



TRBWA

Teacher Registration Board
of Western Australia

Teacher Registration Board of Western Australia

SUBMISSION TO THE REVIEW OF THE *TEACHER REGISTRATION ACT 2012*

November 2017

CONTENTS

INTRODUCTION	3
LIST OF SUBMISSIONS	4
1- WHO MUST BE REGISTERED?	9
2- REGISTRATION CATEGORIES, ELIGIBILITY CRITERIA AND CONDITIONS	10
3- FITNESS AND PROPRIETY	24
4- INELIGIBILITY FOR REGISTRATION	26
5- DURATION OF REGISTRATION AND RENEWAL REQUIREMENTS.....	28
6- DISCIPLINARY MATTERS.....	33
7- FEES AND RESOURCING THE BOARD'S OPERATIONS	42
8- PUBLIC AND PROFESSIONAL REGISTERS	44
9- ACCREDITATION OF INITIAL TEACHER EDUCATION PROGRAMMES.....	48
10- THE BOARD	52
11- NATIONAL CONSISTENCY	55

INTRODUCTION

The *Teacher Registration Act 2012* (TR Act) came into force on 7 December 2012.

Section 130 of the TR Act contemplates a review of its operation and effectiveness.

Mindful of the terms of reference for the Review approved by the Minister for Education and Training, Sue Ellery MLC, the Teacher Registration Board of Western Australia (Board) makes the following submissions aligned to the topics for comment contained in the Information Paper and Call for Submissions.

The Board thanks the Review for the opportunity to provide comment.

LIST OF SUBMISSIONS

The submissions made by the Board are listed here, by theme.

The rationale supporting each of these submissions is provided in the text that follows.

Who must be registered?

1. That part (b) of the current definition of ‘teach’ be amended to clarify 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.

Registration categories, eligibility criteria and conditions

2. That the current limitations on the renewal of Provisional Registration and the extension of Non-Practising Registration be reviewed and consideration be given as to whether such restrictions are appropriate and/or fully take into account the diversity of the teaching workforce.
3. That consideration be given to the addition of a further element to the qualification requirements, to allow for a person, whose qualifications and teaching experience are such that the Board considers the person suitable for registration, to be registered as a teacher.
4. That the name of Non-Practising Registration (Intending to Teach) be re-named to Provisional Registration (Continuing Teacher) and that the duration of this category be extended to three years.
5. That two categories of initial registration be retained.
6. That in order to distinguish the two categories the names of the categories be changed to Provisional Registration (Graduate Teacher) and Provisional Registration (Continuing Teacher).
7. That the category Non-Practising Registration be retained for those teachers who wish to cease teaching for a period, yet still wish to retain a form of registration.
8. That Non-Practising Registration would not allow a person to lawfully teach.
9. 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.
10. That teachers successful in applying to return would be granted the category of registration which they would be eligible for, as determined by the applicable professional standards requirements (within the previous five years).
11. That the Limited Registration qualification/skills/expertise criteria, listed under regulation 12(2) (a), (b) and (c) be consolidated into one eligibility criteria, namely that, ‘the nominee has, in the opinion of the Board, qualifications, expertise or skills in a subject relevant to the teaching position’.
12. 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.

13. That upon lodgement of a valid Form 1 – Notice of Intention to Apply for Limited Registration – a person is deemed to be registered, subject to the lodgement of an application for Limited Registration within five working days. Failure to submit an application within this timeframe will lead to a cessation of the deemed registration.
14. That the prescribed Form 1 in Schedule 2 – Form for the notice of intention to apply for limited registration be removed to allow the Board to develop its own form to meet this requirement.
15. That regulation 11(3) be revisited to make it clear that this provision applies only where the nominee has completed a higher education qualification in an exempt country.
16. That the '28 day rule' be extended to all applications made by registered teachers, including those to renew a category of registration and those applying for a different category of registration.

Fitness and Propriety

17. That the fit and proper requirements for Full Registration or Provisional Registration not include a requirement to hold a Working with Children assessment notice (ie a card) as a prerequisite to registration.
18. That to the factors that are considered in determining whether a person is fit and proper to be registered be added:
“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.”

Ineligibility for registration

19. That where the Board forms the opinion that a person has fraudulently included information in their application, they no longer be entitled to be registered.

Duration of Registration and Renewal Requirements

20. That the period of full registration be five years from the day that registration is granted or renewed, or such shorter period as is approved by the Board, from the day that registration is granted or renewed.
21. That the duration of the second category of initial registration (currently Non-Practising Registration (Intending to Teach) and proposed Provisional Registration (Continuing Teacher) be extended to a period of three years – with scope for the Board to grant for a period less than three years.
22. That the definition of renewal of registration be legislatively defined.
23. That, in the case of an application for renewal, the Board be afforded discretionary authority to waive the professional learning requirements, professional engagement requirements and the requirement that a person continues to meet the professional standards at the applicable level, in circumstances where, in the opinion of the Board, sufficient reasons exist.
24. That it remain a matter for the Board as to how professional standards are deemed to have been met.

25. That the current limitations on the renewal of initial categories of registration be reviewed and consideration be given as to whether such restrictions are appropriate and/or fully take into account the diversity of the teaching workforce.
26. That reference to 'extend' in the case of the second category of initial registration (proposed Provisional Registration (Continuing Teacher) be amended to 'renew' to align with other categories of registration.
27. That current references to exceptional circumstances or extenuating circumstances be amended to something akin to 'where, in the opinion of the Board, sufficient reason exists'.

Disciplinary matters

28. That the use of the term 'complaint' in section 51 of the TR Act be reviewed to enhance the clarity by which the term is used.
29. That a penalty apply if a person fails, without reasonable excuse, to comply with a request made pursuant to the Board's powers of investigation.
30. That what constitutes a disciplinary matter under the Act be amended to include where a teacher has engaged in serious misconduct (that is, serious misconduct below the threshold of that which would render the teacher unfit to be registered).
31. That the Board's interim emergency power be widened to include circumstances where the teacher has not been re-employed as a teacher.
32. That Crown immunity from prosecution pursuant to section 4(2) of the TR Act be retained.
33. That consideration be given to the inclusion of a provision to clarify that Crown immunity does not affect any liability of any officer, employee or agent of the Crown to be prosecuted for an offence.
34. That the range of enforcement options open to the Board to enforce compliance with the TR Act be widened.
35. That the notification obligations of employers pursuant to section 42 of the TR Act be strengthened to capture other identified circumstances where there is a reasonable expectation that the Board would be notified that, in the opinion of the employer, a teacher has been seriously incompetent as a teacher or has engaged in serious misconduct.
36. That the period for employers to provide notice to the Board be reduced from 30 days to two business days.
37. That there be no change to the sanctions available to Disciplinary Committees to deal with a complaint pursuant to section 70(1) of the TR Act.
38. That it be made a requirement for employers to report serious impairment affecting the behaviour or competence of a teacher.

Fees

39. That the principle of cost recovery for the provision of registration services be retained.
40. That fees associated with the accreditation of initial teacher education programmes be reviewed.
41. That fees applied to holders of overseas qualifications who have previously been registered with the Board be reviewed.
42. That a new fee, to cover the activity of the Board providing a letter of recognition or statement of professional standing be introduced.
43. That fees generally are reviewed to accommodate any of the relevant amendments that might be pursued following the review.

Register of teachers

44. That the information currently available on both the public register and the professional register is fit for purpose.
45. That the current legislative provisions in respect to access to TRIP are appropriate and should remain unchanged.
46. That consideration be given to the benefits of mandating the use of the professional register by employers.

Accreditation of initial teacher education programmes

47. That current references 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. This may require amendment or removal of the function contemplated in sections 89(b) and 89(c)(i) of the TR Act.

The Board

48. That the discretion for determining the composition of the Board and key appointments to the Board be left wholly in the hands of the Minister, with no prescriptions concerning stakeholder representation.
49. That the quorum of the Board is reduced from five members to four.
50. That existing settings concerning the accountability relationship between the Board, the Minister and the Parliament are maintained.
51. That the requirement for the Board to make the best interests of children its paramount consideration in all decision-making remain unaltered.

National Consistency

52. That the arguments in favour of a national regulator with respect to the accreditation of initial teacher education programmes are significantly stronger than those for a national regulator with respect to the registration of teachers.

1- WHO MUST BE REGISTERED?

Topics for comment:

- whether the Act imposes the registration obligation on the right categories of a person
- the significant definitions: 'teach', 'educational programme', 'education venue'
- the list of prescribed curriculums

The Board considers that the current legislative settings in terms of who must be registered are generally appropriate and no major legislative change is proposed.

