australian Institute for Teaching and School Leadership, page 3.
Chapter 6 – Notices and complaints

Notifications about registered teachers which the Act requires to be made are the principal way in which the Board is able to monitor their professional conduct and competence between applications for renewal or transition. Complaints from members of the public, typically parents of children enrolled in educational venues, are another source but are less frequently received.

Table 6.1 – Notifications received by type and year (sections 38-42)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Teacher</td>
<td>-</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Employer</td>
<td>32</td>
<td>34</td>
<td>29</td>
<td>54</td>
<td>55</td>
</tr>
<tr>
<td>Police Commissioner or Director of Public Prosecutions</td>
<td>-</td>
<td>2</td>
<td>7</td>
<td>8</td>
<td>4</td>
</tr>
<tr>
<td>Total received</td>
<td>32</td>
<td>38</td>
<td>37</td>
<td>62</td>
<td>61</td>
</tr>
</tbody>
</table>

6.1 Notification obligations of teachers
A registered teacher must notify the Board within 30 days if:

- the teacher or their employer (past or present) is ordered to pay damages or compensation as a result of civil proceedings arising out of the practice of teaching by the teacher;
- the teacher is convicted of an offence which carries a statutory penalty of imprisonment; or
- the teacher’s qualifications are withdrawn or cancelled.2

A registered teacher must also notify the Board, within 14 days, if he or she is issued with a negative notice or interim negative notice under the Working with Children (Criminal Record Checking) Act 2004.3

Failure to notify may incur a fine of up to $5,000.

6.1.1 Including impairment?
The Professional Teaching Council “would have assumed that a teacher ... would have an obligation to notify Teacher Registration Board if [that] teacher was unfit to teach”.4 The Board itself did not make a recommendation to this effect but does require teachers to disclose serious medical conditions and impairments on application forms for initial registration and renewal, and recommended including this explicitly as a matter it must take into account when making a fit and proper assessment.5

The Review supports the explicit inclusion of a physical and mental fitness consideration but does not support the imposition of an obligation on teachers to notify the Board should they become “unfit” to teach, develop “a serious medical condition which adversely affects or is likely to adversely affect their ability to practise as a teacher”, become dependent on alcohol or an illicit drug to such

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1 Data sourced from Teacher Registration Board annual reports.
2 Teacher Registration Act 2012, sections 38 and 39.
3 Section 40.
4 Submission 20, Professional Teaching Council of WA.
5 Submission 12, Teacher Registration Board of WA, page 25.
an extent as to adversely affect their ability to practise as a teacher or their competence, or any similar formulation. In our view it would be extremely difficult to define with sufficient certainty what conditions a teacher would be required to notify the Board about. It may, unnecessarily, require a teacher to notify the Board of a period of sick leave or workers' compensation leave, for example. However, our recommendations relating to the employer's notification obligations should ensure that, when an employer forms a belief that a teacher's serious medical condition or impairment may have contributed to his or her serious incompetence or serious misconduct, the nature of that condition or impairment must be included in the employer's advice to the Board. We note that a teacher experiencing a serious medical condition or impairment may request the Board to impose a condition on his or her registration and consider that some may wish to do so as a buffer or protection from employer demands which do not appropriately take the condition or impairment into account.

6.1.2 Time to notify
On balance and in light of (1) the proposed shortened time limit for employer notifications and (2) the absence of any recommendation from the Teacher Registration Board for shorter timelines for teacher notifications, there is no reason to alter the current deadlines applicable to notifications by registered teachers.

6.2 Notification obligations of employers
Employers of registered teachers must currently notify the Board if, as a result of an investigation into serious misconduct or serious incompetence, a teacher is suspended or dismissed, resigns or otherwise ceases teaching at an educational venue. The 'investigations' covered by this requirement and the information which must be provided are elaborated in the Teacher Registration (General) Regulations ('General Regulations'). In particular, the employer's investigation does not have to have been completed before the obligation to notify is activated.

Neither does it have to be officially called an 'investigation' but, whatever it is called and whether or not it is complete:

1) it must have been established to inquire into a teacher's conduct;
2) because the employer had reason to believe the teacher had been seriously incompetent or had engaged in serious misconduct; and
3) it must have resulted in the teacher no longer teaching at the educational venue.

Failure to notify as required is subject to a fine of up to $5,000.

6.2.1 Whose obligation?
The Act envisages two different ways of employing a teacher:

1) engaging, employing or appointing; and
2) giving permission to teach.

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6 Teacher Registration Act 2012, section 81.
7 Section 42.
8 Teacher Registration (General) Regulations 2012, regulation 26(2).
9 Regulation 26(1).
10 Section 42(1).
11 Definition of 'employer' in section 3.
The interpretation given to the Act acknowledges the employer status of persons or entities who engage, employ or appoint but tends to overlook the role of the person giving permission to teach in some contexts, most notably in the context of the employer's notification obligation. It may occur that a teacher's contract is with an entity external to the venue or even to the education sector (as in the case of an agency supplying contract teachers) but this fact should not exonerate a principal from the obligation to monitor that teacher's conduct and competence, take appropriate action as necessary and notify the Board in such a case. The same should apply to an approved supervisor in an early childhood service.

The Review recommends that, like the offence provision in section 7, the notification obligation should explicitly apply both to the person or entity who engaged, employed or appointed the teacher and the person or entity who gave the teacher permission to teach.

6.2.2 Including impairment?
As to the grounds of the employer's inquiry, it appears that they cover the two disciplinary matters which are particularly within the employer's knowledge. They do not extend to all the matters relevant to a teacher's fitness and propriety – for example, an employer does not have to notify behaviour that shows the person is not of good character. They do not include any of the disentitlement to registration grounds. They do not include impairment matters, although impairment, including drug or alcohol addiction, may be a cause of the alleged misconduct or incompetence. It is clear that the reason for the employer's notification obligation as currently framed is primarily to provide the Board with information relevant to its disciplinary function.

The Teacher Registration Board argued for broadening the employer's notification obligations to include "serious impairment affecting the behaviour or competence of a teacher".

The Australasian Teacher Regulatory Authorities (ATRA) made the same recommendation.

With an ageing teaching population and the complex demands of the work of teachers, dealing with issues of impairment or incapacity are critical in maintaining an effective teaching workforce. ATRA strongly promotes the importance of employers or teachers notifying

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12 Namely those listed in section 47 (Disciplinary matters), paragraph (f)(i) and (ii).
13 Section 24(d)(ii).
14 Section 27. We note that some jurisdictions impose wider notification obligations on employers. In NSW the employer must notify the Authority if aware of any information that is or may be relevant to a ground on which the Authority can suspend or revoke accreditation: 
Teacher Accreditation Act 2004 (NSW), section 42B(3). An ACT employer must notify if it has reasonable grounds for believing a teacher has contravened a condition of his or her registration or the employer is taking disciplinary action against a teacher: ACT Teacher Quality Institute Act 2012, section 67. A Queensland employer must notify if it is dealing with an allegation of harm to a child: Education (Queensland College of Teachers) Act 2005, section 76.
15 Defined in section 48. An ACT employer must notify if it has reasonable grounds for believing a teacher has become mentally or physically incapacitated and the incapacity prevents him or her from performing an inherent requirement of their job as a teacher: ACT Teacher Quality Institute Act 2010, section 67. A South Australian employer must notify if it has reason to believe that a teacher's capacity to teach is seriously impaired by an illness or disability affecting the person's behaviour or competence as a teacher: Teachers Registration and Standards Act 2004 (SA), section 39.
16 Submission 12, Teacher Registration Board of WA, page 41.
regulators, such as the Board, of impairment matters. It should be a requirement for employers to report serious impairment affecting the behaviour or competence of a teacher.\textsuperscript{17}

This suggestion could be accommodated readily without amending section 42 itself. The General Regulations already include a list of information which must be included in an employer's notice and a relevant item could be added.

On another view, the suggestion may be that an employer's concern should be reported regardless of whether the employer has initiated an investigation. This proposal seems to have been made by the WA Council of State School Organisations (WACSSO)\textsuperscript{18} but was opposed by the State School Teachers' Union.\textsuperscript{19}

The Review recommends that a teacher's serious medical condition or impairment should only become notifiable by an employer as information relevant to the reason for the employer's finding that a teacher has been seriously incompetent or has engaged in serious misconduct.

We note that nothing in the Act or Regulations would prevent an employer from informing the Board of these and other concerns should it choose to do so,\textsuperscript{20} except that only a notification under section 42 is unarguably protected from civil liability.\textsuperscript{21}

6.2.3 Removing the causal link between investigation and outcome

Both the Teacher Registration Board and ATRA argued for removing the necessary element of causality between the commencement of an investigation and the outcome that the teacher is no longer teaching at the venue.

ATRA wishes to minimise such risks as

- a registered teacher who is subject to allegations of serious misconduct and immediately resigns in circumstances where the employer is yet to commence a formal investigation
- the employer commences an investigation into a serious misconduct allegation and the teacher incidentally resigns, retires or reaches an end of contract for employment that is not as a result of the investigation
- a teacher leaves an educational venue prior to the misconduct being detected and the employer later investigates and uncovers the issue -- the investigation did not prompt the departure of the teacher and there is no technical requirement to notify the Board.\textsuperscript{22}

The current notification requirement places the onus of responsibility for monitoring teachers' conduct and competence, and responding to serious incompetence and serious misconduct, squarely on the employer. It should ensure the Board is notified of matters relevant to ongoing registration. However, it enables some matters relevant to children's safety to slip through the net. On balance, as the only authority responsible for all teachers and in a position to take appropriate

\textsuperscript{17} Submission 7, Australasian Teacher Regulatory Authorities (ATRA), page 3, paragraph 21. See also Submission 20, Professional Teaching Council of WA.
\textsuperscript{18} Submission 17, WA Council of State School Organisations, page 3.
\textsuperscript{19} Submission 18, State School Teachers' Union of WA, page 12.
\textsuperscript{20} Such as by way of a complaint under section 51, noting that the Board may also receive information in any other form: section 51(3)(c).
\textsuperscript{21} Extended by Teacher Registration (General) Regulations 2012, regulation 26(5).
\textsuperscript{22} Submission 7, Australasian Teacher Regulatory Authorities (ATRA), page 3, paragraph 19. See also Submission 12, Teacher Registration Board of WA, pages 39-40.
action to protect all students, the Board should have access to a wider range of information known to the employer than it does at present.

The Review recommends that employers should be required to notify the Board when they take improvement action or disciplinary action against a teacher for serious incompetence or serious misconduct whether or not the teacher remains on the staff of the school and also when in possession of information on the basis of which such action would have been taken should the teacher still be on the staff of the school assuming a finding of serious incompetence or serious misconduct may have been made. It may also be considered advisable to require employers to notify the Board whenever they are dealing with an allegation of harm caused or likely to be caused to a child because of the conduct of a teacher or former teacher, despite no finding on the matter having yet been made.

6.2.4 Defining seriousness

A difficulty with both the current section 42 and the proposal for lowering the notification threshold lies in distinguishing incompetence from serious incompetence and misconduct from serious misconduct. In our view, incompetence or misconduct become 'serious' when an employer considers that performance management would be inadequate to deal with it and a disciplinary response or improvement action is needed, whether or not that would necessarily result in termination of the teacher's employment.

The Fair Work Regulations 2009 (Cth) define 'serious misconduct' as:

(a) wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment; or

(b) conduct that causes serious and imminent risk to:
   (i) the health or safety of a person; or
   (ii) the reputation, viability or profitability of the employer's business.

We note, however, that conduct fitting the Fair Work definition gives an employer the right to dismiss the employee without notice. The threshold is set higher when the consequences are more significant. In the case of notifications to the Teacher Registration Board, a lower threshold would be appropriate.

Under the Western Australian College of Teaching Regulations 2004, the terms serious incompetence and serious misconduct included the following:

(1) A person has been seriously incompetent as a teacher if, without reasonable excuse, the person has consistently or frequently carried out his or her duties as a teacher at a standard that is significantly lower than the standard that can reasonably be expected of the person, having regard to —

(a) the person's education, training and experience; and

(b) the standard met by other teachers with comparable education, training and experience when carrying out similar duties.

23 This is similar to the position in the Northern Territory which requires the employer to notify the Board if it “takes any action against the person in relation to the serious misconduct or lack of competence or fitness to teach”: Teacher Registration (Northern Territory) Act, section 67A.

24 This is an additional requirement in Queensland: Education (Queensland College of Teachers) Act 2005, section 76. The notice is required “as soon as practicable after starting to deal with the allegation”.

25 Clause 1.07.
(2) A person has engaged in serious misconduct the nature of which renders the person unfit to be a teacher if —

(a) despite being warned or counselled by a supervisor, the person has consistently or repeatedly used language or engaged in behaviour that is offensive, indecent or improper, having regard to the standard of conduct expected of a teacher by members of the teaching profession; or

(b) the person has used language or engaged in behaviour that is profoundly offensive, indecent or improper, having regard to the standard of conduct expected of a teacher by members of the teaching profession.26

The Review favours an indicative but non-exhaustive list of matters which fall into either category rather than attempting to define every circumstance which reasonably ought to be considered either serious incompetence or serious misconduct. We recommend the following non-exhaustive definitions be included in the section 3 of the Act.

Serious incompetence includes consistently or frequently carrying out the teacher’s duties, without reasonable excuse, at a standard that is significantly lower than the standard that can reasonably be expected of the teacher, having regard to —

(a) his or her education, training and experience; and

(b) the standard met by other teachers with comparable education, training and experience when carrying out similar duties.

Serious misconduct includes —

(a) anything that constitutes serious misconduct as defined in the Corruption, Crime and Misconduct Act 2003 section 3(1);

(b) conduct which has caused, causes or is likely to cause harm to any person at the educational venue.

We note that these definitions will apply equally to these terms as they are used in section 47 to define disciplinary matters (see Chapter 7).

The regulations should provide guidance to employers as to what action on their part is notifiable. The Review recommends that ‘improvement action’ should be defined to mean any requirement imposed on a teacher by his or her employer, principal (in a school) or approved supervisor (in an early childhood education and care service) to address his or her serious incompetence with a view to improving the teacher’s competence. ‘Disciplinary action’ would cover any sanction imposed on a teacher by his or her employer, principal or supervisor in response to his or her serious incompetence or serious misconduct including, but not limited to, termination of employment.

6.2.5 Time to notify
The Teacher Registration Board and the Director General of Education both argued for a reduction in the time allowed for an employer to notify the Board. Currently the employer has 30 days and will presumably count from the day on which the teacher is no longer at the educational venue. This may be many more days, even months, after the employer formed the opinion leading to the

26 Western Australian College of Teaching Regulations 2004, regulation 21. The definitions were included for the purposes of defining ‘unprofessional conduct’ as it occurred in section 63(2) of the Western Australian College of Teaching Act 2004. Neither provision was intended to exhaustively define the respective terms. Unprofessional conduct could be met with disciplinary action by the College.
commencement of an investigation. The Board recommended that two days be allowed while the Director General of Education recommended ten.27

The lengthier the period of time to provide notice, the greater the scope there is for a teacher to engage, unchecked, with another employer.28

The Review recommends that employers be required to notify the Board of action imposed or information received within five business days. This is not merely a matter of ‘splitting the difference’ between the proposals received. Rather it recognises that two employers, the Department and Catholic Education WA, are bureaucracies which may require notifications to progress through a hierarchical chain of responsible officers making a two-day limit practicably impossible to achieve.29

6.2.6 Notification outcome

Section 45 requires the Board, on receiving a notification, to consider whether it should cancel the teacher’s registration, make an interim disciplinary order or formulate a complaint. The Board may also inform other employers.30 The Director General of Education called for a statutory obligation on the Board to inform other employers to be introduced.

Notwithstanding the intention of the Board, there have been two occasions this year where the Board has received notification from a non-government school that a teacher has been dismissed for serious misconduct and the teacher has subsequently been employed by the Department. At the time there was no order or notification by the Board about the status of the teacher[s]. The teachers’ registration was subsequently cancelled...

In these situations there was an unnecessary potential risk to the safety and welfare of students between the time the Board was notified of the dismissed teacher gaining employment with the Department and the Department receiving any information about the teacher.31

Currently, the Board is only required to consider whether the contents of a notification or criminal record check should be passed on to the teacher’s current employer. It is not always possible for the Board to know where a teacher is currently employed.

The Review is not persuaded that a blanket requirement to publish the contents of an employer notification to all potential employers would be appropriate, particularly if our recommendation for lowering the threshold of notifiable information is adopted. However, the Review recommends that the Board be required to consider whether it should notify other employers about the information contained in a notification. The Board should be empowered to use its investigation powers to undertake an assessment and investigation into the matter before making such a decision.

27 Submission 12, Teacher Registration Board of WA, page 40; Submission 24, Director General, Department of Education, page 2. A Northern Territory employer has 28 days to notify: Teacher Registration (Northern Territory) Act, section 67A. A Queensland employer dealing with an allegation must notify as soon as practicable after starting to deal with the allegation: Education (Queensland College of Teachers) Act 2005, section 76(2).