It may be worth considering that any widening of the definition of teaching would mean that all such persons who subsequently fell within any widened definition, would be legally required to seek and maintain registration and would be committing an offence if they were to undertake their role whilst not being registered. Any adjustment in this regard would therefore, of course, need to be carefully considered.

Although it is considered that major changes to this aspect of the legislative framework are not required, it is considered that part (b) of the current definition of 'teach' may benefit from some minor adjustment. In particular, it is considered that the meaning of 'administration' of a programme is not sufficiently clear.

It is considered that 'administration of any such programme' is intended to capture those whose role within an educational venue is not to provide direct instruction to students/learners, but rather to provide oversight, leadership and management in respect of the development and/or implementation of educational programmes within the educational venue. Such roles may include, for example, those undertaken by a Principal or Deputy Principal in a school.

SUBMISSION

That part (b) of the current definition of 'teach' be amended to clarify 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- REGISTRATION CATEGORIES, ELIGIBILITY CRITERIA AND CONDITIONS

Topics for comment:

Full and provisional registration

- the requirement that the professional standards have been met within only five years before applying for registration
- whether the prescribed English language requirements are appropriate or too narrowly framed, noting that other tests than those prescribed are acceptable for immigration purposes
- the consistency of the eligibility criteria with those in other Australian jurisdictions

Limited registration

- the scope of the five categories of limited registration
- the requirement that the proposed employer must apply and pay for the limited registration application
- the conditions applicable to the limited registration category

Non-practising registration

- the label 'non-practising registration', particularly as applied to those who have returned to teaching
- the limit of two years within which a person with non-practising registration who returns to teaching is required to meet the professional standards

In October 2011, Commonwealth, State and Territory Education ministers endorsed a nationally consistent approach to the registration of teachers across Australia. It should be noted that a national review of teacher registration in Australia is planned for 2018.

The registration scheme in Western Australia is based on the endorsed approach contextualised to suit the local needs of this jurisdiction.

It should be noted that the nationally-agreed elements of teacher registration include acknowledgement that processes should be flexible to accommodate different contexts and experience.

The registration scheme under the TR Act has been in place for almost five years and its elements are strongly aligned to principles for nationally consistent registration for all teachers.

To be eligible for the grant of teacher registration there are two main components which are required to be met by an applicant – these relate to 'capability' and 'character'.

The former relates to a person's qualifications, proficiency in the English language and professional practice as demonstrated by achievement of the requirements of the *Professional Standards for Teachers in Western Australia (Professional Standards)*. Character relates to a person's behaviour or conduct and whether the person is a fit and proper person to be registered as a teacher.

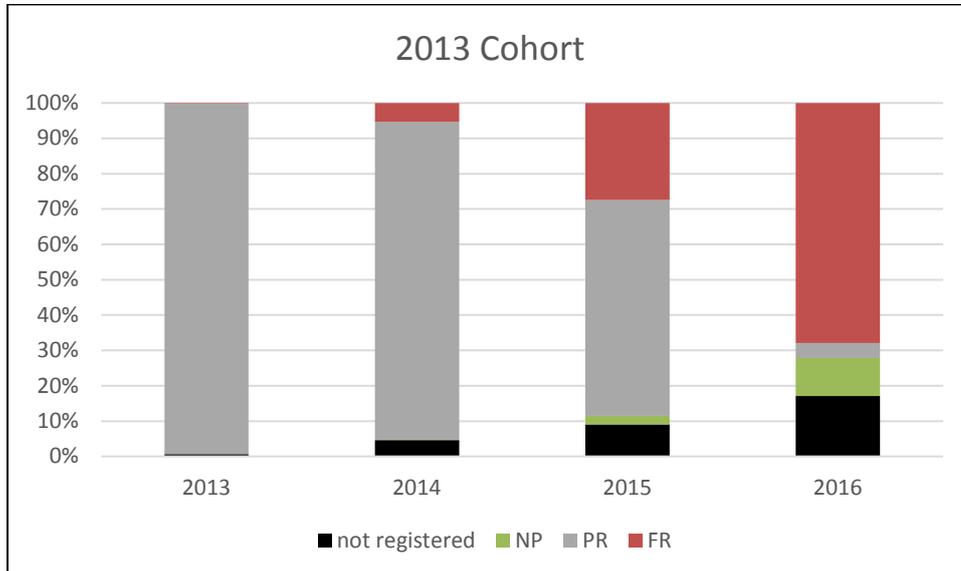
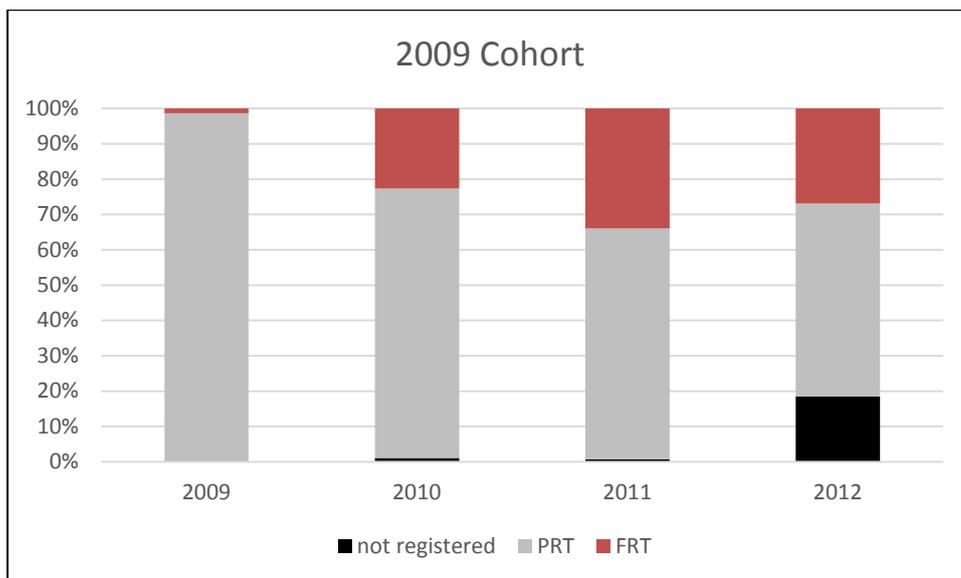
There are currently four categories of registration within the scheme of the TR Act:

- Provisional Registration – for recent graduates who have graduated from an initial teacher education (ITE) programme within the previous five years and have met the Graduate career stage of the Professional Standards (Graduate Standards).
- Full Registration – for qualified teachers who are able to demonstrate recency of professional practice (minimum 100 teaching days within previous five years) and that they meet the Professional Standards at the Proficient career stage (Proficient Standards).
- Non-Practising Registration – for teachers not intending to teach for a period of time or for teachers intending to teach in an educational venue, who meet the requirements for the grant of PR or FR, except for the Professional Standards requirements.
- Limited Registration – this category enables employers to employ suitably qualified people to fill specific teaching positions when needed. Teaching is limited to a specific educational venue and the specific duties of the position offered.

A change in direction

Before providing the Board's response on matters relating to categories of registration highlighted in the information paper, it is instructive to note that there has been a significant and positive shift in the number of registered teachers who have become successfully fully registered in recent years.

The following charts provides a comparison of the registration status of two cohorts over a period of four years:



The chart entitled 2009 Cohort reflects the registration status over four years (from 2009 to 2012) for those teachers who were first registered Provisionally Registered Teachers (PRT) under the auspices of the *Western Australian College of Teaching Act 2004*. In that period, there were no limitations placed on the scope to renew PRT.

The chart entitled 2013 Cohort reflects the registration status over four years (from 2013 to 2016) for those teachers who first received Provisional Registration (PR) under the auspices of the TR Act.

In this most recent period, the Board may renew PR only if, in its opinion, there are exceptional circumstances for doing so.

It is perhaps most instructive to compare the registration status of these cohorts at the end of the fourth year. By 2012, of the 2009 cohort, 27% were Fully Registered Teachers, 55% remained Provisionally Registered Teachers and 18% were not registered. In comparison, by 2016, of the 2013 cohort, 68% had Full Registration, 4% had Provisional Registration, 11% had Non-Practising Registration and 17% were not registered.

There are several key observations arising

- The apparent attrition rate over each four year period is roughly on a par.
- Substantially more teachers (that is, 41% more) had successfully become fully registered in the most recent period compared to the previous period.
- Conversely, substantially less teachers (that is, 51% less) remained provisionally registered in the most recent period compared to the previous period.

In addition to the change in dynamic that arises from the legislation, there are likely to be a number of other contributing factors that have driven the change to proportionately more teachers moving toward Full Registration. It is reasonable to speculate that these factors include:

- Efforts by employers to support teachers to progress to full registration.
- A perception that becoming fully registered is an important factor in career progression.
- All stakeholders in the system becoming more attuned to the requirements.
- The teaching profession as a whole more fully embracing the professional standards.

Limitations on the renewal/extension of Provisional Registration and Non-Practising Registration

In general terms, two categories, Provisional Registration and Non-Practising Registration are intended to be temporary in nature, used to provide a pathway to Full Registration.

Graduates of ITE programmes are usually initially granted Provisional Registration for a period of three years. It is generally acknowledged that teachers actively progress to Full Registration within this time, and the construct of the TR Act supports this expectation, by allowing for the renewal of Provisional Registration only where exceptional circumstances can be demonstrated. The TR Act places a similar expectation on teachers granted Non-Practising Registration (intending to teach). Non-Practising Registration is granted for a period of two years and may only be extended in extenuating circumstances. It is expected that holders of Non-Practising Registration work towards meeting the Proficient Standards and apply to transition to Full Registration within the period of Non-Practising Registration

These provisions are intended to facilitate the transition of all teachers to Full Registration within a reasonable period of time. This generally suits teachers who are employed on a full-time basis and who are attached to one school, as this cohort is best placed to work for the minimum number of days (100 days) and to demonstrate to a Principal (or Principal's delegate) that they have met the Proficient Standards in order to transition to Full Registration.

There are, of course, a number of teachers who are not employed in this capacity (e.g. part-time and relief teachers). For these teachers, due primarily to the fact that they may, either through choice or family/personal circumstance, work more intermittently and across a number of schools for brief

periods of time, it may be more difficult for them to be in a position to meet the Professional Standards requirements to transition to Full Registration.

As the legislative framework currently stands, such teachers are unable to transition to Full Registration and are only able to renew or extend their current category, though the demonstration of exceptional or extenuating circumstances. It could be said that the nature of the current legislative scheme, in particular the reflection in the scheme of the expectation that teachers must transition to Full Registration, may not adequately reflect the diversity of the teaching workforce.

It could also be considered not to reasonably acknowledge the fact that a number of teachers are employed in a part-time or relief capacity and may not be in a position to transition to Full Registration through the demonstration that they have met the Proficient Standards.

Currently a holder of Provisional Registration or Non-Practising Registration who, in the absence of exceptional/extenuating circumstances is unable to renew or extend registration, and who is unable to demonstrate 100 days of teaching and evidence the Proficient Standards, would be faced with the expiry of their registration as a teacher.

The registration options available to a person in this situation would be twofold:

Firstly, to be nominated by an employer of Limited Registration. An application for Limited Registration is generally restricted to a particular role at a particular school and there is a cost of either \$220 or \$531 (depending on the nature of the assessment) associated with each application. While an initial application might contemplate a number of schools coming together to apply on behalf of a nominee, a relief teacher who obtains employment to teach across a number of schools (at different times) would be required to arrange for a separate Limited Registration application in respect of each teaching position.

Secondly, to allow for registration to expire and to simply re-apply. As it is not a renewal or extension then the demonstration of exceptional or extenuating circumstances is not required. In the case of Non-Practising Registration, professional standards requirements do not apply. If the person is appropriately qualified and fit and proper, registration would be granted. This approach is specifically envisaged in the nationally agreed approach to teacher registration, although it begs the question: "Why would the legislation seek to restrict the renewal of Provisional Registration or Non-Practising Registration, if a person is simply able to re-apply?"

The restrictions on the renewal or extension of these 'initial' categories of registration arise from a premise within the legislative framework that purports to 'require' all teachers to meet the Proficient Standards and to transition to Full Registration. In some respects, it could be argued that this is not the primary function of a teacher registration scheme, and that a registration scheme should primarily be concerned with the setting and administering of minimum standards for entry into the profession and taking action against those who fall below the expected standard. In other words, a person is either, suitably qualified and fit to be registered as a teacher, or they are not.

There are a number of other potential levers which could be considered to contribute to the improvement the quality of the teaching workforce. Employer recognition and reward to those who demonstrate a higher level of professional standards would be one such example.

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 it fails to acknowledge the diverse nature of the teaching workforce and the different modes under which teachers are employed.

It is fully acknowledged that the Board must ensure that only those individuals who are appropriately qualified and who are fit and proper to be registered as teachers. That said, it is also considered that the legislative scheme must be sufficiently flexible to reasonably accommodate varied teaching contexts and individual circumstances.

SUBMISSION

That the current limitations on the renewal of Provisional Registration and the extension of Non-Practising Registration be reviewed and consideration be given as to whether such restrictions are appropriate and/or fully take into account the diversity of the teaching workforce.

Current Categories of Registration

Full Registration

The Board considers that the current eligibility criteria for the grant of Full Registration are appropriate. In accordance with the nationally-agreed approach to teacher registration, only those who have demonstrated that they have met the Proficient Standards are eligible for the grant of Full Registration. The requirement that applicants demonstrate that they meet or have met the Proficient Standards within the previous five years is also considered appropriate, and change is not proposed in this regard.

The current qualification requirement for Full Registration is as follows (section 15, TR Act):

A person is eligible for Full Registration as a teacher if the person —

(a) has a teaching qualification —

- (i) from an accredited initial teacher education programme; or*
- (ii) that the Board recognises as equivalent to such a qualification*

This envisages an assessment solely on the basis of the qualifications held by an applicant. Legislatively, it does not appear to allow for the Board to take into account other relevant factors not necessarily related to the actual qualifications themselves, (for example the teaching history of the applicant).

On occasion, the Board is presented with applications from overseas qualified teachers, whose qualifications may not exhibit a sufficient degree of similarity to an accredited initial teacher education qualification, although whose long teaching history would render them an appropriate applicant for teacher registration that is not fettered by the requirement to have an employer apply on their behalf.

SUBMISSION

That consideration be given to the addition of a further element to the qualification requirements, to allow for a person, whose qualifications and teaching experience are such that the Board considers the person suitable for registration, to be registered as a teacher.

Provisional Registration and Non-Practising Registration (Intending to Teach)

These categories are initial categories of registration from which teachers may transition to Full Registration.

Provisional Registration is intended for early career teachers who have graduated from an accredited initial teacher education programme within the last five years. The accreditation process involves an assessment as to how and where the Professional Standards at the Graduate Level (Graduate Standards) are taught and assessed. As such, graduates of an accredited initial teacher education programme are considered to have met the Graduate Standards. Provisional Registration is granted for three years, and as discussed above, is currently only able to be renewed in exceptional circumstances.

This approach, namely that Provisional Registration is for graduates of accredited programs, reflects the nationally-agreed approach to teacher registration which states that Provisional Registration is for those who have demonstrated that they have met the Graduate Standards.

Other jurisdictions generally grant Provisional Registration not just to graduates of accredited programs, 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.

Non-Practising Registration is generally for those applicants from overseas, those who have graduated from an ITE programme which has not been accredited, and those who may be returning to teaching after a leave of absence from the profession. It is also currently used by those who, having not taught a sufficient number of days or demonstrated the Proficient Standards, are unable to transition to (or renew) Full Registration. As noted above Non-Practising Registration (Intending to Teach) is currently only granted for a two year period and, as discussed above, may only be extended in extenuating circumstances.

Non Practising Registration is also available to those teachers who hold Provisional or Full registration and who wish to take a break from teaching and yet still retain teacher registration.

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. Should this category be retained, it will be necessary to change the name to something more appropriate. It may be that the two initial categories could be named Provisional Registration (Graduate Teacher) and Provisional Registration (Continuing Teacher)

It is also recommended that the duration of Non Practising Registration (Intending to Teach) (or if renamed) Provisional Registration (Continuing Teacher) be extended to three years. This would bring it in line with the current duration of Provisional Registration.

Similarly to Provisional Registration, Non-Practising Registration (Intending to Teach), is currently intended to be an interim category of registration during which a person is generally expected to work towards meeting the Proficient Standards and transition to Full Registration. Given this, it seems reasonable that the duration of the category should be no less than that afforded to recent graduates, holding Provisional Registration i.e. three years.

SUBMISSION

That the name of Non-Practising Registration (Intending to Teach) be re-named to Provisional Registration (Continuing Teacher) and that the duration of this category be extended to three years.

Initial Registration – One category or two?

The current legislative position allows for, in effect, two initial categories of teacher registration; Provisional Registration, for graduates of an accredited initial teacher education programme who have met the Graduate Standards, and Non-Practising Registration for those who have not met the Graduate Standards e.g. overseas trained teachers and teachers returning to teaching after a leave of absence from the profession. This category is also available to those who are unable to meet the requirements for transition to, or for the renewal of, Full Registration.