28 Submission 12, Teacher Registration Board of WA, page 39.

29 In 2016-17, both the Department and CEWA met the current deadline on average (29 days and 22 days respectively). The independent school sector was tardiest at 53 days on average: Submission 12, Teacher Registration Board of WA, page 39.

30 Section 118.

31 Submission 24, Director General, Department of Education, page 2.
The Director General of Education further suggested that consideration be given to automatically suspending the registration of a teacher about whom an employer’s notification is received.\textsuperscript{32} The Review does not support this suggestion, particularly in light of the proposed lower notifiable information threshold. We prefer the alternative of redefining the grounds for making an interim disciplinary order which could have the same effect in an appropriate case (see Chapter 7).

6.3 Notification obligations of the Director of Public Prosecutions and the Commissioner of Police

The Director of Public Prosecutions and, where the matter is conducted by a police prosecutor, the Commissioner of Police, are required “where practicable” to notify the Board of the following matters:

- a registered teacher is charged with, or committed for trial or sentence before any court for, a sexual offence involving a child;
- the prosecution of a registered teacher for a sexual offence involving a child is discontinued, or does not result in a committal for trial or sentence, or there is an acquittal or mistrial;
- a registered teacher is convicted or found guilty of an indictable offence in this State.\textsuperscript{33}

6.3.1 Whose obligation?

The Director of Public Prosecutions (DPP) argued for amendments to:

- impose the obligation to notify that a registered teacher has been charged only on the Commissioner of Police who has responsibility for laying charges;
- remove the obligation to notify the committal of a registered teacher for trial which effectively duplicates the notification that a charge has been laid;
- limit the DPP’s notification obligation to the outcome of the matter where the DPP conducted the prosecution;
- retain the DPP’s obligation to notify that a prosecution has commenced only where the DPP commences the prosecution, which is rare; and
- make explicit that the notification cannot breach the requirements of section 36C of the Evidence Act 1996 by providing personal details (name, school) of the alleged victim.\textsuperscript{34}

The Commissioner of Police indicated his support for these proposals.\textsuperscript{35} He proposed that further non-publication/non-disclosure provisions should be included as exemptions from his notification obligation: Young Offenders Act 1994, section 190(2); Children’s Court of Western Australia Act 1988, section 35.\textsuperscript{36} Apart from the proposals for exempting the DPP and Police Commissioner from including victim-identifying information in their notices to the Board, the Review recommends that the amendments proposed by the DPP be made to section 41.

With respect to both senior officers, the Review is not persuaded that the non-publication provisions cited would justify the exclusion of pertinent information from notices to the Board, with the exception of section 189 of the Young Offenders Act. Subject to further advice, it is not clear that providing identifying details of child victims or their schools in a notice to the Board would amount

\textsuperscript{32} Submission 24, Director General, Department of Education, page 2.
\textsuperscript{33} Submission 6, Director of Public Prosecutions.
\textsuperscript{34} Submission 6, Director of Public Prosecutions.
\textsuperscript{35} By letter dated 15 January 2018.
\textsuperscript{36} The Queensland legislation explicitly authorises the Police Commissioner to disclose otherwise protected information: Education (Queensland College of Teachers) Act 2005, section 75(8).
to ‘publishing in a written publication available to the public’ or ‘broadcasting’ which are both prohibited by section 36C of the Evidence Act and, using similar language, section 35 of the Children’s Court of WA Act. Further, although it is unlikely that the Board would ever expect to receive information contrary to section 189 of the Young Offenders Act, it is not obvious to the Review that that section requires an explicit reference or cross-reference in the Teacher Registration Act in order to apply to notifications under that Act.

The Board may not always require personal details of a child victim in order to be able to investigate the perpetrator’s (or alleged perpetrator’s) conduct. Nevertheless, it is contrary to common sense to close off the possibility of the Board ever being able to contact a child victim — or a victim of alleged historical misconduct who has since reached adulthood - as a potential witness in a matter before the Board, a disciplinary committee or the State Administrative Tribunal.

On the other hand, once the Board has received identifying information in a section 41 or section 42 (employer’s) notice, or indeed in a public complaint, it does need to be adequately protected from ‘publishing to the public’ and ‘broadcasting’ (such as by a media outlet which obtains it via a Freedom of Information (FoI) request). It may be that an explicit reference is needed in the Teacher Registration Act to apply the two provisions to matters under consideration by the Board as well as to the court proceedings which are covered by the Evidence Act and Children’s Court of WA Act. The Review recommends that legal advice be obtained as to the amendments needed, if any, to ensure that the identity of a child victim or witness and the identity of the child’s school, when known to the Board, are protected from publication to the public and from broadcast.

6.3.2 Where practicable or as required?

In addition, the Review recommends that the notification obligation, as clarified, should no longer be activated only “where practicable”. The obligation has been in place since 2004 with the proviso that it need only be implemented “where practicable”. Particularly in light of the increasing focus of the State and the nation on sharing information which can operate to protect children, including from grooming and child sexual abuse, it should no longer be acceptable for the Police Commissioner or the DPP to neglect or overlook sharing relevant information about a registered teacher with the regulatory body, the Teacher Registration Board.

6.3.3 Identifying registered teachers

An easy-to-use notification form has been developed by the Board in consultation with the DPP and the online public register of teachers makes it a simple matter for anyone to check whether a person is currently registered. A more reliable check would be made possible by including further identification details, notably date of birth and gender. Two options occur to the Review. Since these additional details are published on the professional register (known as TRIP), enabling the DPP and the Commissioner of Police to have access to the TRIP, through one or more nominated persons, for the purpose of performing their notification obligation and possibly for investigation purposes could be one way of ensuring they can be confident in identifying a person of concern as a registered teacher. An alternative approach may be to provide identifying information about all registered

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37 For example, recent amendments to sections 28A-C, Children and Community Services Act 2004.
39 The Queensland Police Commissioner and Director of Public Prosecutions are required to notify the College of certain matters if they reasonably suspect the person in question is or was an approved teacher and, in some cases, must do so within seven days: Education (Queensland College of Teachers) Act 2005, sections 75 and 80.
40 This would involve amending Teacher Registration (General) Regulations 2012, regulation 21B.
teachers (that is, more information than is currently publicly available but less than is on TRIP) as an online database to the DPP and Commissioner of Police with weekly or fortnightly updates being created automatically.\footnote{These would be alternative ways of fulfilling the Review’s recommendation in support of greater information sharing about teachers in the interests of children’s wellbeing (section 5.2.2).}

The functionality of the TRIP is currently being expanded with, among other objectives, the goal of enabling employers in the early childhood education and care sector to have access for the first time. Access to relevant information by the DPP and Commissioner of Police could also be considered as part of this project.

6.4 Complaints

Public complaints are a relatively scarce source of information for the Board about teachers. In 2016-17 the Board received 11 public complaints. One was referred back to the educational venue where the teacher was employed as the person or authority which could deal with it most appropriately. Five of the complaints were considered by the Board not to raise disciplinary matters. The Board was still considering the remaining five complaints as at the end of June 2017.\footnote{Annual Report of the Teacher Registration Board of WA in Department of Education Services, Final Report 2016-17, page 34.}

Primarily in the interests of children’s safety and wellbeing, the Review favours the retention of the Board’s capacity to receive and assess complaints from members of the public.

6.4.1 Terminology

The Teacher Registration Board’s submission commented on the term ‘complaint’ as used in the Act.\footnote{Submission 12, Teacher Registration Board of WA, page 33.}

\begin{quote}
The term ‘complaint’ is used in several different senses in section 51. There is a general distinction to be drawn between a ‘public complaint’ and a ‘complaint formulated by the Board’. A complaint formulated by the Board may be based on a public complaint and there are requirements to, for example, provide notice to the teacher the subject of a complaint of the identity of the complainant. The Board is generally of the view that there ought to be greater certainty about what constitutes a complaint for the purposes of the operation of the Act, perhaps by more clearly defining the term.\footnote{Western Australian College of Teacher Act 2004, section 61.}
\end{quote}

The use of the term ‘complaint’ for multiple purposes is neither helpful nor necessary. Nevertheless, the term has been in use in this context since 2004\footnote{Western Australian College of Teacher Act 2004, section 61.} and seems to be well-understood and accepted.

The Review recommends that the term ‘public complaint’ should be used for a complaint received by the Board from a member of the public, including any stakeholder, while the term ‘complaint’ should be reserved to refer to a complaint formulated by the Board.

6.4.2 Treatment

Currently the Act treats both public and Board-formulated complaints the same way in some respects. Each may be dismissed as trivial, vexatious or best resolved by another authority. Further, the teacher about whom a complaint is made should be notified of it.

In our view the Board should not be required to notify the teacher who is the subject of a public complaint. In particular, teachers should not be required to respond to public complaints found by...
the Board to be vexatious. Nevertheless, should the Board undertake an investigation into a public complaint before deciding whether to accept it or not, the teacher should be notified.

The Review recommends that the Board should only be required to notify the teacher the subject of a public complaint once it intends to commence an investigation or formulate its own complaint. The Board should retain a discretion, however, to notify the complainant, giving the reasons, in the event the person's complaint is dismissed. A public complaint may be dismissed by the Board for the reasons outlined in section 57 including that it is vexatious or more appropriately dealt with by another authority.

Once a public complaint has been accepted by the Board, it should be treated like any other relevant information including a notification or a criminal record check. It may cause the Board, possibly in combination with other information, to formulate a complaint of its own. If the teacher has not been notified before this point is reached, he or she should be notified once a complaint is formulated by the Board, subject to the caveats set out in section 52 which include avoiding prejudicing investigations by the Board or other agencies or placing a complainant or another person at risk of intimidation.

The Review recommends that public complaints should be treated by the Act and the Board in the same way as notifications, criminal record checks and other information obtained by the Board. Based on a public complaint, criminal record check, notification and/or other information the Board should be able to formulate a 'complaint'.

We recommend further that, following such assessment and investigation as the Board considers appropriate, a Board-formulated complaint may, instead of being referred for inquiry, be dismissed because:

- the matter could more appropriately be dealt with by another person or authority;
- the matter is not within the power of the Board, a disciplinary committee or the impairment review committee to deal with under the Act;
- the matter lacks substance; or
- the complaint should be dismissed in the public interest.

Only a Board-formulated complaint should be capable of referral to an appropriate committee or the State Administrative Tribunal.

At each stage of its dealings with a public complaint, notification, criminal record check, other information or a Board-formulated complaint, the Board's investigation powers should be available to it. Currently this is not the case. Requiring the Board to formulate a complaint before undertaking a thorough investigation is contrary to both fairness and commonsense. An investigation at an early stage will, at least in some cases, lead to the matter being dismissed, lessening not only time and resources but also the stress and reputational damage experienced by the teacher.

The Review recommends that the Board's investigation powers should be available to it for the purpose of investigating a public complaint before making a decision on how to treat it and at each further stage of dealing with the matter.

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Chapter 7 – Disciplinary matters

7.1 The disciplinary scheme
The disciplinary scheme is set out in Part 5 of the Act. When a potential ‘disciplinary matter’ comes to the attention of the Board, it may investigate the matter and:

- take no further action;
- refer it to a disciplinary committee for inquiry and decision or recommendation; or
- refer the matter directly to the State Administrative Tribunal.

In some cases, the Board may have grounds to issue an interim disciplinary order with the effect of suspending or imposing a condition on registration until the matter can be resolved. Other than for the matters listed in section 27 which render a person ineligible to be registered, neither the Board nor a disciplinary committee can cancel a teacher’s registration.1 This can only be done by the State Administrative Tribunal on a matter referred to it by the Board.

The Review has found that, overall, the disciplinary scheme is effective and well-calibrated to meet the public interest and the safety of children while protecting the due process rights of teachers whose conduct is under investigation. Nevertheless, some provisions require amendment to ensure they operate as originally intended: particularly the definition of disciplinary matters relating to misconduct and the authority for the issue of an interim disciplinary order.

7.2 Disciplinary matters defined
Disciplinary matters are:

- being charged with a sexual offence involving a child;
- contravening the Act;
- contravening a condition imposed on registration;
- contravening an order made under Part 5 of the Act;
- being convicted of an offence the nature of which renders the person unfit to be registered;
- being seriously incompetent as a teacher;
- having engaged in serious misconduct the nature of which renders the person unfit to be registered; and
- failing to comply with an undertaking given under the Act.

The disciplinary scheme cannot operate effectively with respect to teacher misconduct due to the way misconduct is defined as a disciplinary matter. The disciplinary matter of serious misconduct is defined as being such that it “renders the person unfit to be registered”.2 The only response to such misconduct is cancellation of registration. A disciplinary committee cannot cancel the registration of a teacher for a disciplinary matter. Therefore, the disciplinary committee cannot deal with serious misconduct.3 Such matters must always be referred to the State Administrative Tribunal. Clearly this was not the Parliament’s intention. As the Teacher Registration Board submitted: “it is reasonable to expect that there may be instances of serious misconduct that ought to have

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1 However, the Board may achieve the same result by refusing an application for renewal of registration.
2 Section 47(f)(ii). Misconduct other than serious misconduct of this nature is not a disciplinary matter.
3 Submission 12, Teacher Registration Board of WA, page 34.
implications for a teacher’s registration but would not necessarily result in cancellation of their registration.”

The Review recommends that the disciplinary matter relating to misconduct should be defined simply as “engaged in serious misconduct” without the requirement that that misconduct was of such a nature as to make the person unfit to be registered. We do not consider it necessary to make misconduct other than serious misconduct a disciplinary matter.\(^5\)

The same dilemma afflicts the disciplinary matter in paragraph (e): that a teacher has been convicted of an offence the nature of which renders the person unfit to be registered. The Review recommends that this disciplinary matter be redefined to provide: that a teacher has been convicted in Western Australia of one or more indictable offences or, elsewhere, of one of more offences which would have been indictable had they been committed in Western Australia.

The definitions of the terms serious incompetence and serious misconduct proposed by the Review in Chapter 6 (section 6.2.4) would apply equally to these terms as used in the list of disciplinary matters.

7.3 Investigations by the Board

It is the Board’s responsibility to conduct investigations into potential disciplinary matters. As a result of its investigations, a matter may be:

- dismissed;
- the subject of an interim disciplinary order (disciplinary matters only);
- referred to a committee to be dealt with; or
- referred to the State Administrative Tribunal.\(^6\)

7.3.1 Investigation powers

The Board’s investigation powers enable it to require the attendance of any person either as a witness or to produce a relevant document.\(^7\) However, no penalties attach directly to a failure to comply with such a notice (although failure of a registered teacher to do so may be considered a contravention of the Act which is itself a disciplinary matter as well as being a factor in the consideration of fitness and propriety\(^8\)).

Both the Teacher Registration Board and the Australasian Teacher Regulatory Authorities (ATRA) of which it is a member supported the need for consequences for failing to comply with the Board’s requests for information in connection with an investigation.

*This may mean being able to impose a penalty if a person or body fails, without reasonable excuse, to comply with the requirements of the section.*\(^9\)

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\(^4\) Submission 12, Teacher Registration Board of WA, page 34.

\(^5\) We note, however, that both misconduct and serious misconduct are covered by the Victorian teacher registration legislation: *Education and Training Reform Act 2006* (Vic), section 2.6.33(1).

\(^6\) Section 53. It should be noted that an interim disciplinary order must be referred to the State Administrative Tribunal within 14 days, unless earlier withdrawn by the Board.

\(^7\) Section 56.

\(^8\) See section 47(b) – disciplinary matters – and section 24(a) – fitness and propriety.

\(^9\) Submission 7, Australasian Teacher Regulatory Authorities (ATRA), page 2, paragraph 16.
The Board has endeavoured to conduct all its investigations in a professional way that is not intrusive and is pointed up to acquiring evidence that will assist in the making of sound decisions. This endeavor would be assisted if there was a penalty that might apply if a person fails, without reasonable excuse, to comply with the requirements of the section ...10

The Board cited the example of the South Australian teacher registration legislation.11 In Western Australia, the Veterinary Surgeons Act 1960 enables an investigation to require any person to provide information, answer questions and produce documents subject to a fine up to $1,000.12 In Queensland, an investigator appointed by the Queensland College of Teachers can require anyone to provide evidence and failure to do so without reasonable excuse is an offence.13

By way of contrast, under the WA early childhood services legislation, only service providers, supervisors, staff and people suspected of working in breach of the law can be required to answer an investigation’s questions and provide information subject to a penalty (which is $8,000 in the case of an individual and $40,000 in the case of an organisation).14

It is not clear that the Board’s notices are often flouted. Nevertheless, it is in the interests of all concerned that a matter be thoroughly investigated before a disciplinary committee or the State Administrative Tribunal, with their additional inquiry powers, becomes involved. In some cases, at least, a thorough investigation is likely to lead the Board to conclude that the matter should be dismissed. On balance we recommend that the Act be amended to enable the Board to prosecute any person for failure to comply with a notice to attend in connection with an investigation into a disciplinary matter.