It should be noted that other Australian jurisdictions do not have two distinct categories below Full Registration. In other jurisdictions, all teachers who have not met or do not continue to meet the Proficient Standards are granted Provisional Registration.

In light of this, it may be worth considering whether a revised registration scheme may operate with one initial category of registration below Full Registration (that is, a single category of Provisional Registration that ‘covers the field’).

In Western Australia, although two categories operate, there is no difference between the two categories of initial registration in terms of what they enable a teacher to lawfully do. Under both categories, a person is able to teach without restriction or limitation. The only difference is in terms of the duration of the respective categories. That said, and as discussed above, it is proposed that, should two categories of initial registration remain, then the duration of both categories should be the same and the name of the current Non-Practising Registration should be amended, as noted above, to something akin to of Provisional Registration (Continuing Teacher).

Should this occur then essentially there would be two categories of registration, identical in all but name. This raises the question of whether the Western Australian registration scheme might revert, as is the case in other States and Territories, to one category of initial registration. Options in respect of initial registration categories would appear to be:

- Option 1 – Two-category system - Provisional Registration with two sub-categories (Graduate Teacher and Continuing Teacher or similar)
 - a) Provisional Registration (Graduate Teacher) - This category of registration is for a person who has a teaching qualification from an accredited initial teacher education programme; and has met the Professional Standards at the Graduate career stage within the last five years.
 - b) Provisional Registration (Continuing Teacher or similar) - The category of registration is for teachers who have yet to practise as a teacher in Australia, those who are returning to teaching after an absence of five years or more, or those who are unable to maintain the requirements for Full Registration for the purposes of renewal.
- Option 2 – One-category system - One category of initial registration (that is, including early career, overseas and returning teachers) - Provisional Registration – removing the Graduate Standards requirement

A move to a one-category system may simplify the registration scheme and would align the scheme, in terms of categories, to other jurisdictions. There may, however, be implications for such a move.

Firstly, a one-category system may be inconsistent with the nationally-agreed approach to teacher registration. The nationally-agreed approach to teacher registration states that Provisional Registration should be for those who have demonstrated the Graduate Standards. As a result, the current legislative framework includes the meeting of professional standards as an eligibility requirement for Provisional Registration. The Board has determined these standards to be the Graduate Standards.

The nationally-agreed approach also makes reference to a category or form of registration where the *'minimum requirement to continue to hold and renew registration is a recent national criminal history record check and continuing to meet other suitability requirements.'*¹ The current Non-Practising Registration (Intending to Teach) category reflects this.

The current system of two categories of registration 'below' Full Registration would, therefore, appear to be consistent with the nationally-agreed approach to teacher registration. It should be noted, however, that a review of the nationally-agreed approach to teacher registration is planned for next year. This review is discussed later in this submission.

Secondly, the creation of one category of initial registration, encompassing the two current categories, would not distinguish between those who have met the Graduate Standards and those that have not. A logical result of this may be that the Graduate Standards may need to be removed from the eligibility requirements of the category.

A possible flow-on from this relates to the Board's function in respect of the accreditation of initial teacher education programs.

The current accreditation scheme is essentially an assessment that an initial teacher education programme 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 this process is an assessment of how and where each of the Graduate Standards is taught and assessed. Under the current registration scheme, meeting the Graduate Standards is a requirement for the grant of Provisional Registration.

Under a one-category system of initial registration, one which does not necessarily require a demonstration of the Graduate Standards, the relevance of the Board accreditation role (i.e. an assessment of whether graduates have met the Graduate Standards) may be lessened.

For these reasons, it may be preferable for a two-category system of initial registration to remain. That said, as stated above, apart from a slight difference in name and the fact that one category may require a demonstration of the Graduate Standards and the other would not, the two categories would be exactly the same.

¹ 13th MCEEDYA Meeting 14 October 2011 – Paper – Agenda item 8.2 – Nationally Consistent Registration of Teachers p4

SUBMISSIONS

That two categories of initial registration be retained.

That in order to distinguish the two categories the names of the categories be changed to Provisional Registration (Graduate Teacher) and Provisional Registration (Continuing Teacher).

Non-Practising Registration (Not Intending to Teach) - for teachers who are no longer practising

Section 18 of the TR Act creates two sub-categories of Non-Practising Registration. Essentially, sub-category (a) is for those registered teachers holding either Provisional or Full Registration who propose to cease teaching for a period of time and yet remain registered. Sub-category (b) allows a teacher who meets all the requirements for Full or Provisional Registration with the exception of the professional standards requirement to gain registration and commence teaching.

As discussed above, it is proposed that this second arm of Non-Practising Registration be renamed and the duration extended to three years. In terms of those teachers who wish to cease teaching, it is recommended that the current Non-Practising Registration (Not Intending to Teach) category be retained. In the absence of any other type of Non-Practising Registration, the category would simply be known as Non-Practising Registration (i.e. with no reference to a teacher's intention to teach).

It is proposed that the category operate substantially in the same way as it currently operates. It is for those who currently hold Full or Provisional Registration (Graduate Teacher and Continuing Teacher), granted for an indefinite period of time and subject to payment of an annual fee. Some amendment is proposed, however, in respect of the mechanisms for such teachers to return to teaching.

Currently a holder of Non-Practising Registration (Not Intending to Teach) can lawfully return to the teaching at any time, subject only to a requirement/condition that that they notify the Board in writing within 14 days of their return. Given that this may occur many years after the teacher was last subject to a 'fit and proper' consideration (including a criminal record check), this is considered problematic from a child protection perspective.

A preferred approach would be that a teacher may return to teaching only after a criminal history check (national and, where appropriate overseas) has been undertaken. The category of registration for which the returning teacher would be eligible, would be dependent on whether they meet the eligibility criteria for either Provisional (Graduate Teacher), Provisional (Continuing Teacher) or Full Registration. Essentially, this would be dependent on meeting the professional standards requirements (within the previous five years).

In practice, this may mean that those who return within a five year period would be eligible for the category that they previously held. A teacher who returns more than five years after last holding teacher registration would be eligible for Provisional (Continuing Teacher) – a category that would not require demonstration of professional standards within the previous five years.

SUBMISSIONS

That the category Non-Practising Registration be retained for those teachers who wish to cease teaching for a period, yet still wish to retain a form of registration.

That Non-Practising Registration would not allow a person to lawfully teach.

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.

That teachers successful in applying to return would be granted the category of registration for which they would be eligible for as determined by the applicable professional standards requirements (within the previous five years).

Limited Registration

The qualification/skills/expertise requirements for the grant of Limited Registration are contemplated in section 17, TR Act and detailed in regulation 12 as follows:

- (a) *the nominee —*
 - (i) *holds a qualification that is, in the Board’s opinion, a teaching qualification; and*
 - (ii) *meets the professional standards approved by the Board for full or provisional registration, or has done so within the previous five years;*
- (b) *the nominee holds a qualification from an Australian university or an overseas university that is, in the Board’s opinion, relevant to the teaching position;*
- (c) *the nominee has, in the opinion of the Board, expertise or skills in a subject relevant to the teaching position;*
- (d) *the nominee is currently enrolled in an accredited initial teacher education programme delivered in a manner approved by the Board for the purposes of this paragraph;*
- (e) *the nominee has successfully completed all of the course requirements for, but has not yet received, a teaching qualification from an accredited initial teacher education programme.*

In practice, the majority of applications for Limited Registration are assessed against (c) (above) which is considered to represent the minimum eligibility threshold. Given this, it is considered that (a), (b) and (c) above could be amalgamated into one eligibility criteria. Such a criteria could be something akin to “*the nominee has, in the opinion of the Board, qualifications, expertise or skills in a subject relevant to the teaching position*”.

It is proposed that eligibility criteria (d) and (e) above remain unchanged.

The current legislative framework allows for a teacher to commence teaching on the day that a Notice of Intention to Apply for Limited Registration (Form 1) is lodged by the applicant, subject to a full application for Limited Registration being lodged by the employer within five days of submission of the Notice. Although a person is not registered until Limited Registration is subsequently granted, if the full application is received within five days of the Notice, registration is, upon grant, backdated to apply retrospectively from the day that the Notice was lodged.

In some ways, this approach could be considered to be inconsistent with the general requirement, under section 6 of the TR Act, that a person must not teach in an educational venue unless that person is registered. During the assessment of the application a person is not registered and does not appear on the Register of Teachers.

An alternative approach could be considered, one which deems registration from lodgement of a Notice of Intention to apply.

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, for example, of 5 working days or seven days, within which to lodge the full application. Failure to lodge the application within this timeframe may lead to the cessation of the deemed registration. Where an application is lodged within this timeframe, registration is deemed to continue until a decision is made on the application.

This approach may address the apparent discord between section 6 of the TR Act and the fact that teachers teaching pending the determination of an application for Limited Registration are technically doing so unregistered until the application is granted. This may also address potential issues with employer policy that may require all teachers to be registered (and to be included on the Register of Teachers).

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 immediate authorisation of teachers to commence teaching. From a child protection perspective, this is considered to represent a degree of risk.

To provide a greater degree of reassurance, it is proposed that a valid Notice of Intention to Apply (Form 1) should include a requirement for the submission of evidence that the teacher either holds or has applied for a Working with Children card. This would align Board requirements with the requirements under *Working with Children (Criminal Record Checking) Act 2004* that a person may only undertake, and an employee may only engage a person to undertake, child related work, if the person has applied for a WWC Check or holds a current WWC Card.

Employees and teachers should be in possession of this evidence, and so the provision of such documentation as part of the Form 1 process is not considered unduly onerous, and, as stated, provides a degree of reassurance that deeming registration to the teacher is appropriate.

It could be argued that a Form 1 Notice should be accompanied by a valid Working with Children card (as opposed to evidence that an application has been made for one). This would certainly provide a high level of reassurance of the suitability of the nominee – from a working with children perspective. One implication of adopting this approach would be that any person who did not hold a Working with Children card at the time of application, would not be able to start immediately in the teaching position – and would need to wait until the Working with Children assessment had been finalised.

This implication may need to be taken into account when determining an appropriate approach in respect of the Form 1 process for Limited Registration.

It is important to note that this requirement is not in any way intended to replace the Board's assessment of fitness and propriety, including the requirement to undertake a criminal record check.

Section 23(3)(a) of the TR Act requires that notice to the Board of the intention to make an application for the grant of Limited Registration be given in a prescribed form. Regulation 14 stipulates that the form prescribed is "*Form 1 in Schedule 2*". Form 1 is the only prescribed form contemplated within the current legislative scheme.

The manner in which the Board accepts applications and notices is an operational matter and therefore the Board should be afforded flexibility within the legislative framework to develop and

determine the requirements for all of its forms including the *Notice of intention to apply for limited registration*. Accordingly, it is proposed that the current *Form 1 – Notice of intention to apply for limited registration* be removed.

SUBMISSIONS

That the Limited Registration qualification/skills/expertise criteria, listed under regulation 12(2) (a), (b) and (c) be consolidated into one eligibility criteria, namely that, ‘the nominee has, in the opinion of the Board, qualifications, expertise or skills in a subject relevant to the teaching position’.

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.

That upon lodgement of a valid Form 1 – Notice of Intention to Apply for Limited Registration – a person is deemed to be registered, subject to the lodgement of an application for Limited Registration within five working days. Failure to submit an application within this timeframe will lead to a cessation of the deemed registration.

That the prescribed Form 1 in Schedule 2 – Form for the notice of intention to apply for limited registration be removed to allow the Board to develop its own form to meet this requirement.

English language requirements for all categories

It is considered that the current legislative provisions for English language requirements across the categories are, in the main, appropriate. It is noted that the requirements for Limited Registration differ in respect of teachers of languages other than English and for teachers teaching, or teaching in, an indigenous language.

There are, however, two areas which may need to be considered. The first matter relates to the Professional English Assessment for Teachers test, a test developed for teachers intending to teach with the NSW Department of Education. It is understood that this test was discontinued in May 2017. As such, some consideration may need to be given as to whether this remains part of the legislative provisions surrounding English language requirements for registration.

The second issue relates to Limited Registration and the current regulation 11(3). Regulation 11(3) states that a nominee for Limited Registration meets English language requirements if:

The nominee has undertaken all of the components of a requirement under regulation 12(2), as are relevant to the application, in the English language in one or more of the following countries —

- (a) Australia;*
- (b) New Zealand;*
- (c) the United Kingdom;*
- (d) the United States of America;*
- (e) Canada;*
- (f) the Republic of Ireland.*

Regulation 12(2) refers to the qualifications/skills/expertise requirements for Limited Registration. In some cases, these requirements are demonstrated in the absence of formal academic teaching or

non-teaching qualifications. Given this, it is considered that this mechanism for meeting English language requirements may need to be revisited to make it clear that this applies only to higher education academic programs or qualifications.

The Board has developed the following policy/guidance in this space in an attempt to clarify how this provision operates.

A nominee who can demonstrate that they have undertaken, and successfully completed, all components of a qualification in English in one of the prescribed countries, will meet the English language requirements. The qualifications are:

- *An accredited initial teacher education programme*
- *A teaching qualification*
- *A university qualification which is relevant to the teaching position²*

SUBMISSION

That regulation 11(3) be revisited to make it clear that this provision applies only where the nominee has completed a higher education qualification in an exempt country.

28 day rule – application

Currently, the registration of any teacher, who applies for the renewal of a category of registration 28 days or more prior to the expiry of the current period of registration, will be taken to continue until notice of the decision on the application is provided. This 28 day rule applies only to applications for renewal. The 28 day rule does not apply to those who are transitioning from one category of registration to another.

Although this rule currently applies to applications for renewal only, it is understood that it was intended to apply also to category changes. There is no sound reason to deny to those changing their registration category the same protections afforded to those renewing their registration. Common category changes include a teacher holding Provision Registration seeking Full registration and a teacher with Full Registration seeking Non-practising Registration.

SUBMISSION

That the '28 day rule' be extended to all applications made by registered teachers, including those to renew a category of registration and those applying for a different category of registration.

² TRBWA Limited Registration: English Language Policy – section 4.2

3- FITNESS AND PROPRIETY

Topics for comment

- whether the fit and proper requirements should also include a requirement to hold a Working with Children assessment notice (i.e. a card) as a prerequisite to registration

When the phrase ‘fit and proper’ is used in the context of an office or vocation it normally comprises the three characteristics of honesty, knowledge and ability in the context of that office or vocation (*Hughes and Vale Pty Ltd v New South Wales* [No 2] [1955] HCA 28). Walters J in *Sobey v Commercial and Private Agents Board* (1979) 22 SASR 70, 76 provided the following useful commentary with respect to the phrase:

what is meant by that expression is that an appellant must show not only that he is possessed of a requisite knowledge of the duties and responsibilities devolving on him as the holder of a particular licence under the Act, but also that he is possessed of sufficient moral integrity and rectitude of character as to permit him to be safely accredited to the public, without further inquiry, as a person to be entrusted with the sort of work which the licence entails. (cf Ex Parte Meagher 4) The burden clearly lay upon the appellant to satisfy the Board of his fitness and propriety to hold the licences for which he applied

As it stands, in addition to the factors listed at section 24(a)-(f) of the TR Act, it is open to the Board to consider any other matter relating to the person that the Board considers are appropriate.

The Board is being asked to comment on whether the fit and proper requirements should also include a requirement to hold a Working with Children assessment notice as a prerequisite to registration. Comment has been provided above confirming the Board’s position that a valid Notice of Intention to apply for Limited Registration ought not to include evidence that the teacher either holds or has applied for a Working With Children Card.

For the reasons set out below, the Board considers that this should not form a requirement for other categories of registration.

Section 9(1) of the *Working with Children (Criminal Record Checking) Act 2004* (WWC Act) states:

“A person who is, or is proposed to be, employed in child-related employment by another person (the Employer) may apply to the CEO for an assessment notice.”

Section 91(3)(b) states that the approved form is to include provision for –

“certification by the employer that the employer employs, or proposes to employ, the applicant in child-related employment.”

On the WWC website (workingwithchildren.wa.gov.au) it states:

“The WWC Check does not apply to everyone. You must apply for a WWC Check or hold a current WWC Card if you are about to start or are engaged in child-related work in Western Australia and/or the Christmas and Cocos (Keeling) Islands.”

As many applicants for registration are making their applications well before they are employed, eg last year students at university, they are seeking registration *before* they need a WWC check. Further, there would be scenarios where a person would be eligible to renew their registration (because they have met the eligibility requirements) but they may not be employed at the time their registration is due to expire. In such instances, if they were not in child-related work at the time their registration was due to be renewed, they would therefore not be required to hold a WWC Card.

In these circumstances, it would be nonsensical to make it a requirement for registration (as opposed to employment).

The Board does, however, suggest that to the factors already specified under section 24, consideration be given to adding a sub-section relating to medical conditions and impairments.

At present, pursuant to section 24(g) of the TR Act, the Board may consider medical conditions and impairments as part of the fit and proper assessment.

As medical conditions and impairments that are disclosed as part of an application are not dealt with through the Impairment Review Committee, this matter has been given considerable thought.