We further recommend that the defence provision, which currently enables the person who is prosecuted to claim a “lawful excuse”, be amended to enable a defence of “reasonable excuse”. This formulation of the defence is used in other contemporary legislation to excuse the same kind of non-cooperation and is clearly more applicable to the situations in which a person may not comply with a Board notice (for example, the person was overseas or in hospital).15 Circumstances which would amount to a ‘lawful excuse’ are potentially narrower.16

Finally, the Review considers it may be necessary to ensure the Board can activate its investigation powers at any stage of a process so that it is possible for a matter to be properly investigated as early as possible. This should ensure that matters are not unnecessarily escalated before adequate information is obtained. It is clear that this was the original intention for the Act although it appears not to have been interpreted in this way. We recommend that the Board’s investigation powers should be made available to the Board before considering what action to take on receiving a notification, criminal record check or public complaint and before formulating a complaint (see

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10 Submission 12, Teacher Registration Board of WA, page 33.
11 Teacher Registration and Standards Act 2004 (SA), section 34.
12 Section 16B inserted in 1984 and amended most recently in 2005. See also Architects Act 2004, sections 12 and 14, imposing a penalty up to $2,000 on any person failing to comply; Legal Profession Act 2008, section 519 ($5,000); Fair Trading Act 2010, sections 69 and 88 ($10,000).
13 Education (Queensland College of Teachers) Act 2005, section 181.
15 For example, Health Practitioner Regulation National Law (WA) Act 2010 – Schedule, section 88(2), 129(3) and others; Education and Care Services National Law (WA) Act 2012 – Schedule, section 212(1)(b) and 254(2)(c); Mental Health Act 2014, section 465.
16 Based on the analysis in Poole v Wah Min Chan [1947] HCA 37; (1947) 75 CLR 218, per Starke J.
section 6.4.2) as well as before referring a complaint to an appropriate committee or the State Administrative Tribunal.

7.3.2 Duplication of investigations
Duplication of investigations was raised as a concern by the Acting Executive Director, Catholic Education WA.

The potential for duplicate investigation of a matter is a concern (for example, where a school based investigation is followed by another full investigation by the Board). Investigations can have adversely affect [sic] students, principals, staff and broader school community.

In the case of child protection matters, it is not in the best interests of students to be interviewed multiple times in relation to the same matter, particularly given the length of time that it typically takes for a secondary investigation to be finalised.

I propose that the Act is amended to require the Board to consider any other investigations, and to adopt the information in those investigations.17

The Act already enables the Board to avoid unnecessary duplication of investigations into disciplinary matters. Section 57 enables the Board to reject a public complaint in respect of a matter that could more appropriately be dealt with by another person or authority and the Review recommends above (section 6.4.2) that the same should be applied to Board-formulated complaints once an initial assessment has been made and any appropriate investigations undertaken. As part of an initial assessment and investigation the Board may obtain publicly available information such as the transcript of evidence in a court trying an offence or sentencing a perpetrator. We note here that a disciplinary committee inquiry can also limit duplication to a significant extent. It can “receive in evidence any transcript of evidence taken in any proceedings” and “adopt any findings, decision, judgment or reasons for judgment” of a court, tribunal or other body constituted by law and “draw such conclusions of fact from those as it considers proper”.18

Nevertheless, the Review acknowledges that there may be duplication of investigations and inquiries. This is most likely to occur when the Board or a disciplinary committee considers that a regulatory response is required, particularly suspension or cancellation of registration, to a matter which was previously dealt with as an employment matter or even a criminal matter which does not affect the person’s registration. In our opinion it is appropriate that the Board has the power to impose or seek a regulatory response in addition to disciplinary action imposed by an employer or criminal penalty in an appropriate case. We consider that the Board has adequate powers to approach such cases sensitively with a view to limiting disruption to schools and distress to students both present and past.

7.4 Disciplinary committees
7.4.1 Membership and procedures
The Act provides for more than one disciplinary committee to be established in anticipation of a significant number of disciplinary matters arising. Each disciplinary committee is to be constituted by a registered teacher, an Australian lawyer and another person considered appropriate by the Board. One of the three members must also be a Board member.19

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17 Submission 23, Acting Executive Director, Catholic Education WA.
18 Section 66.
19 Section 49.
The Association of Independent Schools (AISWA) proposed that a “teacher under investigation” should be able “to challenge perceived bias of the disciplinary panel”. A conflict of interest on the part of the disciplinary committee or any member would be a clear contravention of natural justice which requires an unbiased decision-maker. Two opportunities exist in the Act for a teacher to object to a biased panel or individual member: he or she may refuse consent to the disciplinary committee inquiry (effectively forcing the Board to choose between dismissing the matter and referring it to the State Administrative Tribunal), or seek a review of the committee’s decision by applying to the Tribunal. Relying on these provisions is, in our view, unfair. Taking the first course denies the teacher the option of the more informal and less punitive disciplinary committee process; taking the second is at the teacher’s own unpredictable, and not inconsiderable, expense.

In any case, the Act already requires conflicts of interest to be declared and puts the onus of doing so on the member himself or herself. Moreover, it explicitly binds the disciplinary committee to observe the rules of procedural fairness. The proposed inclusion is unnecessary.

The disciplinary committee role is one of inquiring while the Board itself, as set out above (section 7.3), conducts the initial investigation. The Board is required to provide a report on its investigation to the committee when referring a complaint. A committee may request the Board to undertake further investigations into the matter. A committee may also recommend that the Board refer the complaint to the impairment review committee instead or directly to the State Administrative Tribunal.

If a committee accepts a complaint it may only deal with it with the teacher’s consent. Incentives for teachers to consent include that the committee cannot cancel registration and that its procedure is likely to be less formal than that of the State Administrative Tribunal.

While a disciplinary committee is not bound by the rules of evidence, it is bound by the rules of procedural fairness. Teachers usually have the right to call witnesses and give evidence, examine and cross-examine witnesses, and make submissions. The teacher requires the committee’s leave to be represented. Once an inquiry is underway (with consent), the committee can require registered teachers, including the teacher under consideration, to attend as witnesses and to produce any specified relevant documents or things and the Board could prosecute a registered teacher who fails to comply. Other people, however, can only be requested to attend and cannot be prosecuted for failing to do so.

Although the Teacher Registration Board’s submission does not address the disciplinary committee’s inquiry powers, it would be anomalous if the Board had power to prosecute any person for disobeying notices issued during an investigation but could not do so for failure to obey a notice.

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20 Submission 16, Association of Independent Schools of WA, page 3, paragraph 17.
21 In accordance with section 63(b).
22 Section 108(2).
23 Section 64(c).
24 Section 54.
25 Section 55(a).
26 Section 55(b) and (c).
27 Section 63.
28 Section 64.
29 Section 65.
30 Section 67.
31 Section 68(1)(a).
32 Section 68(1)(b).
issued during an inquiry by a disciplinary committee. It is the committee and not the Board which makes the decision and imposes the order in a disciplinary matter it takes through to completion and it is from the committee’s decision that an aggrieved teacher has a right of review. It is at least equally vital that the committee has all relevant information before it on which to make a decision. For these reasons the Review recommends that the notice powers of a disciplinary committee inquiry should mirror those proposed to be extended to a Board investigation in that they should apply to any person subject to a penalty on prosecution for failure to comply without reasonable excuse.

7.4.2 Disciplinary committee orders
Disciplinary committees have a range of orders available to them:

- dismiss the matter;
- a caution or reprimand;
- a fine up to $5,000;
- suspension of registration up to two years;
- a condition or conditions;
- 'demotion' from full to provisional registration – only available where the finding is one of serious incompetence as a teacher.33

Alternatively the committee may recommend that the Board refer the matter to the State Administrative Tribunal.34

The Teacher Registration Board supported the continued omission of a power to cancel registration as the result of an inquiry by a disciplinary committee35 and the Review agrees that cancellation should remain the province of the State Administrative Tribunal.

7.5 Interim disciplinary orders
Interim disciplinary orders can be made under section 59 or 60 of the Act. The Board36 or a disciplinary committee may make an interim disciplinary order to impose a condition on, or suspend, a teacher's registration where:

- an activity of the teacher involves, or will involve, a risk of imminent injury or harm to the physical or mental health of any person;37 or
- the teacher is charged with a sexual offence involving a child.38

An interim disciplinary order takes effect on the day notice is given of it to the teacher or on a later date as specified in the notice.39 It cannot last longer than 30 days (i.e. calendar days) unless it is still before the State Administrative Tribunal at the end of that time.40 These orders must be referred to

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33 Section 70(1).
34 Section 70(1)(g).
35 Submission 12, Teacher Registration Board of WA, page 40.
36 The Board has delegated this power to a subcommittee known as the Interim Disciplinary Order Committee.
37 Section 59.
38 Section 60.
39 Section 58(5).
40 Sections 58(2) and 83(2).
the State Administrative Tribunal within 14 days of being made although the Board or committee itself may revoke or withdraw them at any time before referral.41

Table 7.1 - Interim disciplinary orders issued by type and year42

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<th>Order type</th>
<th>2013-14</th>
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<th>2015-16</th>
<th>2016-17</th>
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<td>0</td>
<td>1</td>
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<tr>
<td>S. 60 - child sex offence charge</td>
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<td>1</td>
<td>12</td>
<td>7</td>
<td>5</td>
</tr>
</tbody>
</table>

Unfortunately, the wording of the authority for an interim disciplinary order for a person posing an imminent risk means that these can only rarely be issued as the Teacher Registration Board’s submission explained. The ‘activity’ of the teacher which poses a risk of imminent injury or harm:

... cannot be the incident which gave rise to the notification (or complaint). It must relate to an activity a teacher is undertaking giving rise to a risk at the time the IDO is contemplated. Such an activity cannot include, for example, job seeking or ‘potential employment’ at another school. The question is what the teacher is doing which of its nature currently involves or will in the future involve a risk of imminent injury or harm.

Thus the Board has no power to issue an interim disciplinary order in circumstances where the teacher has not been re-employed as a teacher. Students at this new educational venue would be at ‘potential risk’ [as distinct from imminent risk] until the TRBWA became aware of such further employment. The scope of the power to issue an IDO does not include instances where the Board is concerned that the teacher may be employed elsewhere without further evidence to establish such an activity is actually occurring.43

The Board’s concern was echoed by ATRA44 and the Acting Executive Director, Catholic Education WA.45

Other jurisdictions also have an emergency suspension power. For example, the Tasmanian Board may suspend registration if it believes on reasonable grounds that the teacher may pose a risk of harm to a student.46 Similarly, the Queensland College may suspend registration if it reasonably believes the teacher poses an unacceptable risk of harm to children. Suspension is automatic in Queensland if the teacher is charged with a serious offence or made subject to a temporary offender prohibition order or interim sexual offender order.47 The Review appreciates, as the Board itself pointed out, that the power to issue an interim disciplinary order is an extraordinary one.

There is, of course, a balance that must be achieved here because the implications of making such an order are high. Further, the making of such an order is contingent on the Board (or a disciplinary committee) forming the requisite opinion. Such an opinion is formed in circumstances where a full investigation has not yet been completed and can be made without hearing submissions from the teacher involved. While such an order is only in place for a reasonably short period of time (noting that the period of suspension may be extended by the

41 Sections 61 and 58(3).
42 Data sourced from Teacher Registration Board annual reports.
43 Submission 12, Teacher Registration Board of WA, page 35.
44 Submission 8, Australasian Teacher Regulatory Authorities, page 3, paragraph 18.
45 Submission 23, Acting Executive Director, Catholic Education WA.
46 Teachers Registration Act 2000 (Tas), section 24B.
47 Education (Queensland College of Teachers) Act 2005, sections 48 and 49.
The authorisation must recognise the limited information the Board has and the potentially irreversible impacts on the teacher’s professional reputation and livelihood. For this reason the Review does not support the suggestions of the Director General of Education, that merely having been dismissed for serious misconduct or serious incompetence, or even the subject of an employer’s notification under section 42, should be sufficient for the Board to issue an interim disciplinary order.49

Nevertheless, the current section 59 is essentially nugatory and cannot operate effectively as intended to protect children from injury and harm. The Review recommends that the circumstances in which the Board or a disciplinary committee can issue an interim disciplinary order should be widened to cover the situations in which the teacher has not been re-employed or the Board is unaware whether or not the teacher has been re-employed. This is likely to be achieved by replacing the current requirement that the Board or committee is of the opinion that ‘an activity’ of the teacher ‘involves or will involve a risk of imminent injury or harm to the physical or mental health of any person’. One model which may be referred to is section 240 of the School Education Act 1999 which empowers the Director General of Education to require an employee to leave and remain away from the premises of a government school, or all government schools, if she suspects that the presence of the person on the premises constitutes a risk to the safety or welfare of students. Another possible model is that in the Queensland and Tasmanian teacher registration legislation referred to above. Should this proposal for reform be accepted, we expect that a close involvement of the State Solicitor’s Office in the drafting of the amendment will be required to ensure the desired outcome is achieved.

7.6 Alternative power to impose conditions

It should be mentioned here that it is not only a disciplinary committee which can impose conditions on a teacher’s registration. Conditions can be imposed by the Board without reference to the disciplinary process. In addition to the conditions applicable to each category of registration and all registrants, the Board may impose one or more conditions on the registration of an individual teacher. These conditions must be reasonable and relevant to ensuring the professional, competent and safe practice of teaching by the registered teacher.50 They may be imposed at the time of initial application or renewal or at any other time during a teacher’s registration period. They are not imposed as a result of a disciplinary matter. As shown in the following table, conditions of this kind are rarely imposed. The Board’s decision to impose such a condition is reviewable on application by the teacher to the State Administrative Tribunal.51

<table>
<thead>
<tr>
<th>Year</th>
<th>7/12/2012 - 30/6/2013</th>
<th>2013-14</th>
<th>2014-15</th>
<th>2015-16</th>
<th>2016-17</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of teachers</td>
<td>Not reported</td>
<td>1</td>
<td>6</td>
<td>6</td>
<td>9</td>
</tr>
</tbody>
</table>

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48 Submission 12, Teacher Registration Board of WA, pages 35-36.
49 Submission 24, Director General, Department of Education, page 2.
51 Section 124(2)(c).
52 Data sourced from Teacher Registration Board annual reports.
Chapter 8 – Impairment matters

The 2010 review of the Western Australian College of Teaching Act 2004 (WACOT Act) noted there was no requirement in that Act for an applicant in any category of registration to have sufficient physical capacity, mental capacity and skill to practise.1 The review noted the power in the Victorian teacher registration legislation to convene impairment panels in cases where a teacher’s ability to practise is already, or is likely to be, seriously detrimentally affected by a physical or mental impairment. The justification was to protect teachers unfit to continue to teach for health reasons from being subjected to the disciplinary process set up to deal with serious misconduct.2

This matter was taken up in the drafting of the current Act.

8.1 Impairment matters defined
8.1.1 Impairment in the Act

When a complaint is referred to the impairment review committee, the committee’s functions are, with the consent of the teacher, to consider the matter, usually with the benefit of a medical report, and decide whether, and if so how, to respond.3

Impairment matters are defined as follows:

(a) a registered teacher is affected by use of or dependence on alcohol or a drug to such an extent that their ability to practise as a teacher is or is likely to be affected; and/or
(b) a registered teacher suffers from an impairment to such an extent that their ability to practise as a teacher is or is likely to be affected.4

Impairment means “mental disability, injury, or physical illness”.5 The terms ‘dependence’ and ‘drug’ in paragraph (a) are not defined.

The State School Teachers’ Union raised concerns about the risks associated with the Board’s impairment review jurisdiction.

... the “use or dependence” on alcohol or drugs is open to interpretation and misinterpretation. While we would argue strongly that a person who is intoxicated should not be teaching children, “use or dependence” may vary depending on an individual’s tolerance. Not only that, why would it be necessary to inform the Board about a teachers [sic] use and dependence on a prescription drug say for cancer. This should be managed at the local level.6

The Acting WA Equal Opportunity Commissioner submitted that the definition of impairment for the purposes of the second limb of the definition of impairment matters – paragraph (b) - should be the same as in WA’s Equal Opportunity Act 1984.7

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1 In contrast with, for example, section 27(2)(d) of the Nurses and Midwives Act 2006, since repealed.
2 Department of Education Services, Review of the Western Australian College of Teaching Act 2004: Report, June 2010, page 60.
3 Teacher Registration Act 2012, section 78.
4 Section 48.
5 Section 46.
6 Submission 18, State School Teachers’ Union of WA, page 12.
8.1.2 Inter-State comparisons
Most teacher regulatory authorities in Australia now have power to consider impairment in the context of teacher registration.