The application forms include fit and proper questions, to assist with the assessment. One of the questions is:

Do you have a serious medical condition, or mental or physical impairment, that adversely affects, or is likely to adversely affect, your ability to practise as a teacher?

If an applicant answers 'yes' to the above question, they are automatically directed to further questions, the answers to which should assist the Board with the assessment.

The Board has also formulated a Policy and Guideline with respect to Medical Conditions and Impairment, showing the seriousness with which the Board takes this aspect of fit and proper assessment.

Given the attention being focused on Medical Conditions and Impairments as part of the fit and proper assessment pursuant to section 24 of the Act, it is recommended that it is included as a new sub-section, with a possible wording:

“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.”

SUBMISSION

That the fit and proper requirements for Full Registration or Provisional Registration not include a requirement to hold a Working with Children assessment notice (ie a card) as a prerequisite to registration.

That to the factors that are considered in determining whether a person is fit and proper to be registered be added:

“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.”

4- INELIGIBILITY FOR REGISTRATION

Topics for comment

- whether all of the matters listed in section 27 should result in automatic cancellation of registration
- whether any additional matters should result in automatic cancellation

Should all current 27 matters result in automatic cancellation?

Section 27 of the TR Act sets out the circumstances in which the Board is to cancel the registration of a teacher when it becomes aware that the teacher is no longer entitled to be registered.

Section 27(2)(b) concerns teachers being issued with an interim negative notice or negative notice under the WWC Act. The situation currently is the Board cancels the teacher's registration and provides advice to the teacher of the provision for reinstatement of registration if the negative notice is withdrawn or cancelled. In the interests of natural justice there has been some suggestion that rather than cancel their registration, the Act be amended to provide for the suspension of the teacher's registration for the duration of the terms that the negative notice stays in place. There are several issues with this proposal.

First, the proposal does not appear to take account of section 34 of the TR Act which states that a teacher whose registration is suspended is to be taken 'not to be registered as a teacher' for the period of the suspension.

Second, there are essentially two reasons why a person who is in receipt of an interim negative notice cannot work as a teacher. The first reason is that pursuant to section 27(2)(b) of the TR Act, they are not entitled to be registered. The second reason is that a person who has received an interim negative notice is simply unable to undertake child-related work pursuant to section 23 of the WWC Act.

This means that, for all intents and purposes, they cannot undertake the normal duties of a teacher. This would presumably have a bearing on whatever employment contract there is in place between the teacher and their employer (and what obligations the employer has to maintain their pay and conditions during the period that they are unable to undertake child-related work). It would also appear to have a bearing on an employer's policy or obligation with respect to providing work that is not 'child-related' for the period that an interim negative notice is in place.

It is suggested that the identified issue is therefore more related to employment policy than to the TR Act.

As a consequence it is suggested that all those matters that currently result in 'automatic cancellation' pursuant to section 27 remain.

Should there be any additional matters included in section 27 of the Act?

The words 'not entitled to be registered' in section 27(1) are confined by the matters listed at section 27(a)-(f). 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.

SUBMISSION

That where the Board forms the opinion that a person has fraudulently included information in their application, they no longer be entitled to be registered.

5- DURATION OF REGISTRATION AND RENEWAL REQUIREMENTS

Topics for comment suggested by the Reference Group include:

- the renewal of registration requirements
- the provisions for exceptional and extenuating circumstances
- whether there should also be an extenuating circumstances exception for failing to satisfy the professional engagement (i.e. minimum number of days teaching) requirement for renewal of registration

Duration of Registration

In general, it is considered that the current settings in terms of the duration of particular categories of registration are appropriate and should, in the main, remain unchanged.

It is noted, however, that in respect of the current categories of Provisional Registration and Limited Registration, the Board has discretion to grant up to a period of three years. Such discretion is not afforded in respect of the grant or renewal of Full Registration. 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, for reasons of an exceptional or extenuating nature, 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.

As discussed earlier in this submission, it is also recommended that the duration of the second category of initial registration (currently Non-Practising Registration (Intending to Teach) and proposed Provisional Registration (Continuing Teacher) should be extended to a period of three years. This should also be accompanied with discretion afforded to the Board to grant for a period less than three years, where considered appropriate. This would provide alignment with the provisions in respect of current Provisional Registration (proposed Provisional Registration (Graduate Teacher)).

SUBMISSION

That the period of full registration be five years from the day that registration is granted or renewed, or such shorter period as is approved by the Board, from the day that registration is granted or renewed.

That the duration of the second category of initial registration (currently Non-Practising Registration (Intending to Teach) and proposed Provisional Registration (Continuing Teacher) be extended to a period of three years – with scope for the Board to grant for a period less than three years.

Renewal of Registration

'Renewal' of registration is not currently defined in the Act. The concept of registration renewal is important, not least because of the fact that a number of other obligations/requirements under the Act apply to applications for 'renewal'. These include the '28 day rule' and professional learning and professional engagement obligations.

As a result of the lack of a legislative definition, and on the basis of legal advice, the Board clarified in policy, its understanding of 'renewal'. Board policy states:

Renewal of registration is an application made during a period of registration to renew registration in the same category³.

SUBMISSION

That the definition of renewal of registration be legislatively defined.

Current general requirements for renewal –

The current requirements for the renewal of a category of registration are detailed in section 22, TR Act and regulation 13, *Teacher Registration (General) Regulations 2012* (General Regulations) and are as follows:

SECTION 22

- (1) *An application for the renewal of registration is to be made to the Board at least 28 days before the expiry of the registration.*
- (2) *The Board may renew the registration of a teacher if, on application to the Board, the Board is satisfied of the following –*
 - (a) *that the teacher continues to meet the requirements for registration set out in section 15, 16 or 17 as is relevant;*
 - (b) *that the teacher is complying with the conditions, if any, imposed on the person's registration;*
 - (c) *that the teacher has met such other requirements for the renewal of registration, if any, as are prescribed in respect of the relevant category of registration.*
- (3) *The Board may renew provisional registration only if, in the opinion of the Board, there are exceptional circumstances for doing so.*

REGULATION 13

- (1) *For the purposes of section 22(2)(c) of the Act, the additional requirements for the renewal of registration set out in subregulations (2), (3) and (4) are prescribed.*
- (2) *For the renewal of full registration, that the teacher has, since the registration was last granted or renewed –*
 - (a) *taught –*
 - (i) *for at least 100 full working days; or*

³ TRBWA Policy on Making an Application p2

- (ii) *for a period of time that would be equivalent in hours to at least 100 full working days;*
 - and*
 - (b) *undertaken at least 100 hours of professional learning activities.*
- (3) *For the renewal of provisional or limited registration that was last granted or renewed for 3 years, that the teacher has, since the registration was last granted or renewed —*
 - (a) *taught —*
 - (i) *for at least 60 full working days; or*
 - (ii) *for a period of time that would be equivalent in hours to at least 60 full working days;*
 - and*
 - (b) *undertaken at least 60 hours of professional learning activities.*
- (4) *For the renewal of provisional or limited registration that was last granted or renewed for less than 3 years, that the teacher has, since the registration was last granted or renewed —*
 - (a) *taught for a period of time calculated on a pro rata basis for the period since the registration was last granted or renewed, at the rate of 20 full working days for each year; and*
 - (b) *undertaken professional learning activities for a period of time calculated on a pro rata basis for the period since the registration was last granted or renewed, at the rate of 20 hours of professional learning activities for each year.*
- (5) *The requirements of subregulations (2)(b), (3)(b) or (4)(b) do not apply in relation to the renewal of registration of a teacher if, in the opinion of the Board, extenuating circumstances exist*

Regulation 13 details the Professional Learning and Professional Engagement requirements the renewal of registration. It is proposed that these be retained, albeit with some amendment.

Currently, under regulation 13(5), extenuating circumstances applies only to Professional Learning requirements. It could be argued, however, that this should also be applicable to the Professional Engagement requirement and also to the requirement, pursuant to section 22(2)(a), that a person continue to meet the professional standards at the applicable level.

The main reason for this proposal is that, if circumstances relating to a particular application are considered extenuating, then the Board should not be precluded from allowing for the renewal of registration, where it considers it appropriate and reasonable to do so. As it currently stands, the Board is so precluded where a person has not met the Professional Engagement requirements, even if there are extenuating circumstances as to why the teacher is unable to meet this requirement. In addition, there is a requirement that a person continues to meet any professional standards applicable to the category.

Currently, and in accordance with the nationally-agreed approach to teacher registration, these standards also include an ‘engagement’ requirement of 100 days of teaching. The extenuating circumstances associated with an application may be such that it would be right and proper, notwithstanding the fact that certain requirements had not been met, for the category of registration to be renewed for a period of time.

SUBMISSION

That, in the case of an application for renewal, the Board be afforded discretionary authority to waive the professional learning requirements, professional engagement requirements and the requirement that a person continues to meet the professional standards at the applicable level, in circumstances where, in the opinion of the Board, sufficient reasons exist.

Prescribing how teachers 'continue to meet' Professional Standards

In terms of the requirement for renewal that a person continues to meet the professional standards applicable to that category, the Act is silent in respect of the manner by which the Board may consider this requirement to be met. This silence, it is submitted, is entirely appropriate.

In undertaking all aspects of its regulatory function, and in determining whether a particular registration requirement is satisfactorily demonstrated, the Board is mindful of the standard of proof to be applied to administrative decision making⁴, and may take into account a variety of relevant evidentiary sources in reaching its decision. That said, the manner by which the Board makes its decisions, and the evidence upon which it relies in doing so, and the weight attached to particular sources of evidence, is a matter for the Board, and it is considered quite proper that these are not prescribed in legislation.

SUBMISSION

That it remain a matter for the Board as to how professional standards are deemed to have been met.

Restrictions on 'renewal' of initial categories of registration

As discussed earlier in this submission (Categories of Registration), there are currently restrictions on the renewal of initial categories of registration.

As stated, a 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 it fails to acknowledge the diverse nature of the teaching workforce and the different modes under which teachers are employed.

SUBMISSION

That the current limitations on the renewal of initial categories of registration be reviewed and consideration be given as to whether such restrictions are appropriate and/or fully take into account the diversity of the teaching workforce.

Consolidation of terminology

⁴ *Briginshaw v Briginshaw* [1938] HCA 34; (1938) 60 CLR 336 (30 June 1938)

- Extend and Renew

The current legislative provisions refer to the extension of Non-Practising Registration (Intending to Teach)⁵ and the ‘renewal’ of other categories of registration.

SUBMISSION

That reference to ‘extend’ in the case of the second category of initial registration (proposed Provisional Registration (Continuing Teacher) be amended to ‘renew’ to align with other categories of registration.

- Exceptional circumstances, extenuating circumstances and sufficient reason

The current legislative framework includes references to both ‘exceptional circumstances’ and ‘extenuating circumstances’. These terms are not defined. These terms are incorporated into provisions within the legislation, which afford discretion to the Board to, essentially, approve or renew applications for registration where there is sufficient reason to do so. Accordingly, it is considered preferable that the legislation should specifically state that.

SUBMISSION

That current references to exceptional circumstances or extenuating circumstances be amended to something akin to ‘where, in the opinion of the Board, sufficient reason exists’.

⁵ Regulation 15(3) General Regulations

6- DISCIPLINARY MATTERS

Topics for comment:

- the definition of disciplinary matters and the relationships between sections 24 (fit and proper factors), 27 (ineligibility for registration) and 47 (disciplinary matters)
- the immunity of government school employers from prosecution
- the notification obligations of teachers and/or employers
- the powers of the disciplinary committees

Making a complaint (section 51)

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 around what constitutes a complaint for the purposes of the operation of the Act, perhaps by more clearly defining the term.

SUBMISSION

That the use of the term 'complaint' in section 51 of the TR Act be reviewed to enhance the clarity by which the term is used.

The Board's investigation role (section 56)

The Board's powers of investigation pursuant to section 56 of the Act may only be invoked once it has formulated a complaint pursuant to section 51(3).

The Board may investigate by requiring a person to attend as a witness at a time and place specified in the notice or require a person to produce any document in its possession or control that is relevant to the matter inspect a document produced before it. The Board may inspect the document and retain it or make copies, photograph or take extracts.

As noted in the information paper, there are little or no consequences arising from not complying with the Board in exercising its investigative function. Where a person is a registered teacher and they fail to comply, it may become a disciplinary matter and a factor in the consideration of fitness and propriety.

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 (see, for example, section 34 of the *Teacher Registration and Standards Act 2004 (SA)*).

SUBMISSION

That a penalty apply if a person fails, without reasonable excuse, to comply with a request made pursuant to the Board's powers of investigation.

Disciplinary Matters (section 47)

Taken together, the matters that may constitute disciplinary matters under the Act are generally serious ones (section 47(a) and (e)) or directed towards protecting the integrity of the Act (sections 47(b), (c) and (d) and (f)(iii)).

The Board is of the view that the matters that constitute disciplinary matters for the purposes of the Act are generally sound.

It is important to note, however, that matters of serious misconduct of a teacher that fall below the threshold of being of the nature that renders the person unfit to be registered, do not constitute disciplinary matters (see section 47(f)(ii)). There are several consequences that arise from this. Where the Board (or a Disciplinary Committee) forms a view that the serious misconduct of a teacher would not warrant the cancellation of a person's registration, then the relevant complaint would not constitute a disciplinary matter. As a consequence, the Board has no jurisdiction with respect to matters of serious misconduct that fall below this high threshold. In dealing with such matters, there is essentially no practical recourse to Disciplinary Committees at all because they do not have the power to cancel a teacher's registration- this power rests only with the State Administrative Tribunal.

It is important to note that with respect to dealing with matters of serious misconduct and serious incompetence, it is not intended that the Board would displace the role of employers or their own processes in undertaking investigations, disciplinary processes and performance management processes. It is intended to operate as an alternative complaints process, if required and a different focus, with different consequences to that arising from such processes undertaken by employers.

It may be that the somewhat limited range of misconduct matters that constitute disciplinary matters is consistent with this approach. The Board certainly considers it would be both imprudent and inefficient to deal with matters where it is of the opinion they have already been adequately dealt with elsewhere. That said, it is reasonable to expect that there may be instances of serious misconduct that ought to have implications for a teacher's registration but would not necessarily result in cancellation of their registration.

SUBMISSION

That what constitutes a disciplinary matter under the Act be amended to include where a teacher has engaged in serious misconduct (that is, serious misconduct below the threshold of that which would render the teacher unfit to be registered).

The Board's 'emergency power' pursuant to Section 59

The TR Act confers on the Board powers to make interim disciplinary orders (IDOs) (section 59 and section 60). As noted in the information paper, these sections provide alternative bases for the making of such orders. There are no apparent issues with the operation of powers pursuant to section 60 which enables the Board to impose a condition or suspend a teacher's registration where they have been charged with a sexual offence involving a child.

It is the Board's view, however, that the formulation of section 59 is problematic.

The Second Reading Speech relevantly states:

The TRB will have an interim emergency power to suspend a teacher's registration in defined circumstances in which the teacher is deemed to pose a potential risk of harm or injury to another.

There is, however, a discord between the use of the word 'potential' in the Second Reading Speech (and the apparent intent of the section) and the terms used in section 59:

If the Board or a disciplinary committee is of the opinion that an activity of a registered teacher involves, or will involve, a risk of imminent injury or harm to the physical or mental health of any person the Board or the committee may make one of the following orders —

- (a) an order imposing a condition, or conditions, on the registration of the teacher;
- (b) an order suspending the person's registration.

While it is clear that the section 59 IDO is intended to operate as a protective measure to deal with a teacher's registration in instances where the activity of a registered teacher involves, or will involve a risk of imminent injury or harm, the use of the word 'activity' in the provision has a particularly limiting effect on the circumstances when a section 59 IDO might lawfully be made.

In particular, the reference to 'activity', together with the reference to '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' 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.

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 State Administrative Tribunal), the professional implications for the teacher against whom allegations have been made in these circumstances may be profound. The effect of suspension is that a teacher is taken not to be registered as a teacher for the period of the suspension. This is, of course, quite sound. The flow on effect is that, subject to the policies of the teacher's employer, their employment may immediately be discontinued (as they are unable to practice as a teacher for the period that they are suspended).

It is noted that the formulation of the emergency power in Queensland, pursuant to section 49 of the *Education (Queensland College of Teachers) Act 2005* (Qld) is as follows:

The college may suspend an approved teacher's registration or permission to teach if the college reasonably believes the teacher poses an unacceptable risk of harm to children.

SUBMISSION

That the Board's interim emergency power be widened to include circumstances where the teacher has not been re-employed as a teacher.

The immunity of the State from prosecution

Section 4 of the TR Act binds the State and Crown to comply with the TR Act. Accordingly, the Department of Education has an obligation to comply with those requirements but cannot be prosecuted for failing to do so (s 4(2)). The Department of Education is, of course, the largest employer of teachers in the State.

The main arguments for the Crown being bound by legislation are accountability, equality before the law and deterrence.