In Victoria impairment is defined to mean "the person has a physical or mental impairment, disability, condition or disorder including substance abuse or dependence".\(^8\) If a hearing conducted by a medical panel finds that the teacher's ability to practise is, or is likely to be, seriously detrimentally affected because of an impairment, conditions can be imposed on registration and/or registration can be suspended.\(^9\) Conditions which can be imposed include that the teacher undergoes counselling or obtains treatment.\(^10\)

In South Australia, the employer of a practising teacher must notify the Board if it "has reason to believe that the teacher's capacity to teach is seriously impaired by an illness or disability affecting the person's behaviour or competence as a teacher" describing the grounds for that belief.\(^11\) The South Australian Board may hold an inquiry "to determine whether a teacher's capacity to teach is seriously impaired by an illness or disability affecting the person's behaviour or competence as a teacher". Available outcomes apart from dismissing the matter are imposition of conditions, suspension of registration or cancellation of registration.\(^12\)

The ACT Institute may suspend or cancel registration if a teacher "has become mentally or physically incapacitated and the incapacity prevents the person from performing an inherent requirement of their job as a teacher".\(^13\)

In Tasmania fitness to be a teacher is an eligibility requirement together with being of good character.\(^14\) In determining fitness, the Board is authorised to take into account (a) any medical, psychiatric or psychological condition of the application, and (b) the competence of the person as a teacher, and (c) any other matter it considers relevant. The Board may require the person to undergo a medical examination, including a psychiatric, psychological or other examination and authorise the practitioner to provide a copy of the resulting report to the Board.\(^15\) In the case of a registered teacher, the Board can hold an inquiry into fitness and outcomes can include a caution, conditions, suspension or cancellation.\(^16\)

In Queensland impairment is relevant when it may have contributed to a teacher's offending, misconduct, incompetence or other behaviour that does not satisfy a standard generally expected of a teacher. Impairment means "a physical or mental condition or disorder (including substance abuse or dependence)".\(^17\) If the Professional Capacity and Teacher Conduct Committee considers the behaviour of concern may be caused, or contributed to, by an impairment then it can order a health assessment.\(^18\) The health assessment report must include whether there is an impairment

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\(^{8}\) Education and Training Reform Act 2006 (Vic), section 2.6.1.
\(^{9}\) Education and Training Reform Act 2006 (Vic), section 2.6.41E.
\(^{10}\) Education and Training Reform Act 2006 (Vic), section 2.6.41E.
\(^{11}\) Teachers Registration and Standards Act 2004 (SA), section 39. In section 6.2.2 the Review recommends that a WA employer should be required to notify the Board if a serious medical condition or an impairment has contributed to a teacher's serious incompetence or serious misconduct.
\(^{12}\) Teachers Registration and Standards Act 2004 (SA), section 38.
\(^{13}\) ACT Teacher Quality Institute Act 2010, section 63.
\(^{14}\) Teachers Registration Act 2000 (Tas), section 17D.
\(^{15}\) Teachers Registration Act 2000 (Tas), section 17K.
\(^{16}\) Teachers Registration Act 2000 (Tas), section 24.
\(^{17}\) Education (Queensland College of Teachers) Act 2005, Schedule 3.
\(^{18}\) Education (Queensland College of Teachers) Act 2005, section 119A.
and whether it caused the behaviour; it may also include whether the impairment has an adverse impact on the teacher's ability to practise.\(^{19}\) The Committee's powers include issuing warnings and reprimands, imposing conditions and accepting undertakings but for a more severe penalty the matter must be referred to the Queensland Civil and Administrative Tribunal.\(^{20}\)

### 8.1.3 Anti-discrimination law

Discrimination on the ground of impairment or disability may be unlawful.

WA's Equal Opportunity Act defines impairment as follows.

\[ \text{impairment in relation to a person, means one or more of the following conditions} - \]

(a) any defect or disturbance in the normal structure or functioning of a person's body; or
(b) any defect or disturbance in the normal structure or functioning of a person's brain; or
(c) any illness or condition which impairs a person's thought processes, perception of reality, emotions or judgment or which results in disturbed behaviour, whether arising from a condition subsisting at birth or from an illness or injury and includes an impairment —

(d) which presently exists or existed in the past but has now ceased to exist; or
(e) which is imputed to the person.\(^{21}\)

The Review considers that there should be consistency between the two definitions, particularly as the Equal Opportunity Act makes discrimination by professional regulatory bodies unlawful and because a secondary objective of the Teacher Registration Act is to provide a more compassionate approach for teachers with impairments.

The Review understands that the Teacher Registration Board is not bound by these provisions because the Teacher Registration Act 2012 was passed later than the Equal Opportunity Act 1984.\(^{22}\) Nevertheless, the two Acts cover substantially the same matters and the treatment of impairment in the Teacher Registration Act is largely consistent with the requirements of the Equal Opportunity Act.

The Review recommends that the definition of impairment in the Teacher Registration Act should be the same as in the Equal Opportunity Act paragraphs (a) – (c) together with the rider “whether arising from a condition subsisting at birth or from and illness or injury”.

Under the Equal Opportunity Act, professional qualifying bodies (regulators) cannot discriminate by:

- refusing to register an applicant because of his or her impairment;
- refusing to renew registration for that reason;
- imposing conditions for that reason; or
- cancelling registration for that reason.\(^{23}\)

\(^{19}\) Education (Queensland College of Teachers) Act 2005, section 119B.

\(^{20}\) Education (Queensland College of Teachers) Act 2005, section 123.


\(^{22}\) The Disability Discrimination Act 1992 (Cth) does not apply to State professional regulatory bodies, including the Teacher Registration Board: sections 19 and 12(6).

\(^{23}\) Equal Opportunity Act 1984, section 66G.
It is also unlawful for the regulator to require an applicant or a registered person to provide information connected with or intended to be used for the purpose of discriminating unlawfully if other applicants and registered teachers are not required to provide such information.24

However, it is not unlawful for the regulator to treat a person with an impairment differently, including by requiring information, refusing registration or imposing conditions or other sanctions, if it reasonably concludes that the person with the impairment would be unable to carry out the work required to be performed in the course of the practice of the profession. Before coming to that conclusion, the regulator must take all reasonable steps to obtain relevant and necessary information concerning the impairment.25

As outlined below (section 8.2.1), the Board’s processes for obtaining “relevant and necessary information” about an impairment matter include investigation and referral, with the teacher’s consent, to the impairment review committee for inquiry and recommendation or, if consent is refused or the Board considers it more appropriate, to the State Administrative Tribunal for inquiry and determination.26

As noted in Chapter 3, all applicants are currently required to inform the Board if they have “any serious medical condition, or mental or physical impairment, that adversely affects, or is likely to adversely affect, the person’s ability to practise as a teacher”. The Board takes this information into account in determining an applicant’s fitness and propriety to be registered.

There is potentially a very real difference between an impairment which does or is likely to adversely affect a person’s ability to practise as a teacher and one which means that the person is unable to carry out the work required to be performed by a teacher. Something which adversely affects an ability may simply make it harder whereas the Equal Opportunity Act requires that the work be made impossible. Given the many ways in which the profession of teaching can be practised, a smaller range of impairments will render a teacher unable to do the work required than will make the work harder.

However, as noted above, the Teacher Registration Board is not bound by the Equal Opportunity Act and, for the following reasons, should retain a somewhat broader power to investigate the situation of teachers whose medical condition or impairment affects their ability to teach:

1. the wider coverage of the Teacher Registration Act reflects that Act’s paramount concern for the best interests of children;
2. physical and mental capacity are essential components of a teacher’s fitness and propriety;
3. the Board has the power to impose a condition on a teacher’s registration to ensure the teacher can work safely and competently despite his or her condition or impairment;27
4. the Board and the State Administrative Tribunal have the power to suspend a teacher’s registration for up to two years in a case where the illness or impairment may be temporary; and
5. in the event that an impairment means a registered teacher can no longer perform the work required of a teacher, the Board would be expected to refer the matter to the State Administrative Tribunal to consider whether registration should be cancelled.

26 Teacher Registration Act 2012, sections 53, 73-80, 83-84.
27 Section 26(3) requires the condition to “be reasonable and relevant to ensuring the professional, competent and safe practice of teaching by the registered teacher”.

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We **recommend** that the definition of an impairment matter be amended to mirror the additional fitness and propriety consideration proposed to be added to section 24, namely that a registered teacher has a serious medical condition or an impairment that adversely affects, or is likely to adversely affect, the teacher’s ability to work as a teacher.

We note that registering a teacher with an impairment which makes his or her work harder to undertake does not guarantee that he or she will be successful in obtaining employment as a teacher. We acknowledge that a condition imposed by the Board may require a prospective employer to adjust the work duties or working environment so that the teacher is able to comply. The Equal Opportunity Act requires employers to provide services and facilities in the workplace to enable the work to be done by the person with an impairment unless doing so causes the employer unjustifiable hardship.\(^{28}\)

### 8.2 Impairment review committee

#### 8.2.1 Membership and procedures

It is the Board’s responsibility to investigate potential impairment matters and to determine how best to deal with them: take no action, refer to the impairment review committee or refer to the State Administrative Tribunal.\(^ {29}\) If a matter is referred to the impairment review committee after initial investigation by the Board, the committee may request that the Board undertake further investigations.\(^ {30}\) The committee may also recommend referral instead to a disciplinary committee or the State Administrative Tribunal.\(^ {31}\)

The impairment review committee is to have three members: a registered teacher, a medical practitioner and another person the Board considers appropriate. One of these members must also be a member of the Board.\(^ {32}\)

The impairment review committee will inform the teacher of its intention to deal with a referred matter as an impairment matter. The notice must set out the nature of the impairment matter, summarise the effect of the impairment review provisions of the Act, seek the teacher’s consent to the matter being dealt with in this way and, if the committee considers that a medical examination of the teacher is necessary, seek the teacher’s consent to such an examination.\(^ {33}\)

The committee must proceed with as little formality and technicality, and as speedily, as the requirements of the Act and a proper hearing of the matter permit. This committee is not bound by the rules of evidence but is bound by the rules of procedural fairness.\(^ {34}\)

If the teacher agrees to undergo a medical examination but the committee and the teacher are unable to agree upon the medical practitioner to conduct it, the committee is able to appoint a practitioner to perform the examination. Examinations are conducted at the Board’s expense.\(^ {35}\) If the teacher does not agree to undergo the examination, the committee is required to recommend to the Board that the matter be referred to the State Administrative Tribunal.\(^ {36}\)

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\(^{28}\) *Equal Opportunity Act 1984*, section 66Q.

\(^{29}\) *Teacher Registration Act 2012*, section 53.

\(^{30}\) *Section 55(a).*

\(^{31}\) *Section 55(b) and (c).*

\(^{32}\) *Section 50.*

\(^{33}\) *Section 74.*

\(^{34}\) *Section 75.*

\(^{35}\) *Section 76(3).*

\(^{36}\) *Section 76.*
A medical practitioner who conducts an examination is to give a report of the examination to the committee and the teacher must get a copy of it from the committee within seven days, unless the committee believes that providing a copy might be prejudicial to the physical or mental health or wellbeing of the teacher. In such a case the committee may decide to give it instead to a medical practitioner, or another teacher, nominated by the teacher. If the teacher does not identify a nominee within 14 days, the committee may give the report to a medical practitioner or a teacher it selects itself. The teacher who is the subject of the matter may make written representations to the committee about the report within 30 days.37

To date, no matters have been referred to the impairment review committee although one is understood to be pending.

8.2.2 Right to appear and be represented
WA’s Acting Equal Opportunity Commissioner noted that, unlike the disciplinary committee process, the impairment review process does not provide for the teacher to be represented.38 Although the Act does not contemplate that an impairment review committee would hold “an inquiry” or even meet with the teacher, there is no reason why the two proceedings should be different in this respect should a formal meeting be convened. The Review recommends that a right to representation with the committee’s leave be included in respect of impairment review matters as for disciplinary matters.39

8.2.3 Impairment review committee outcomes
Having considered the Board’s investigation report, a medical report if any, and the subject’s submissions if any, the committee has the following options:

- dismiss the matter;
- recommend to the Board that the matter be referred to a disciplinary committee or the State Administrative Tribunal;
- request that the teacher consent —
  - to the imposition of conditions on his or her registration; or
  - to having his or her registration suspended for a period, not exceeding two years, specified by the impairment review committee; or
  - to undergo counselling specified by the impairment review committee.40

If the teacher does consent to such a request the committee must recommend that the Board take the action to which the teacher has consented. However, if the teacher refuses consent, the committee must recommend to the Board that the matter be referred to the State Administrative Tribunal.41

The impairment review committee’s recommendation is not binding on the Board. After considering it, the Board may:

(a) decide not to take any action; or
(b) take the action to which the teacher has consented; or

37 Section 77.
39 As in section 67.
40 Section 78.
41 Section 79.
(c) refer the matter to the State Administrative Tribunal.\textsuperscript{42}

For the purpose of the action to which the teacher has consented the Board may impose a new condition or modify an existing condition on the teacher’s registration or suspend the registration for a specified period. The Board may cancel a condition if the teacher subsequently satisfies the impairment review committee that their ability to practise is no longer affected.\textsuperscript{43}

There is also the option for teachers themselves to ask the committee to recommend to the Board that a condition on registration be imposed or modified. If the committee and the teacher agree upon the condition, the Board must agree to it.\textsuperscript{44}

The Review concludes that, with the amendments recommended in this Chapter, the impairment review jurisdiction should be retained in the Act.

\textsuperscript{42} Section 80.
\textsuperscript{43} Section 82.
\textsuperscript{44} Section 81.
Chapter 9 – Enforcement powers

The Board has available to it a range of ways to ensure the requirements and obligations imposed by the Act on both teachers and employers are complied with.

1. Compliance with the Act is relevant to the Board’s assessment of a person’s fitness and propriety to be registered.¹
2. Contravention of an order made under the Act is also relevant to fitness and propriety.²
3. Contravention of the Act, contravention of a condition and contravention of an order made under the Act are disciplinary matters.³
4. A disciplinary committee can issue a fine, impose a condition or suspend registration following a disciplinary inquiry.⁴
5. The Board may refer a disciplinary or impairment matter to the State Administrative Tribunal which, in addition to these outcomes, has the power to cancel a teacher’s registration.⁵
6. A registered teacher may be prosecuted and fined for failing to comply with a notice issued by a disciplinary committee or for disrupting an inquiry.⁶
7. Failure to pay the annual fee will result in cancellation of registration unless extenuating circumstances are established.⁷
8. Failure to comply with their notification obligations can lead to prosecution and a fine for registered teachers and employers.⁸
9. Teaching unregistered, teaching in contravention of a condition, claiming to be registered or registered in a particular category and employing unregistered teachers are all offences under the Act for which the alleged offender may be prosecuted and fined.⁹

This Chapter is concerned with the enforcement power of prosecution which has only very recently been utilised by the Board.¹⁰

Table 9.1 - Investigations of unregistered teaching by year (sections 6-9)¹¹

<table>
<thead>
<tr>
<th>Year</th>
<th>7/12/2012 - 30/6/2013</th>
<th>2013-14</th>
<th>2014-15</th>
<th>2015-16</th>
<th>2016-17</th>
</tr>
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<tbody>
<tr>
<td>Investigations undertaken</td>
<td>9</td>
<td>31</td>
<td>23</td>
<td>20</td>
<td>2</td>
</tr>
</tbody>
</table>

¹ Section 24(a)(i).
² Section 24(e).
³ Section 27(b), (c) and (d). See also section 27(f)(iii): contravention of an undertaking given to the Board is also a disciplinary matter.
⁴ Section 70.
⁵ Sections 83 (referral) and 84 (orders).
⁶ Sections 71 and 72.
⁷ Section 27(2)(f).
⁸ Sections 38-40 and 42.
⁹ Sections 6-9.
¹⁰ The first prosecution concluded with multiple convictions and fines on 7 February 2018.
¹¹ Data sourced from Teacher Registration Board annual reports.
9.1 Immunity from prosecution

‘Registered teachers’, ‘employers’ in educational venues, and other ‘persons’ are variously referred to in offence provisions as liable to prosecution.12

9.1.1 Immunity for employers

Although the Act is binding on the Crown, the State and “the Crown in any of its other capacities” are not liable to prosecution for an offence against the Act.13 This means that the Director General of Education and any principal or other officer to whom she has delegated her power of employing teachers cannot be prosecuted for breaching the Act in their capacity as employers.14

There is, therefore, an uneven playing field for employers of teachers: employers in the Catholic and Independent sectors are liable to prosecution but those in the Government sector are not. This seems unfair when the Government is the State’s largest employer of teachers.

Most submissions addressing this matter were in favour of removing the Crown’s immunity from prosecution.15 The Teacher Registration Board, however, was in favour of retaining the immunity at least in part because:

- if the Crown was subject to prosecution, it is possible and even likely that this would result in questions within the Parliament – [which could] promote trial by third parties, incompatible with due process; and
- political imperatives will weigh against an agency defending itself in the same way that a private entity would.16

The Review accepts that it would not be appropriate to remove the Crown’s immunity from prosecution. Indeed, it should not be necessary in order to ensure full compliance with the Act on the part of the Director General of Education and her delegates. It is reasonable to assume that an agency of the government will comply with all of that government’s legislation which applies to it. If that assumption proves illusory, we note that the Crown’s immunity from prosecution does not extend to its civil and administrative liabilities. This means, for example, that a principal giving permission to teach to a person without registration would be contravening the Act and this would be a factor relevant to the Board’s consideration of that principal’s own fitness and propriety. It would also be a disciplinary matter on which the Board may take disciplinary action against the principal.17

9.1.2 Immunity for staff

Government school teachers are not protected otherwise from prosecution for breaching the Act. In particular, government school teachers, including principals and other school leaders, may be prosecuted for teaching without registration or contrary to a condition on their registration. This is the correct interpretation of section 4 of the Act despite the absence of an explicit provision to that effect such as was included in the Western Australian College of Teaching Act 2004. That provision

12 Note that the Review recommends extension of the liability to prosecution to any person who fails to comply with a Board investigation or a disciplinary committee notice (Chapter 7).
13 Section 4(2).
14 School Education Act 1999, section 236(2), vests the power to engage and manage staff of the Department of Education in the Director General. Her power to delegate is set out in section 230.
15 Submission 16, Association of Independent Schools of WA, page 2, paragraph 15; Submission 20, Professional Teaching Council of WA;
16 Submission 12, Teacher Registration Board of WA, page 36.
17 Teacher Registration Act 2012, section 24(a) and 47(b).
stipulated that Crown immunity “does not affect any liability of any officer, employee or agent of the
Crown to be prosecuted for an offence”.

The Teacher Registration Board submitted that the WACOT Act provision should be reinstated in the
Teacher Registration Act. The Review recommends that section 4 of the Act be amended to make
explicit that officers, employees and agents of the Crown are not immune from prosecution under
the Act.

9.2 Time limit on prosecutions
The offences in the Teacher Registration Act are ‘simple’ offences which would be prosecuted in a
Magistrate’s Court. In the absence of any stipulation as to timeframe for prosecution in the Act
itself, the Criminal Procedure Act 2004 applies a 12 month time limit for commencement of a
prosecution from the date the offence was allegedly committed.

The Teacher Registration Board argued that this time limit is too short.

Comencing a prosecution for any offence within the TR Act is a time-consuming and resource
intensive process, necessary to obtain the evidence to support a prima facie case and prosecution
in the local magistrate’s court. The implication is that by the time the offence has been detected,
investigated and evidence obtained to establish the prima facie case, the limitation period may
have passed and a prosecution unable to be commenced.

Other vocational regulatory Acts have negatived the 12 month time limit and imposed longer
periods: two years for landlords and tenants and debt collectors; three years for builders and
painters. In the case of real estate agents and settlement agents, for example, the three year time
limit can be extended, with the approval of the Minister, indefinitely. On the other hand,
prosecutions against health practitioners, legal practitioners, pharmacists, vets and licensed
surveyors must be commenced within 12 months of the date of the conduct as is the case for
teachers now.

The Review recommends that the Teacher Registration Act be amended to negative the application
of the Criminal Procedure Act time limit. Particularly in light of the overarching objective of the
Act to secure the best interests and safety of children and the fact that, for most teachers, five
years will elapse between one application and the next if the Review’s proposals are adopted, the
statutory time limit on prosecutions should be six years. For example, the offence of providing
false information in an application may be committed at the time of applying for initial registration
but may remain undetected by the Board until the teacher makes an application for renewal which
reveals the earlier information was false. An application for renewal may not be submitted until four

18 Western Australian College of Teaching Act 2004, section 4(3).
19 Submission 12, Teacher Registration Board of WA, page 36.
20 Teacher Registration Act 2012, section 119.
21 Criminal Procedure Act 2004, section 21(2).
22 Submission 12, Teacher Registration Board of WA, page 37.
23 Residential Tenancies Act 1987, section 87; Debt Collectors Licensing Act 1964, section 21(4).
25 Real Estate and Business Agents Act 1978, section 143(2); Settlement Agents Act 1981, section 121(2). A
provision of this kind would be inappropriate in the Teacher Registration Act which does not allow the
Minister to direct the Board with respect to a particular matter: Teacher Registration Act 2012, section
93(2).
26 There is no time limit on bringing prosecutions for indictable offences: Criminal Procedure Act 2004,
section 21(1). No indictable offences are created by the Teacher Registration Act.
years and 11 months after initial registration was granted and likely more than five years from the
date the first application was made and the offence committed. The 12 month time limit would
prevent a prosecution being commenced in these circumstances.

9.3 An alternative to prosecution

The Teacher Registration Board suggested that an infringement notice system would be a useful
intermediate step between issuing a warning against future contraventions and prosecution for an
offence. It would also enable a matter to be dealt with more expeditiously.27

There is a general view that prosecutions of offences should be the last resort for the Board. The
Board must be able to take some form of action if an offence is detected, investigated and
requires sufficient action above a warning. Presently the Board is limited to simply two levels of
enforcement, the first level being, advice or warnings before the next level of prosecutions and
refusal of teacher registration at time of application (see section 24(a)(i) of the TR Act [referring
to the person’s history of compliance with the Act]).

... It is important that the Board adopt an enforcement response that is proportionate to non-
compliance, and that also provides sufficient incentive to the teacher and employers of teachers
to amend the non-compliant behaviour. This is arguably presently unavailable to the Board. It
is also important to consider whether there is an immediate need to remedy the non-compliance,
in the best interests of children and in order to protect the profession.28

Infringement notices are the most common intermediate steps adopted in WA. Several regulatory
bodies in WA provide for infringement notices by regulation.29 A modified penalty is limited to 20%
of the maximum statutory fine or less.30

Although an infringement notice system may be achieved by amending the Teacher Registration
(General) Regulations 2012, this would need to be authorised first by an amendment to the Criminal
Procedure Regulations 2005.31 Several features of an infringement notices/modified penalty system
may undermine its usefulness in the particular circumstances, and within the resources, of the Board.

1. A person served with an infringement notice may decline to pay the modified penalty and
elect instead to be prosecuted.32
2. An infringement notice must be served within 21 days of the alleged offence having
occurred.33
3. The Board must appoint both an approved officer and an authorised officer.34

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27 Submission 12, Teacher Registration Board of WA, page 37.
28 Submission 12, Teacher Registration Board of WA, page 37.
29 These regulate abattoirs, debt collectors, employment agents, landlords and tenants, land valuers, real
estate and business agents, and settlement agents.
30 Criminal Procedure Act 2004, section 5(4)(b). Therefore, the maximum under the Teacher Registration
Act would be $1,000.
31 Criminal Procedure Regulations 2005, Schedule 1A, lists prescribed Acts for the purposes of infringement
notices in accordance with section 5 of the Criminal Procedure Act 2004.
32 Criminal Procedure Act 2004, section 9(1)(f). The person has up to 28 days to make this election.
33 Criminal Procedure Act 2004, section 8(2).
34 Criminal Procedure Act 2004, section 6(a) and (b). They cannot be the same person: section 7(1). It is the
authorised officer who issues the infringement notice: section 8(1). An approved officer receives the
payment and may extend time for payment of the modified penalty or withdraw the notice: sections 14
and 15.
4. Payment of a modified penalty cannot be taken as an admission for the purposes of any criminal or civil proceedings.35

An alternative not considered in the Teacher Registration Board submission is the enforceable undertaking. Enforceable undertakings are one enforcement strategy, together with infringement notices, in the Education and Care Services National Law (WA) Act 2012 under which early childhood service providers and supervisors are regulated.36 A person subject to the offence provisions of that Act may give a written undertaking to the regulator under which the person commits to take certain actions, or refrain from taking certain actions, to comply with the Act. If the regulator believes the person has failed to comply with the undertaking, it may apply to the State Administrative Tribunal for an order enforcing it and may commence prosecution for the original offence.

A third intermediate option, one which on balance the Review prefers, is to make clear that an unpursued non-compliance with the Act may be a disciplinary matter. We recommend that the list of disciplinary matters in section 47 be amended to provide: “(b) that a teacher has contravened or failed to comply with the Act”.37 We note that failures to comply with the Act include both matters for which the person may in the alternative be prosecuted and matters, such as non-payment of the annual fee, which are not offences.38

Should the Board wish to proceed with the introduction of an infringement notice system, the proposed extension of the time limit on prosecutions from 12 months to 6 years (section 9.2) will assist in overcoming the challenging time constraints the system would otherwise present. The Attorney General’s approval would be required for such a change to be introduced. The Review notes that the most beneficial use of such a system would be in the case of alleged offenders who are not registered teachers and who cannot therefore be dealt with under the disciplinary provisions of the Act.

35 Criminal Procedure Act 2004, section 16(2). This means that the matter cannot become failure of compliance relevant to a fitness and propriety assessment or a disciplinary matter.
36 Sections 180-181.
37 This is the formulation used in the Architects Act 2004, section 56(c)(i), to define proper causes for disciplinary action.
38 Offences under the Education and Care Services National Law (WA) Act 2012 can be dealt with as disciplinary matters instead in accordance with section 188B which includes “failed to comply with this law” as a disciplinary matter in subsection (1)(a): see, for example, CEO, Department of Local Government and Communities v Catholic Education Commission of WA Trustees Association (Inc), VR: 86/2017, State Administrative Tribunal, 9 June 2017.
Chapter 10 – State Administrative Tribunal

The State Administrative Tribunal has both original and review jurisdictions under the Act. The Tribunal’s original jurisdiction is triggered by a referral from the Board of an interim disciplinary order, a disciplinary matter or an impairment matter. The Tribunal’s review jurisdiction is triggered by a registered teacher or employer-applicant aggrieved by a reviewable decision of the Board or a disciplinary committee.

10.1 Original jurisdiction

An interim disciplinary order imposed by the Board must be referred to the Tribunal within 14 days unless the Board withdraws it earlier.1 On receiving the referral, the Tribunal may affirm or revoke the order or vary it, whether by extending its duration (limited to 30 days when made by the Board) or in any other respect.2 The order remains in force until it is either revoked by the Tribunal or the matter is finally decided by the Tribunal.3

As outlined in Chapters 7 and 8, the Board may refer a disciplinary matter or an impairment matter to the Tribunal either on its own initiative or on the recommendation of a committee. Only the Tribunal has the power to cancel a teacher’s registration and disqualify the teacher from re-applying for a stipulated period.4 In the alternative to these orders, the Tribunal can impose any of the other orders available to a committee. In addition, only in an impairment matter, the Tribunal may order the teacher to undergo counselling or medical treatment or to act in accordance with medical advice.5

Table 10.1 - Board referrals by year – disciplinary matters6

<table>
<thead>
<tr>
<th>Referred to</th>
<th>7/12/2012 - 30/6/2013</th>
<th>2013-14</th>
<th>2014-15</th>
<th>2015-16</th>
<th>2016-17</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disciplinary committee</td>
<td>0</td>
<td>1</td>
<td>9</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>State Administrative Tribunal</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>7*</td>
<td>5</td>
</tr>
<tr>
<td>Total</td>
<td>0</td>
<td>1</td>
<td>13</td>
<td>8</td>
<td>7</td>
</tr>
</tbody>
</table>

* Five of these were discontinued by the Board.

The Tribunal declined to make a submission to the Review and the Teacher Registration Board did not make any submissions concerning the Tribunal’s original jurisdiction. The Review concludes that the jurisdiction is working appropriately and effectively and that no amendment to the Act is required in this respect.

No charge or fee is payable to the Tribunal by the Board in respect of a referred matter.7 However, progressing a matter before the Tribunal requires that the Board engages the services of the State Solicitor’s Office. Currently those services are provided without charge. Imposition of a fee in either case would significantly undermine the scheme of the Act, including the inability of the Board or its

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1 Teacher Registration Act 2012, section 61.
2 Section 61(3).
3 Section 83(2).
4 Section 84.
5 Section 84(2)(d).
6 Data sourced from Teacher Registration Board annual reports.
7 State Administrative Tribunal Regulations 2004, regulation 11B and Schedule 1.
disciplinary committees to cancel a teacher’s registration, by requiring considerable funds to be set aside each year to achieve a result which is principally designed to protect children in educational venues in this State.

10.2 Review jurisdiction
Most of the Board’s registration decisions taken under the Act are reviewable if the person affected is aggrieved by them. A decision of a disciplinary committee is also reviewable. An application for review is to be made to the Tribunal. The cost of an application is $465 which covers the application and the first hearing day. An additional $465 is payable for each additional hearing day or part day. There is no cap on the total which may eventually apply although an applicant who holds a health care card or similar may be successful in having the fee reduced to $100 per day on the ground of financial hardship or in the interests of justice.

Although State Administrative Tribunal fees are very considerably lower than those of the Supreme Court, the only review option provided by the former Western Australian College of Teaching Act 2004, they may still operate as a disincentive to aggrieved teachers seeking review.

The process and fee involved with pursuing a review with the State Administrative Tribunal are very strong disincentives. The $465 (minimum) fee to lodge an application for review was an effective deterrent to me, particularly considering my impacted earning capacity due to refusal of renewal of full registration.

Facility for review of individual cases should be included in the Board’s functions and duties.

The Board has informed the Review that no applications for review have been lodged to the date of writing. This is unsurprising for several reasons. First, the fee is uncapped and therefore the total financial commitment cannot be predicted, at least by a teacher with limited knowledge of how the Tribunal operates. Second, the Tribunal’s Rules require the application for review to be lodged within 28 days from the date the teacher received notice of the Board’s (or committee’s) decision. Although the Tribunal can extend this time limit, there is no guarantee that it will do so in any particular case. Finally, it should be acknowledged that the Board’s decisions are made with due care and attention to the evidence.

The fee applicable to teachers is also applicable to architects and pharmacists, lawyers and veterinary surgeons. General community expectations would ascribe a substantially greater capacity to pay to the majority of these professionals than to teachers.

Consideration may be given to moving teacher applications for review to the lowest fee category in the State Administrative Tribunal Regulations 2004 (application fee and first hearing day $103.50; subsequent hearing days $206 per day). Others in this category include applicants aggrieved by a decision of the Working with Children Screening Unit to issue a negative notice or refuse to cancel one. We note that other Screening Unit reviewable decisions incur the same application for review fee as applies to teachers at present.

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8 Reviewable decisions are listed in section 124(2).
10 State Administrative Tribunal Regulations 2004, regulations 8-9C.
11 Submission 7, Maria Doolan.
Chapter 11 – Accreditation of initial teacher education programmes

The Western Australian College of Teaching (WACOT), the predecessor of the Teacher Registration Board, had a statutory power to approve teacher education qualifications for registration purposes. At the time of the review the prospect of a national approach to the accreditation of teacher education courses was under discussion by State and Commonwealth Education Ministers. Because of this, the review concluded that the inclusion or omission of an explicit accreditation function in Western Australia’s teacher registration legislation should await the outcome of those discussions.

11.1 The Board’s accreditation functions

Subsequent support for a national approach saw the inclusion of the following functions in the Teacher Registration Act 2012:

- to facilitate and assist in the establishment of an accreditation scheme for initial teacher education programmes that may apply throughout Australia;
- to work with, and join associations of, teacher regulatory authorities (however described) of other States or Territories or New Zealand —
  o to establish such an accreditation scheme; and
  o generally, to participate in, and contribute to, debate and activities relating to teaching and teachers;
- to implement and administer for Western Australia an accreditation scheme for initial teacher education programmes so established.

The Association of Independent Schools (AISWA) and the State School Teachers’ Union (SSTUWA) both supported the continuation of the Board’s accreditation function.

The Teacher Registration Board’s submission to the Review queried aspects of the Act’s wording of its accreditation-related functions because they imply the existence of a common scheme across Australia and New Zealand.

The current accreditation scheme that applies throughout Australia is probably best described as one that ... is a product of cooperative federalism. To suggest that a single, national accreditation scheme currently exists misrepresents where the locus of decision-making lies.

The Board also pointed out that, while it liaises with other teacher regulatory authorities and with the Australian Institute for Teaching and School Leadership (AITSL), there are differences across the authorities in role, function, focus and the manner in which accreditation is carried out.

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1 Western Australian College of Teaching Act 2004, sections 33(a) and 35(a).
3 Respective paragraphs (b), (c) and (d) of section 89.
4 Submission 16, Association of Independent Schools of WA, page 3, paragraph 22; Submission 18, State School Teachers’ Union of WA, page 17.
5 Sections 89(b) and (c)(l).
6 Submission 12, Teacher Registration Board of WA, page 51.
This point was also made by the Australasian Teacher Regulatory Authorities (ATRA) when noting that most of its members have a similar statutory accreditation function.

...the development of an accreditation scheme in Western Australia is a matter for the Board [and as such] ... the current references [in the WA Act] to facilitating and assisting in the establishment of an accreditation scheme that may apply throughout Australia should be reviewed to ensure that there is no confusion or uncertainty concerning the Board’s role.⁸

The Act and associated regulations should make clear that the accreditation scheme in Western Australia, and the manner in which it is administered, are matters for the Board to determine subject to Western Australian legislation. The Review recommends that the references to facilitating and assisting in the establishment of a national accreditation scheme (section 89(b) and (c)(i) of the Act and regulation 12 of the Teacher Registration (Accreditation of Initial Teacher Education Programmes) Regulations 2012) and the words “so established” in section 89(d) be deleted.

ATRA was established to facilitate cooperation and collaboration across the Australian and New Zealand jurisdictions in the regulation of the teaching profession. Members include the Teacher Registration Board of WA. The Board’s function at section 89(c)(ii) enables it to work with and join associations of teacher regulatory authorities and participate in and contribute to debate and activities relating to teaching and teachers. This should be retained to enable the Board to be a member of ATRA.

11.2 Accreditation standards and procedures
The Board’s statutory accreditation-related functions need to be read in conjunction with the applicable regulations to appreciate the full scope of the scheme.

The Teacher Registration (Accreditation of Initial Teacher Education Programmes) Regulations 2012 (‘Accreditation Regulations’) deal with the determination of accreditation standards; implementing and administering the scheme including the granting, renewing and cancelling of programme accreditation; conditions and duration of accreditation; eligibility criteria for accreditation; application fees; and the functions and powers of accreditation panels.

Regulation 9 requires the Board to develop accreditation standards for the Minister’s approval. The Board requires applicants for accreditation to demonstrate that the accreditation standards will be met. The current application fee is $2,111 per programme submitted and accreditation is for a maximum of five years.⁹

11.2.1 Revision of the standards
The Teacher Registration Board’s accreditation processes are based on the nationally-agreed approach, the development of which has been facilitated by AITSL.

In 2014 the Australian Government commissioned the Teacher Education Ministerial Advisory Group (TEMAG) to advise on how teacher education courses could ensure graduate teachers have the right

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⁸ Submission 8, Australasian Teacher Regulatory Authorities, page 2, referring to the function at section 89(b).

In December 2015, the Education Council of the Council of Australian Governments (COAG) agreed to a revised national approach to the accreditation of initial teacher education programmes. The WA accreditation standards were revised accordingly by the Board and then approved by the Western Australian Minister for Education on 5 August 2016.¹⁰

11.2.2 The WA standards

The accreditation standards deal with the structure, content, duration, admission and graduation criteria, and outcomes of programmes that are suitable for accreditation. There are six programme standards relating to: programme outcomes; programme development, design and delivery; programme entry; programme structure and content; professional experience; and programme evaluation, reporting and improvement.

Accreditation concentrates on the capacity of a higher education provider’s programme to produce graduates who meet the Graduate Standards. Meeting the Graduate Standards is, in turn, a requirement for obtaining provisional registration (and will remain a requirement for obtaining provisional registration (graduate teacher) if the Review’s recommendation is adopted).

There are seven Graduate Standards, organised in three Domains, dealing with what is expected of graduates from accredited programmes:

1. Professional knowledge:
   a) know students and how they learn;
   b) know the content and how to teach it;
2. Professional practice:
   a) plan for and implement effective teaching and learning;
   b) create and maintain supportive and safe environments;
   c) assess, provide feedback and report on student learning;
3. Professional engagement:
   a) engage in professional learning;
   b) engage professionally with colleagues, parents/carers and the community.

11.2.3 Evaluation of the standards

The WA Council of State School Organisations (WACSSO) recommended that pre-service teacher training include a compulsory focus on parental engagement and prepare students for teaching in rural and remote schools.¹¹ The Graduate Standards themselves address WACSSO’s concern about parental engagement¹² and therefore this must be addressed in an accredited teacher education programme. The Graduate Standards do not explicitly require that graduates be able to teach in rural and remote schools.

The State School Teachers’ Union supported, without being specific, longer training and the raising of the minimum Australian Tertiary Admission Rank (ATAR) for entry into teacher education. It also

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¹¹ Submission 17, WA Council of State School Organisations, pages 1-2.

¹² See Graduate Standard 7.3.
urged the Board to liaise with employers and teacher unions “to explore ways of ensuring consistency of graduate practice from various Initial Teacher Education providers”.¹³

The Union is opposed to ‘fast-track teacher training’ such as the Teach for Australia (TfA) model.

Fewer than half of TFA participants are still teaching just over three years after completing the program. The SSTUWA rejects the premise that TFA associates are classroom ready after a six week introductory course.¹⁴

The Union’s concerns are appropriately matters for consideration by the Board and the Minister for possible revision of the standards in due course.

The Acting Commissioner for Equal Opportunity submitted that the Commission had received complaints that due regard was not being given to student teachers with disabilities or family responsibilities during supervised practicum placements. The Acting Commissioner suggested that a requirement may have been imposed by the Teacher Registration Board that placements must be undertaken on a full-time, ‘real life’ basis. As he submitted, contemporary ‘real life’ includes part-time and other flexible working arrangements and practicum requirements should reflect this fact.

For many years teachers have been working on a part-time basis and when teachers experience a temporary or permanent injury or disability, it is expected that their employers implement reasonable accommodations for personal situations ...

... I strongly recommend that such flexibility be included as a consideration in the accreditation role and regulations of the Teacher Registration Board to make the teaching profession inclusive and up to date with the expectations of our community. This should be mandatory to allow students in education courses with personal needs the opportunity to become registered teachers.¹⁵

We find that the concern expressed by the Acting Commissioner is a serious one and, even though it is not borne out in the wording of the accreditation standards or information provided by relevant staff of the Teacher Registration Directorate, it is a matter that should be addressed.

The Review recommends that the Board and the Minister consider an amendment to the accreditation standards that explicitly enables flexible practicum arrangements that are consistent with contemporary employment arrangements for people with disabilities and family responsibilities.

Another matter brought to the attention of the Review is a recent report on Vocational Education and Training in schools by the WA Parliament’s Education and Health Standing Committee (Standing Committee). Recommendation 6 proposed:

The Teacher Registration Board of Western Australia consider amending its accreditation standards for initial teacher education programs to include a vocational teaching component for secondary teachers, either as an elective or a core unit. The Minister for Education and Training

¹³ Submission 18, State School Teachers’ Union of WA, page 17.
¹⁴ Submission 18, State School Teachers’ Union of WA, page 17. The Review notes that Teach for Australia Associates can only hold limited registration during the two years they work in schools leading up to the award of a Master of Teaching.
¹⁵ Submission 14, Acting Commissioner for Equal Opportunity.
It is increasingly common for upper secondary students to undertake vocational education and training (VET) studies leading to the award of a qualification by a Registered Training Organisation (RTO). It is a requirement under relevant VET legislation that RTOs observe a standard that requires the teachers of the VET courses to themselves hold a Certificate IV in Training and Assessment. Much of the teaching of VET to school students is done by Board-registered teachers. The need for these teachers to hold the Certificate IV qualification and to upgrade it when necessary at their own or their school’s expense is not a Board requirement.17

The Standing Committee’s recommendation is not directed to teachers currently teaching VET in schools. Rather, it goes to the question of what could or should be done to enable student teachers to acquire the Certificate IV before they commence teaching (VET or otherwise). According to the Standing Committee’s report, the need for initial teacher education programmes to deliver the Certificate IV is implicit in Standard 2.2(a) of the Board’s Accreditation Standards because that standard requires programmes to take account of “contemporary and emerging developments in education, curriculum requirements, community expectations and local, employer and national system needs including workforce demands for teaching specialisations”.18 If this were true it would follow that if students in accredited programmes are not getting the Certificate IV qualification, then the Board is not enforcing Standard 2.2(a).

The Standing Committee’s report notes that the State’s five universities see substantial difficulties with the recommendation.19 Curtin University found that there is a lack of interest from students. Edith Cowan University queried whether the higher education student loans scheme (‘HECS’) would cover the VET course. Murdoch University queried whether student teachers without a vocational area of competence would be eligible for enrolment in the Certificate IV. The University of Western Australia stated its teacher education course is a Masters programme and that it would not be possible to integrate a Certificate IV course due to its much lower Australian Qualifications Framework (AQF) level.

The Standing Committee’s recommendation could be given effect through amendments to the Accreditation Standards. However, we do not recommend this course of action in light of the issues raised by the universities which seem difficult to resolve. Further, we do not agree that a qualification in VET teaching should become a necessary part of the requirements for provisional registration.

11.3 Two-stage accreditation

It is the exception rather than the rule for accreditation of higher education courses to be subject to requirements of State legislation. Generally, the regulation of all higher education providers, university as well as non-university, and their courses is a matter for the Tertiary Education Quality...
and Standards Agency (TEQSA), the Commonwealth body which is the national regulator of the higher education sector.\textsuperscript{20}

However, the TEQSA legislation does not override any State or Territory law which “regulates who may carry on an occupation”.\textsuperscript{21} This means that the Teacher Registration Board’s accreditation functions operate alongside those of TEQSA.

The Teacher Registration Board made the point that it is important to distinguish its accreditation purpose and process from those of TEQSA.\textsuperscript{22}

TEQSA has two basic functions: provider registration and course accreditation. Registration with TEQSA is needed to be a legal provider of higher education in the first place; and TEQSA accreditation is needed to provide assurance that courses are, in fact, ‘higher education’ in terms of the AQF. Some providers are ‘self-accrediting’, meaning that TEQSA regards the provider’s internal course development and quality assurance processes to be sufficiently robust for its courses to be meeting TEQSA’s Course Accreditation Standards without the need for TEQSA to double-check.\textsuperscript{23} TEQSA does, however, accredit the courses of registered non-self-accrediting providers to ensure that they are in fact ‘higher education’ and not of lesser quality.

All but one of the initial teacher education programmes accredited by the Teacher Registration Board are provided by Western Australian universities.\textsuperscript{24} As the Board submitted:

\begin{quote}
Accreditation by the Board ... is essentially an assessment that the program is approved for the purposes of teacher registration – and more specifically – that it is approved for the purposes of Provisional Registration. A key aspect of the Board accreditation process is an assessment of how and where each of the Professional Standards at the Graduate career stage (Graduate Standards) is taught and assessed. Meeting the Graduate Standards is a key requirement for the grant of Provisional Registration as a teacher. As such the accreditation of a program allows the Board to be satisfied that graduates of the program have met the Graduate Standards, and are therefore eligible for the grant of Provisional Registration.\textsuperscript{25}
\end{quote}

This leaves open the possibility of there being teacher education programmes that meet TEQSA’s accreditation standards but not the Board’s. Avoidance of this would be served by the two bodies working together. Some Australian teacher regulatory authorities have entered into non-binding memorandums of understanding with TEQSA to cooperate with a view to a synchronised, consistent assessment of programmes. The Teacher Registration Board is not a party to such an arrangement at present. The Review recommends that the Board commence discussions with the Tertiary Education Quality and Standards Agency (TEQSA) with a view to establishing a memorandum of understanding for the purposes of enabling the sharing of information relevant to programme assessments and of aligning their regulatory processes.

\textsuperscript{20} Established by the Tertiary Education Quality and Standards Agency Act 2011 (Cth) (TEQSA Act).
\textsuperscript{21} TEQSA Act, section 9(2)(b).
\textsuperscript{22} Submission 12, Teacher Registration Board of WA, page 48.
\textsuperscript{23} All Australian universities and 11 of the 123 non-university providers are self-accrediting.
\textsuperscript{24} The exception is the 2-year Graduate Diploma in Education (Montessori).
\textsuperscript{25} Submission 12, Teacher Registration Board of WA, page 48.
Chapter 12 – Fees

Like its predecessor the Western Australian College of Teaching (WACOT), the Teacher Registration Board is ‘self-funded’. Although it is established by an Act of Parliament, it is not funded from moneys appropriated by Parliament. Instead, its operations are funded primarily from charges and fees levied under the Act.

The Teacher Registration Act established a special purpose account called the Teacher Registration Board Account ('Account'), which holds all funds received or recovered by the Board.¹ The account is administered by the CEO, currently the Director General of Education.²

Moneys held in the account must be used for – and only for – any remuneration and allowances payable to the members of the Board or of a committee, costs and expenses incurred in the performance of the functions of the Board, and the costs of the administration and enforcement of the Act. The Director General must provide the staff, services and facilities and other resources and support that are reasonably necessary to enable the Board to perform its functions and the cost of these is to be met from the funds held in the Account.³

Fees are collected in accordance with various sections of the Act, mainly to do with obtaining and maintaining registration. The applicable fees are prescribed in the General Regulations.⁴ They are reviewed annually in accordance with the State Government’s general review of fees and charges and fees may be increased to keep pace with the Consumer Price Index (CPI) and the cost of providing the Board’s services. Government guidelines require fees to be levied on a ‘cost-recovery’ basis.⁵ The Review observes that the Board’s fees only approximate cost-recovery. In particular, there are some Board services which are provided free of charge, most notably the transition from provisional to full registration. The cost of a criminal record check (currently $26) and evaluating other fitness and propriety information is not currently recovered by the Board in these cases.

12.1 Fees applicable from 1 July 2017

12.1.1 Annual fee

The annual fee, which must be paid by all registered teachers by the end of March each year, is the principal source of recurrent funding for the Teacher Registration Board, as it was for WACOT.

WACOT’s annual fee prior to the commencement of the Board was $80. The same amount was the annual fee on the commencement of the Teacher Registration Board. Since that time annual increases in line with the Consumer Price Index have resulted in an annual fee of $89 from 1 July 2017.⁶ Those in the other Australian jurisdictions are displayed in Table 12.1.

¹ Section 115(3).
² Under section 3 the CEO is the chief executive officer of the department principally assisting the Minister in the administration of the Act, meaning the Director General of the Department of Education.
³ Sections 92 and 115(4).
⁴ Teacher Registration (General) Regulations 2012, Schedule 1.
⁶ Rounding – either up or down – to the nearest dollar has also influenced the level of the annual fee.
Table 12.1 – Annual fee for teacher registration in Australian States and Territories – September 2017

<table>
<thead>
<tr>
<th>State/Territory</th>
<th>Annual fee</th>
<th>Fee where renewal is required annually</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Capital Territory</td>
<td>$105</td>
<td></td>
</tr>
<tr>
<td>New South Wales</td>
<td>$100</td>
<td></td>
</tr>
<tr>
<td>Northern Territory</td>
<td>$86.25</td>
<td></td>
</tr>
<tr>
<td>Queensland</td>
<td>$86.70</td>
<td></td>
</tr>
<tr>
<td>South Australia</td>
<td>None*</td>
<td></td>
</tr>
<tr>
<td>Tasmania</td>
<td>$95</td>
<td></td>
</tr>
<tr>
<td>Victoria</td>
<td>$94</td>
<td></td>
</tr>
<tr>
<td>Western Australia</td>
<td>$89</td>
<td></td>
</tr>
</tbody>
</table>

* South Australian teachers currently pay $355 for each 3 years’ registration or renewal.

The State School Teachers’ Union proposed that relief and part-time teachers should pay a reduced rate of annual fee and that teachers on parental or other approved leave, including extended sick leave, should not have to pay the annual fee at all.7

Exemption from the annual fee could be achieved by amending section 35 to the effect that ‘each teacher is to pay ... the annual fee, except a teacher on approved leave’, with ‘approved leave’ being defined either in the regulations or a Board policy. While the proposal is not without merit, its implementation would lead to reduced revenue from the annual fee and increased administrative costs. We have neither calculated the nett cost nor canvassed the preparedness of teachers who would not benefit to cover the cost of those who would through higher fees.

The combined Australian Secondary Principals’ Association and WA Secondary School Executives Association submission argued for consideration to be given to streamlining fee collection processes, including charging a five-yearly (rather than annual) fee payable on registration or renewal.8 Payment of annual fees in advance is an immediately available way to reduce administrative costs. The option is already available whereby the fee “may be paid in advance for some or all the period of registration”.9 Only about 2,000 teachers have availed themselves of the option to pay annual fees in advance.

The Review recommends that the Board devise incentives to encourage more registered teachers to pay their annual fees several years in advance, and advise the Minister on an applicable amendment to the regulations if necessary.

12.1.2 Late payment processing fee
A teacher’s registration must be cancelled if he or she is in arrears of fees due and payable,1 but the Board must not cancel if it is of the opinion there are extenuating circumstances.2 Teachers are invoiced for the annual fee early in February each year. Around a month later, teachers who have not yet paid are sent a reminder as are all school principals, the latter to alert them to the advisability

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9 Teacher Registration (General) Regulations 2012, regulation 28(4)(b).
1 Section 27(2)(f).
2 Section 23(3)(c).
of checking that no staff are in danger of losing their registration, especially as by then the school year is already well under way. Teachers who have not paid the annual fee by 29 March are sent an SMS text message by way of a further reminder.

A late payment processing fee of $55 is charged for annual fee payments not submitted by 31 March but paid during April. Invoices for this amount are sent around 4 or 5 April each year. If all outstanding fees are not paid by the end of April, the Board takes steps to cancel the teacher’s registration.

Queensland also imposes a late payment processing fee ([$29.50]) while Victoria charges a reinstatement fee (currently $30). Table 12.2 shows the number of late payment notices issued by the WA Board in recent years.

<table>
<thead>
<tr>
<th>Table 12.2 – Late payment notices issued by year</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Year</strong></td>
</tr>
<tr>
<td>2013-14</td>
</tr>
<tr>
<td>2014-15</td>
</tr>
<tr>
<td>2015-16</td>
</tr>
<tr>
<td>2016-17</td>
</tr>
</tbody>
</table>

On 15 April 2016 1,787 notices of potential cancellation were issued and the Board subsequently cancelled 1,154 registrations. Twenty-one requests for extenuating circumstances consideration were submitted and 18 were successful resulting in registration being reinstated.

On 13 April 2017 1,582 notices of potential cancellation were issued. Subsequently, 23 extenuating circumstances requests were received, all of which were granted.

The State School Teachers’ Union submitted that:

... there is no need to either charge a late fee or de-register a teacher for non-payment of fees. Instead, this can be achieved by “suspending” registration until such time as the fees are paid. The effect is the same, in that a teacher would be unable to teach until s/he has their suspended registration lifted. This would also reduce the time and monetary costs involved in the processes of cancelling and re-registering teachers.

Given that the annual fee requirement has been in place for well over a decade, it is surprising that so many teachers are still not paying it by the end of March each year, even after receiving three reminders. While the total includes those voluntarily relinquishing their registration (mainly due to retirement), it seems more than 1,000 registered teachers only pay after the imposition of the late fee. While the late fee may be unpalatable, it is based on cost recovery and it seems it may well

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3 General Regulation 28(5).
4 Education (Queensland College of Teachers) Regulation 2016, Schedule 1, item 9; Education and Training Reform Act 2006 (Vic), section 2.6.21(3).
5 Data sourced from Teacher Registration Board annual reports.
6 Section 31 requires at least 14 days’ notice of cancellation.
prevent classes being disrupted during the first half of the year through teachers having their registration cancelled.

The Review finds that the current late payment processing fee is fit for purpose and recommends that any need to address natural justice claims continue to be accommodated through the exercise of Board discretion.

12.1.3 Registration fees
A non-refundable registration fee is payable at the time of submitting a registration application. For an applicant holding an approved Australasian qualification it is either $131 (provisional registration) or $166 (full or non-practising registration). The fee for Mutual Recognition is $131.

The fee for applicants holding non-Australasian teaching qualifications is $443 (provisional registration) or $475 (full or non-practising registration).

The combined Australian Secondary Principals’ Association and WA Secondary School Executives Association submission indicated no objection to a registration fee “as long as it is imposed on a cost recovery model”.10

The Teacher Registration Board’s submission drew attention to the fact that there is no fee differentiation between an applicant with overseas qualifications who has been previously registered with the Board and one seeking initial registration. As the Board would not need to undertake a full qualification assessment of the former, the Board submits that the fee should be equivalent to that paid by an applicant with a ‘locally’ conferred qualification.

The Review agrees with the Board that the registration fee payable by an applicant who has previously been registered should be equivalent to that payable by an applicant with an accredited qualification and recommends that this change be given effect by an amendment to the Fee Schedule.

12.1.4 Limited registration application fee
The application fee for limited registration, which must be paid by the employer,11 is $220 for a nominee with an Australasian qualification and $531 for nominees with non-Australasian qualifications. The Review has recommended that proposed changes to the requirements for limited registration should also require limiting the applicable fee for all applicants to $220 (section 3.1.3).

There is no fee for limited registration for overseas teachers participating in an approved teacher exchange programme. The Review considers that this is appropriate. Requiring employers to pay a fee would be a significant disincentive to their participation in teacher exchange. Fewer than ten overseas teachers participate in the exchange programme each year.

12.1.5 Qualification advice
Before making an application, a person can seek advice as to whether their qualification(s) meet the requirements for registration in any category. During 2016-17, the Board determined 140 requests...

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11 In other Australian jurisdictions, except the Northern Territory, where the employing agency is also the applicant and liable for the application fee, this fee is paid by the teacher, not the employer.
for qualification advice. The current fee for this advice is $309 which will be deducted from the registration fee payable if an application is made within two years.

12.1.6 Renewal of registration fee
The renewal of registration fee is currently $52. Revenue from this fee is subject to cyclical variation due to the ‘spike’ in renewals that occurs every five years. The spike is due to the renewal of the registrations of the tens of thousands of teachers who were granted full 5-year ‘foundation’ registration when the WACOT Act commenced in September 2004. There have been two such spikes since 2004, the first handled by WACOT in 2010-11 and the second (as shown in Table 12.3) by the Teacher Registration Board over the period 2015-16.

Table 12.3 - Registration applications received by year of operation

<table>
<thead>
<tr>
<th>Application type</th>
<th>7/12/2012 - 30/6/2013</th>
<th>2013-14</th>
<th>2014-15</th>
<th>2015-16</th>
<th>2016-17</th>
</tr>
</thead>
<tbody>
<tr>
<td>New registration</td>
<td>2,461</td>
<td>4,284</td>
<td>3,695</td>
<td>3,881</td>
<td>4,104</td>
</tr>
<tr>
<td>Renewal of registration</td>
<td>530</td>
<td>2,999</td>
<td>3,488</td>
<td>17,545</td>
<td>6,684</td>
</tr>
<tr>
<td>Transition to another category</td>
<td>-</td>
<td>2,299</td>
<td>3,009</td>
<td>4,982</td>
<td>2,031</td>
</tr>
<tr>
<td>Total received</td>
<td>2,991</td>
<td>9,582</td>
<td>10,192</td>
<td>26,408</td>
<td>12,819</td>
</tr>
</tbody>
</table>

The effect of the spike on total revenue from fees is evident over the past three years: $5.290m in 2014-15, increasing to $6.225m in 2015-16, and down to $5.804m in 2016-17.

The State School Teachers’ Union proposed that, as WA and Tasmania appear to be the only States which have a renewal fee, the Board should investigate how the other jurisdictions manage without one. The Union would prefer the renewal fee to be abolished or at least significantly reduced.

The Teacher Registration Board pointed out that this fee only covers the cost of obtaining a criminal record check and processing the renewal application.

The issue here is not so much how other States manage without a renewal fee, but rather, how the Board would manage without one. If the cost of police clearances and processing is not met from an application fee, it would have to be met from increases to one or more of the other fees, probably the annual fee.

12.1.7 Transition between registration categories
For applicants transitioning between registration categories there is currently no fee. There are, however, recommendations elsewhere in this report that will, if implemented, entail the introduction of fees for transition between registration categories. Table 12.4 provides an indication of the new fee types which will be required and the Review’s estimate of an appropriate quantum for each based on a comparison with existing fees designed to cover the same or similar assessments.
Table 12.4 – Indicative fees for transition between registration categories

<table>
<thead>
<tr>
<th>Transition type</th>
<th>What must be assessed by the Board</th>
<th>Appropriate fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provisional to full registration</td>
<td>Fitness and propriety</td>
<td>$52</td>
</tr>
<tr>
<td>Non-teaching to full or provisional registration</td>
<td>Fitness and propriety</td>
<td>$52</td>
</tr>
<tr>
<td>Provisional or full to non-teaching registration</td>
<td>Nothing</td>
<td>$0</td>
</tr>
</tbody>
</table>

12.1.8 Accreditation and re-accreditation fee

Accreditation Regulations 5 and 6 respectively currently impose a fee of $2,111 for accreditation and re-accreditation of each initial teacher education programme. According to the Board this fee does not represent full cost recovery. A comparison with fees charged for similar work by other accreditation bodies supports this. TEQSA charges $9,000 for the accreditation of a higher education course of study and $8,000 for the re-accreditation of a course. The fees levied by the Australian Nursing and Midwifery Accreditation Council (ANMAC) include one of $23,700 for a programme up to 12 months’ duration and another of $38,000 for a programme longer than 12 months.

The fee for accreditation and reaccreditation of initial teacher education programmes in all probability does not achieve cost recovery. The Review recommends that the accreditation and re-accreditation fees be reviewed in accordance with the requirements of the Government’s annual review of fees and charges with due regard to the known costs to date, the amounts charged by teacher regulatory authorities elsewhere in Australia, and the fees of other higher education accreditation bodies such as the Tertiary Education Quality and Standards Agency (TEQSA) and the Australian Nursing and Midwifery Accreditation Council (ANMAC).

12.1.9 Other fees

The Board charges for a small number of other services as listed in the Schedule of Fees in the General Regulations.

The Board submitted that from time to time it is asked to provide a letter of recognition or statement of professional standing or similar. As currently there is no fee for this service we agree that it would be reasonable to introduce one on a cost-recovery basis. We therefore recommend that a fee at least equivalent to that for a copy of a register entry (currently $55) be introduced for the provision of a letter of recognition or statement of professional standing.

12.2 Sufficiency of revenue

The Teacher Registration Board noted that the annual fee provides approximately 80% of its total fee revenue and submitted:

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17 Submission 12, Teacher Registration Board of WA, page 43.
20 Teacher Registration (General) Regulations 2012, Schedule 1.
21 Submission 12, Teacher Registration Board of WA, page 43.
During every budgetary cycle, the objective for the TRBWA is to remain cost neutral by setting fees and charges that will enable full cost recovery. It is not recommended that there be any change to this position unless the Board is provided additional functions...22

The cost of the Board’s regulatory services per teacher is a key performance indicator published in the Board’s annual report. Over the past three financial years this amount has been: $101.95 (2014-15), $120.93 (2015-16) and $121.32 (2016-17).23 Notes in the 2015-16 Annual Report indicate that the increase over the previous year was predominantly due to a 19% increase in the total cost of services of the Board “driven by additional resources required to manage the seasonal spike in registration renewals”.24

The most promising long-term strategy to achieve cost-containment appears to be to put as much of the routine administration as possible online. It is therefore prudent for the Board to be now setting aside funding for information and communications technology upgrades noting that in doing so scrupulous planning and management are essential to ensure that costs are contained and that services are maintained throughout the upgrading process, including to teachers in remote locations with slow and unreliable internet access.25

12.3 Financial transparency
A number of submissions were critical of the dearth of publicly available information as to how Board funds are spent. The Australian Secondary Principal’s Association and the WA Secondary School Executives Association submission called for “open and transparent accounting ... so [teachers] can understand the cost involved in running the TRBWA”.26

The Professional Teaching Council submitted that, while their members see that the fee enables them to teach and that being registered in itself is an acknowledgement that they meet professional standards, they see no other benefits. Furthermore:

If teachers had access to open and transparent accountability for the financial operations of the TRBWA there would be fewer complaints from teachers about fees.

PTCWA sees the importance of an independent Board and therefore that fees should cover operational expenses. The cost and processes of disciplinary matters need to be clear to teachers so that they understand that their fees are protecting the profession not only granting them the right to teach.27

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22 Submission 12, Teacher Registration Board of WA, page 42. This is taken to be a reference to the fees set by the General Regulations and separate from the Board’s information regarding the fee for the accreditation of teacher education programmes being less than cost recovery.
23 This figure is a calculation of the cost of the amount of staff time (measured in FTE) devoted to the provision of regulatory services divided by the number of registered teachers.
25 We note, for example, M.C.’s pleas for “consideration for those of us who live remotely ... with hit and miss technology and internet service, not fast never ending usage allowance like my city friends, but Satellite service that is intermittent in its reliability and amount available, internet that I must conserve to ensure I have enough internet to order our shopping online ... “: Submission 13.
27 Submission 20, Professional Teaching Council of WA, pages 2 and 5.
The State School Teachers’ Union submitted that its members do not regard the fees they pay to the Board as delivering value for money. They are not convinced that the current registration fee is set on a cost-recovery basis and are critical of the lack of transparency as to how fees are used.28

The Association of Independent Schools (AISWA) submitted that, while the fees seem to be reasonable compared with other States and Territories, “there is a popular perception among teachers that they receive little or nothing for the fees that they pay”. AISWA queried whether the principle of cost recovery for the provision of registration services is transparent in practice given that it is AISWA’s understanding that “a large proportion of the registration fees are used to cover the investigative function of a small percentage of teachers whose registration is in question”.29

As to cost recovery, the Review did not undertake an independent fee-by-fee assessment of the extent of cost recovery because there are already acceptable checks and balances in place when approval for fee increases is sought. First, the Department is required to certify to the Expenditure Review Committee of Cabinet that proposed fees are cost neutral and do not exceed cost recovery. Second, changes to the fees are, following their gazettal as amendments to the Fee Schedule, subject to disallowance by Parliament (infringement of the principle of cost recovery being a possible reason for disallowance).

As to transparency of expenditure, the Board’s annual report should include details as to the operation of the Teacher Registration Board Account. However, the Board’s annual report must be included in the annual report of its host department, until this year the Department of Education Services.30

Inspection of the certified financial statements in the two most recent annual reports of the Department of Education Services indicate that expenses are not reported separately for the Teacher Registration Board (with the exception of some minor ones such as interest payments31 and police clearances32). Essentially, most expenditure – for example salaries - is reported at the whole-of-department, rather than the Board-specific, level.

As a consequence, Teacher Registration Board expenditure is not visible to readers of the annual reports. The Board’s own, incorporated, annual report simply provides a summary of the Board’s activities, initiatives and projects – and therefore some indication of the areas where the fees are spent – but no financial information. Nothing exists anywhere in the annual reports that shows the operation of the Teacher Registration Board Account, in particular the costs of the staff, by functional areas, and the services and facilities provided by the department to the Board.33 This is in contrast to the former WA College of Teaching annual reports which included comprehensive financial statements, transparent to the general public.

Unpublished financial information for 2016-17 provided to the Review shows that total income for the year was $5.9m of which $5.8m was from charges and fees. The total cost of services delivered was $6.4m of which $4.7m was for staff salaries and on-costs, $1.1m for supplies and services, and $0.43m for accommodation. Of the $1.1m spent on supplies and services, the largest amounts were

28 Submission 18, State School Teachers’ Union of WA, page 15.
30 To date, all Teacher Registration Board of WA annual reports have been included in the annual reports of the Department of Education Services. From 2017-18 the Department of Education will be responsible for publishing the Board’s annual reports.
31 For the mortgage on the property in Ascot purchased by WACOT.
32 Purchased from the Australian Criminal Intelligence Commission (ACIC).
33 Section 92.
$0.34m for police clearances, $0.20m for communications and $0.17m for consultants and contractors.

The Review was advised that, while the figures for 2016-17 show an operating loss of around $458,000, this includes some non-cash adjustments for accrued leave, which are effectively book entries. Removing these items results in a cash surplus of around $320,000 for the year. Overall, around three quarters of total expenditure is for staffing, with the next largest items being accommodation and criminal record checks.

It is likely that the reported scepticism among teachers and their representative bodies regarding ‘value for money’ will continue if the paucity of financial reporting included in past annual reports is maintained. The Review recommends that the certified financial statements in future annual reports transparently show the operation of the Teacher Registration Board Account, in particular the costs to the Teacher Registration Board of the staff, services – including any not provided on a cost-recovery basis - and facilities provided and costs recouped by the Director General of Education.

\[\text{\footnotesize We note that the Board is forecasting a further operating surplus in 2017-18 with a view to meeting the cost of replacing its legacy customer relationship management software in 2018-19: Submission 12, Teacher Registration Board of WA, page 42.}\]
Chapter 13 – The Teacher Registration Board

13.1 Composition and size
13.1.1 Background

The 2010 statutory review of the Western Australian College of Teaching Act 2004 found shortcomings with the size and composition of the WACOT board of management. The responsible Minister had virtually no say in the appointment of its 19 members and would have found it difficult to assure Parliament that its representational nature delivered the expertise and experience needed to carry out the Act’s functions effectively.

Invoking the principle of ministerial accountability, the WACOT review concluded that members of the board should all be appointed by the Minister. Under this principle, the Minister can justifiably be called to account by Parliament (and others) for the performance of the board.

Adherence to this principle requires the roles and responsibilities of a board to be clear so that they can be matched to the expertise and experience that will need to be brought to the table through ministerial appointments. These, in turn, have a strong bearing on the optimum size of a board: the broader the roles and responsibilities, the larger the board should be to cover them all.

The WACOT review, while not definitive on board size, did find that between 9 and 13 members would be needed to ensure the requisite experience and expertise.

13.1.2 The current Board

The Teacher Registration Board has seven members, all appointed by the Minister. At least one must be a lawyer and at least three are to be registered teachers. The Minister designates one of the members to be the chairperson and another to be the deputy. Appointments are for terms not exceeding five years and members are eligible for reappointment.

In selecting appointees to the Board, the Minister is directed “to appoint people such that between them they have such experience, skills or qualifications as the Minister considers appropriate to enable them to effectively carry out the functions of the Board.”

Members are entitled to remuneration and allowances determined by the Minister on the recommendation of the Public Sector Commissioner.

To assist the Board in the performance of its functions it must appoint at least one disciplinary committee and one impairment review committee. It may also appoint other committees and has done so in the establishment of an Accreditation Committee and an Interim Disciplinary Order

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1 Achieved through a combination of ten elected teachers and nine persons nominated by bodies and organisations named in the WACOT Act: section 9.
3 Ibid.
4 Teacher Registration Act 2012, section 87.
5 Section 95(1) and (2).
6 Section 87(4).
7 Section 88.
8 Sections 49 and 50.
9 Section 107.
Committee. The Board may also delegate some decision-making and has done so to the Director, Teacher Registration, who is an officer of the Department of Education.¹⁰

The Director General of Education must ensure that the Board is provided with the staff, services, facilities and other resources and support that are reasonably necessary to enable it to perform its functions.¹¹ The staff supporting the work of the Board are employed by the Department of Education.¹²

Board meetings occur monthly from February through to December. In ordinary circumstances, five members constitute a quorum of the Board.¹³

### 13.1.3 Submissions

The State School Teachers’ Union (SSTUWA) proposed that the Board be increased to include more registered, practising teachers and a SSTUWA representative.¹⁴

The Schools of Early Learning argued for the inclusion of early childhood education and care expertise:

> The unique circumstances of early education and care services require specialist knowledge and understanding. We question whether this expertise is accessible in the current Board membership.

> We recommend that a position on the Board be created for a teacher in an early education and care setting.¹⁵

The Professional Teaching Council submitted that the Board should be made up exclusively of teachers because “it is teachers who should be, and are able to, making judgements about a teacher’s capacity to teach”. The Council argued that “with careful selection, even a small Board of 7-9 people” could be inclusive of the inherent diversity of the profession. The Council was further concerned, without being specific as to how, that the Minister can influence Board decision-making through her or his selection of Board members.¹⁶

The Association of Independent Schools (AISWA) submitted that the current size and composition of the Board neither guarantees “true representation of all sectors” nor covers the inherent diversity of the profession as a whole. Without saying so explicitly, AISWA seemed to be calling for a larger Board.¹⁷

The Australian Secondary Principals’ Association and WA Secondary School Executives Association submitted that “the current make-up of the Board is acceptable” and should remain in place, especially the three registered teacher positions. They also said that it is “important to ensure that

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¹⁰ As permitted by section 91.
¹¹ Section 92.
¹² One submission was critical of this. The Professional Teaching Council submitted that the Board’s ability to work with independence across the sectors is compromised by being housed in government buildings with oversight by the Department of Education: Submission 20.
¹³ Teacher Registration Act 2012, sections 109–112, deal with the size of a quorum in the circumstances where a member is disqualified from voting on a matter because of a conflict of interest.
¹⁴ Submission 18, State School Teachers’ Union of WA, page 18.
¹⁵ Submission 10, Schools of Early Learning.
¹⁶ Submission 20, Professional Teaching Council of WA.
¹⁷ Submission 16, Association of Independent Schools of WA, page 3, paragraph 23.
while the Board members are appointed by the Minister, there is no real or perceived conflict of interest.\textsuperscript{18}

\textbf{13.1.4 Recommendation}

The basic question is: what Board size and composition is needed to ‘get the job done’ efficiently, effectively and fairly, the ‘job’ being that specified by the Act’s functions listed below (section 13.2.1). Considered this way, the expertise and experience required needs to cover at least:

- teaching at all the types of educational venues (as defined in the Act) and in different parts of the State;
- making judgements about teachers’ proficiency, incompetence, misconduct and impairment;
- assessing the fitness and propriety of members of the teaching profession;
- the relationship between registration standards and the design and delivery of teacher education programmes;
- the professional learning needs of teachers;
- the staffing of educational venues under contemporary industrial awards across the sectors;
- the interpretation of the Act and related statutes;
- risk assessment and risk management;
- sound and ethical regulatory decision-making; and
- communicating effectively with teachers, principals and governing bodies of schools.

The Review has found no reason to resile from the arguments against representational appointments advanced in the report of the 2010 WACOT review which drew on the 2003 ‘Uhrig Review’.

\textit{Representational appointments can fail to produce independent and objective views. There is the potential for these appointments to be primarily concerned with the interests of those they represent, rather than the success of the entity they are responsible for governing. While it is possible to manage conflicts of interest, the preferred position is to not create circumstances where they arise.} \textsuperscript{19}

Taking account of the Board’s statutory functions, and the range of expertise and experience needed to cover them, we conclude that a seven-member board is too small. Whether the Board has seven or nine members, it would not be acceptable to reduce the quorum from five to four, as proposed by the Teacher Registration Board,\textsuperscript{20} given the far-reaching implications of decisions taken at Board level.\textsuperscript{21}

While the Review does not agree that adding more registered teachers \textit{per se} would necessarily improve the quality of the Board’s decision-making, we do find that the range of expertise and experience needed for the effective performance of its functions is more likely to be met by a larger Board. The Review \textbf{recommends} that the Board membership be increased from seven members

\textsuperscript{18} Submission 19, Australian Secondary Principals’ Association and WA Secondary School Executives Association.


\textsuperscript{20} Submission 12, Teacher Registration Board of WA, page 54.

\textsuperscript{21} We note it could mean Board decisions routinely being taken by four members in the absence of the three registered teachers appointed under section 87(3)(b). At present this is only possible should a member need to abstain due to a conflict of interest.
13.2 Roles and responsibilities

13.2.1 The Board’s functions

The Board’s roles and responsibilities are specified as functions and these are set out in section 89 of the Act. With amendments proposed in this report, these will be as follows:

(a) to perform the functions that are conferred on the Board under this Act or any other Act;
(b) to work with, and join associations of, teacher regulatory authorities (however described) of other States or Territories or New Zealand to participate in, and contribute to, debate and activities relating to teaching and teachers;
(c) to implement and administer for Western Australia an accreditation scheme for initial teacher education programmes;
(d) to advise the Minister on matters to which this Act applies.

The functions ‘conferred’ on the Board under paragraph (a) may be listed as follows:

- to process applications for registration and renewal of registration and grant or refuse them according to the requirements of the Act;\(^{22}\)
- to develop professional standards relevant to different categories of registration for the Minister’s approval;\(^ {23}\)
- to collect registration, annual and other fees as required by the Act and set out in Schedule 1 of the *Teacher Registration (General) Regulations 2012*;\(^{24}\)
- to consider whether to impose conditions on a teacher’s registration;\(^ {25}\)
- to keep a register of all registered teachers;\(^ {26}\)
- to consider information received by way of a notification, criminal record check or otherwise and decide whether to act on it and if so how;\(^ {27}\)
- to establish one or more disciplinary committees and an impairment review committee\(^ {28}\) and to receive, consider and act on their recommendations;\(^ {29}\)
- to assess, investigate and refer complaints about teachers when and where appropriate\(^ {30}\) including to the State Administrative Tribunal;\(^ {31}\)
- to consider whether to make an interim disciplinary order in appropriate circumstances\(^ {32}\) and to refer it to the State Administrative Tribunal if one is made;\(^ {33}\)

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\(^{22}\) Particularly Part 3 Division 1 Subdivision 2 and section 24.

\(^{23}\) Section 20.

\(^{24}\) Section 26.

\(^{25}\) Section 36.

\(^{26}\) Section 45.

\(^{27}\) Sections 49 and 50 respectively.

\(^{28}\) Sections 70(1)(g) and 79-82.

\(^{29}\) Section 53.

\(^{30}\) Section 83.

\(^{31}\) Sections 59 and 60.

\(^{32}\) Section 61.
to develop and publish standards for the accreditation of initial teacher education programmes;\textsuperscript{33}

to give effect to directions from the Minister;\textsuperscript{34}

to take legal action or authorise any other person to do so for an offence against the Act or in respect of any other matter arising under the Act;\textsuperscript{35} and

to develop and approve application and other forms that are convenient for the purposes of the Act.\textsuperscript{36}

In performing all of its functions, the Board must make the best interests of children its paramount consideration.\textsuperscript{37}

\textbf{13.2.2 Submissions}

The State School Teachers' Union submitted that reinstating the promotion of the teaching profession as a function under the Act would address the antagonistic view of the Board held by many teachers.\textsuperscript{38}

M.C. also proposed an advocacy role for the Board, calling for:

\begin{quote}
A governing body that advocates for teachers, not just a governing body that takes our money, and provides no service in return.
\end{quote}

As to what 'service in return' should include, M.C. specifically mentioned a list of Board-recommended professional learning; return to work seminars and courses for teachers re-entering the classroom after a break; a more user friendly website; and better communication generally.\textsuperscript{39}

The Association of Independent Schools also raised the need to improve communication, submitting that greater compliance with and respect for the Board would be achieved through clearer and more timely communication with teachers and principals.\textsuperscript{40}

\textbf{13.2.3 Recommendation}

The Review has found no case for the addition of functions related to advocacy for teachers or promotion of the profession. While such things are important they are not appropriate functions for a registration body and are better addressed by employers, professional associations and industrial bodies. In our view the communication strategy of the Board which emphasises teacher and employer initiative such as in accessing the TRIP and the many publications on the Board's website is appropriate when dealing with professionals. The Review recommends that the current functions of the Board under the Act, with the exception of those implying that the Board accredits initial teacher education programmes in accordance with a national scheme,\textsuperscript{41} be retained unaltered.

\textsuperscript{33} Teacher Registration (Accreditation of Initial Teacher Education Programmes) Regulations 2012, regulation 9.

\textsuperscript{34} Teacher Registration Act 2012, section 93.

\textsuperscript{35} Section 119.

\textsuperscript{36} Section 129.

\textsuperscript{37} Section 5.

\textsuperscript{38} Submission 18, State School Teachers' Union of WA, page 18. Promotion of the profession was one of WACOT's functions.

\textsuperscript{39} Submission 13, M.C.

\textsuperscript{40} Submission 16, Association of Independent Schools of WA, page 1, paragraph 5.

\textsuperscript{41} As recommended in Chapter 11 (section 11.1).
13.3 Effectiveness

As required by the Review’s terms of reference, a consideration of the effectiveness of the Board requires an evaluation as to whether its operations have served to give effect to the purposes of the Act.

Taking the long title as the starting point, the purpose of the Act as passed was to:

(a) provide for the establishment of the Teacher Registration Board of Western Australia; and
(b) provide for the regulation of the teaching profession in Western Australia; and
(c) facilitate the establishment, implementation and administration of an inter-jurisdictional accreditation scheme for teacher education programmes; and
(d) repeal the Western Australian College of Teaching Act 2004 and the regulations made under that Act; and
(e) make consequential amendments to various Acts, and for related purposes.

As to ‘related purposes’ and other matters that have a bearing on the Board’s operations and effectiveness, then Minister Dr Elizabeth Constable’s Second Reading Speech\(^42\) is instructive. She confirmed that, in contrast to WACOT’s functions:

... the TRB’s functions are limited to the determination of professional standards, the registration of teachers, dealing with complaints and discipline and impairment matters, and accrediting initial teacher education programs. Teachers aggrieved by the TRB’s decisions will have access to the State Administrative Tribunal. ... Serious disciplinary matters will not be dealt with by the TRB and will go straight to the SAT in its original jurisdiction.\(^43\)

One ‘related purpose’ was to have the corporate services the Board needs to carry out its functions provided by a government department.

... WACOT’s financial position is precarious. ... Having the TRB hosted by [a] department will enable economies of scale that are not possible in a small stand-alone agency like WACOT. The TRB will be hosted by the Department of Education Services, which will provide corporate services and support. This department has the expertise and a track record in the regulation of the education sector; experience in similar arrangements, particularly the Training Accreditation Council; and has direct access to government services and expertise.\(^44\)

A further ‘related purpose’ of the Act was the winding up of WACOT’s affairs:

... the WACOT board will be replaced by the chief executive officer of the department, whose responsibility will be to wind up the residual affairs of WACOT, after which time that act will be repealed in its entirety. The proceeds of the eventual sale of the premises are to be credited, together with all other assets of the college, to the teacher registration board account to be used for the purposes of the new Teacher Registration Act.\(^45\)

\(^42\) Dr Elizabeth Constable, Legislative Assembly, Hansard, 1 December 2011, pages 10371b–10373a.
\(^43\) Ibid.
\(^44\) Ibid.
\(^45\) Ibid.
The successful winding up of WACOT goes to the effectiveness of the operations of the Board only indirectly insofar as it was a matter it did not have to worry about, thus freeing it to concentrate on its core business.

The two main questions that bear on the Board's effectiveness are, given the shortcomings identified in the legislative framework and the fact that its corporate services are now provided on a cost-recovery basis by the Department of Education:

1. How effective has the Board been in regulating the profession?
2. How effective has the Board been in accrediting initial teacher education programmes?

### 13.3.1 Effectiveness of regulation

The Board's effectiveness as the regulator of the profession is positively indicated by the following:

1. Compared with the 2010 review of WACOT, submissions to the current Review were more focussed on the legislative framework than the performance of the Board.

2. The trends in the data displayed elsewhere in this report are generally positive. In particular, we noted the trends related to the non-payment of the annual fee. Cancellations due to non-payment have fallen from 2,507 in 2013-14 to 904 in 2016-17. The number of late payment notices issued has fallen from 6,864 to 2,014 over the same period.

3. The Board has proceeded cautiously and conservatively in testing the extent of its available regulatory, disciplinary and prosecutorial powers.

4. Negativity towards the annual fee seems to have abated and Board staff work with the universities to ensure that upcoming graduates are aware of what is required to achieve and maintain registration. Board staff report that negativity to fees among beginning teachers is virtually non-existent.

5. A Hansard search revealed only one matter of concern about the Board being debated in the Parliament. This was a grievance raised on 27 November 2014 by the Member for Joondalup on behalf of a constituent whose registration was cancelled for non-payment of the annual fee. This appears to have led to the Board subsequently adopting a less bureaucratic approach to non-payment, making greater use of its extenuating circumstances discretion.

6. Twelve parliamentary questions were asked about the Board's operations between 21 June 2012 and 23 June 2016 (the most recent). These questions generally went to fees and their

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47 See Table 2.2.
48 See Table 12.2.
calculation,\textsuperscript{49} Board revenue and costs,\textsuperscript{50} the sale of WACOT’s Ascot property,\textsuperscript{51} and the transition of WACOT’s incomplete inquiries and investigations to the incoming Board.\textsuperscript{52} None of them raised doubts about the effectiveness of the Board.

7. The Teacher Registration Board has had less media coverage, negative or otherwise, than its predecessor.

13.3.2 Effectiveness of accreditation

Although it has transpired that the Board’s accreditation function is not to implement an “inter-jurisdictional scheme”, the Board has been diligent in contributing to discussions at the national level and the Western Australian accreditation standards and procedures do not diverge markedly from those that apply elsewhere in Australia.

We have considered the Board’s involvement in teacher preparation at some length (in Chapter 11) and make no findings that go to the question of the Board’s effectiveness, with the possible exception of it not having been assertive enough with providers on the question of flexible practicum arrangements for people with disabilities and family responsibilities. We do not regard the fact that a ‘federalist’ scheme has evolved to be in any way a shortcoming in Board effectiveness. In fact we regard it as an indicator that the Board has responded most effectively to the realities of the situation it faced.

\textsuperscript{50} Hansard 15 October 2015, 14 October 2015, 8 April 2014, 12 March 2014, 21 June 2012.
\textsuperscript{51} Hansard 19 September 2013.
\textsuperscript{52} Hansard 5 December 2013.
## Appendix – Submissions to the Review

<table>
<thead>
<tr>
<th>No.</th>
<th>Author</th>
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<tbody>
<tr>
<td>1.</td>
<td>L F (jigs) Bootsma</td>
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<tr>
<td>2.</td>
<td>Not for publication</td>
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<tr>
<td>3.</td>
<td>Michelle Murphy, President, Level 3 Classroom Teacher Association (L3CTA)</td>
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<td>4.</td>
<td>Meredith van der Klip</td>
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<td>5.</td>
<td>Michael Armstrong</td>
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<td>6.</td>
<td>Amanda Forrester SC, Director of Public Prosecutions (DPP)</td>
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<td>7.</td>
<td>Maria Doolan</td>
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<td>9.</td>
<td>Anonymous (name supplied)</td>
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<td>10.</td>
<td>Schools of Early Learning</td>
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<td>11.</td>
<td>Paul Whyte, Acting Director General, Department of Communities</td>
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<td>12.</td>
<td>Teacher Registration Board of WA</td>
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<td>13.</td>
<td>M. C. (name supplied)</td>
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<td>14.</td>
<td>Dr John Byrne, Acting Commissioner for Equal Opportunity</td>
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<tr>
<td>15.</td>
<td>Alwyn Terpstra, Principal, John Calvin Schools</td>
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<td>16.</td>
<td>Association of Independent Schools of WA (AISWA)</td>
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<td>17.</td>
<td>WA Council of State School Organisations (WACSSO)</td>
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<td>18.</td>
<td>State School Teachers’ Union of WA (Inc.) (SSTUWA)</td>
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<td>19.</td>
<td>Rob Nairn, Executive Director, Australian Secondary Principals’ Association (ASPA) and Janette Gee, President, Western Australian Secondary Schools Executives Association (WASSEA)</td>
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<td>20.</td>
<td>Professional Teaching Council WA (PTCWA)</td>
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<td>21.</td>
<td>Helen Dempsey</td>
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<td>22.</td>
<td>Lisa Rodgers, Chief Executive Officer, Australian Institute for Teaching and School Leadership Ltd (AITSL)</td>
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<td>23.</td>
<td>Dr Debra Sayce, Acting Executive Director, Catholic Education WA</td>
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<td>24.</td>
<td>Sharyn O’Neill, Director General, Department of Education</td>
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