As to accountability, if the Crown was subject to prosecution, it is possible and even likely that this would result in questions within the Parliament. There is an argument that this would promote trial by third parties, incompatible with due process.

As to equality before the law, the same exemption does not extend to other employers of teachers (Catholic Education Western Australia and the governing board of individual independent schools). There is an argument, however, that political imperatives will weigh against an agency defending itself in the same way that a private entity would.

The Board considers that immunity from prosecution currently afforded to the State should be retained.

That said, it is also important that the legislation is clear, in terms of providing the Board the authority to prosecute individual persons employed by the State for offences under the Act, where considered appropriate to do so (for example, a Principal who places an unregistered person into a teaching position). In this regard, it is proposed that section 4 of the TR Act be reviewed to ensure that such authority is legislatively afforded to the Board.

The previous *Western Australian College of Teaching Act 2004* included the following relevant provision:

4. CROWN BOUND

- (1) *This Act binds the Crown in right of the State.*
- (2) *Nothing in this Act renders the Crown liable to be prosecuted for an offence under this Act.*
- (3) *Subsection (2) does not affect any liability of any officer, employee or agent of the Crown to be prosecuted for an offence.*

It is proposed that consideration be given to the inclusion of a provision similar to section 4(3) above.

SUBMISSIONS

That Crown immunity from prosecution pursuant to section 4(2) of the TR Act be retained.

That consideration be given to the inclusion of a provision to clarify that Crown immunity does not affect any liability of any officer, employee or agent of the Crown to be prosecuted for an offence.

Enforcing compliance with the TR Act

The TR Act itself does not contain any provision for dealing with the time in which a prosecution must be commenced. Accordingly, section 21(2) of the *Criminal Procedures Act 2004* applies in that a prosecution for a simple offence must be commenced within 12 months after the date on which the offences were allegedly committed.

Commencing 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.

If a prosecution were to be commenced, the matter may take many months before it is resolved which may have a flow on effect, if the teacher is currently subject to renewal or an application to obtain registration.

One possible solution is to deal with the offences within the TR Act via an infringement system with a prescribed penalty, similar to other regulatory government bodies. Many state government or local council authorities such as the Department of Health, Department of Transport, the Botanic Gardens and Parks Authority, WorkCover WA use infringements to ensure compliance.

The Department of Mines, Industry Regulation and Safety, for example, manages the *Residential Tenancies Act 1987* and imposes serious obligations on the real estate industry and the way it operates. Failing to meet those obligations can result in that department issuing an infringement notice, prosecuting offending license holders before a Court, or initiating disciplinary action in the State Administrative Tribunal in a manner similar to the Board.

It is also noted, the *Teachers Registration and Standards Act 2004* (SA) deals with several offences by way of an expiation fee in the South Australian context.

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 related to prosecutions and refusal of teacher registration at time of application (see section 24(a)(i) of the TR Act).

Providing the Board with additional enforcement options after investigation including the issue of infringement notices for offences within the TR Act provides the Board with another level of enforcement between a warning and prosecution. When the Board observes an incidence of non-compliance, they will need to consider which enforcement tool will be most effective at achieving compliance.

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.

The Board typically seeks a collaborative and cooperative approach to ensuring compliance with the TR Act, wherever possible. This means that, where appropriate, 'lower level' enforcement options should be pursued first, escalating to the issue of an infringement notice where there is a deliberate or continued failure to comply with the requirements of the Act. Ongoing or critical non-compliance may be dealt with through the 'higher order' sanctions including prosecution available within the TR Act.

SUBMISSION

That the range of enforcement options open to the Board to enforce compliance with the TR Act be widened.

Notification obligations of employers

Section 42 – Notice from employer

Section 42 of the TR Act is a key provision because it is the principle means by which notices are provided to the Board that might give rise to a complaint about serious misconduct or serious incompetence by a teacher. The provision hinges around the term 'investigation':

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

An employer of a registered teacher at an educational venue is to give written notice to the Board of any **investigation** —

(a) into the conduct of a registered teacher who teaches, or taught, at the educational venue; and

(b) **that was held** because, in the opinion of the employer, there was reason to believe that the teacher —

- (i) has been seriously incompetent as a teacher; or
- (ii) had engaged in serious misconduct, if, as a result of that investigation —
- (c) the teacher has been suspended or dismissed from teaching at the educational venue; or
- (d) the teacher has resigned or no longer teaches at the educational venue

A notice must be provided within 30 days of the action occurring. A total of 208 notices have been received from employers and is the main source of disciplinary matters for the Board.

Notifications have increased since the commencement of the TR Act and the Board has worked to remind employers of their obligations under this section. Correspondence regarding the obligations of employers has been sent to employers on several occasions, usually resulting in an increase of notifications shortly after being sent.

Failure to provide notice to the Board within 30 days of the employer action can result in a prosecution with a maximum fine of \$5,000.

Indicative data on the notices provide by employers for 2016/17 reporting period for each education sector is provided in the table below.

Sector	Number	Misconduct	Incompetence	Ave Days
DoE	30	20	10	29
CEWA	15	12	3	22
Independent	12	12	0	53

Notably, a significant number of notifications from all sectors have not been provided within the prescribed period.

There are several issues with the notice requirements under section 42.

The first is that the amount of time allowed to provide notice (30 days) is considerable. The lengthier the period of time to provide notice, the greater the scope there is for a teacher to engage, unchecked, with another employer. It is suggested that a more reasonable requirement to provide notice to the Board is two business days.

The second is that circumstances may present themselves where there is a reasonable expectation that the Board would be notified of a matter concerning the serious misconduct or incompetence of a teacher but may not be because the circumstance does not fall within the requirements of section 42 of the TR Act. Examples of these circumstances may include where:

- a registered teacher 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.

As noted above, the section hinges around the term ‘investigation’. While the Board has worked to provide clarification around this term to assist in capturing the full range of circumstances that one might reasonably expect to be drawn to the Board’s attention, the fact that the provision pivots around interpretation of what constitutes an ‘investigation’ is problematic.

SUBMISSIONS

That the notification obligations of employers pursuant to section 42 of the TR Act be strengthened to capture other identified circumstances where there is a reasonable expectation that the Board would be notified that, in the opinion of the employer, a teacher has been seriously incompetent as a teacher or has engaged in serious misconduct.

That the period for employers to provide notice to the Board be reduced from 30 days to two business days.

The powers of Disciplinary Committees

The Board is of the view that both the powers of inquiry available to Disciplinary Committees and the range of sanctions available to them to deal with a complaint, following an inquiry, are generally sound. As noted above, as a consequence of amending what constitutes a disciplinary matter under the TR Act to include serious misconduct by a teacher, the jurisdiction of the Disciplinary Committees to deal with such matters will also change.

It is noted that neither the Board nor the Disciplinary Committees have the power to cancel a teacher’s registration. That jurisdiction lies solely with the State Administrative Tribunal (section 84(1)(b)(ii)) (in this context, it is important to note that the matters triggering the cancellation of a person’s registration under section 27 of the TR Act do not involve a discretion being applied). An alternative to the current framework is that the Board or Disciplinary Committees have the jurisdiction to cancel a person’s registration following a disciplinary inquiry. In this circumstance, it might be proposed that the State Administrative Tribunal would essentially have an appellate jurisdiction. The Board is of the view that the current framework has proven efficient and fit for purpose and has not been able to identify any reasonable rationale for the scheme to be amended to implement such an alternative.

SUBMISSION

That there be no change to the sanctions available to Disciplinary Committees to deal with a complaint pursuant to section 70(1) of the TR Act.

Impairment Review matters

While the Board has formed an Impairment Review Committee, there has been, until only very recently, no call for that committee to convene to consider a complaint referred to it.

It is submitted that the key reason for this is that there is no notification obligation in relation to impairment matters that rests on employers or teachers. It is noted that a provision of this kind is included in the *Teacher Registration and Standards Act 2004 (SA)*:

39- Employer to report impairment of teacher's capacity

(1) If the employer of a practising teacher 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, the employer must, as soon as practicable, submit a written report to the Teachers Registration Board— (a) describing the grounds on which the belief is based; and (b) containing all other prescribed information. Maximum penalty: \$10 000.

(2) A person incurs no liability by making a report purportedly in compliance with subsection (1) in good faith.

The Board has, however, had cause to deal with certain impairment-related matters that have arisen at time of application to the Board (for initial registration or renewal of registration). In these circumstances, the Board has appropriately dealt with this information as part of the consideration as to whether a person is fit and proper to be registered as a teacher. The Board has also formulated policy and guidelines to assist teachers in identifying those matters that ought to be brought to the Board's attention and to provide guidance as to how those matters will be assessed.

SUBMISSION

That it be made a requirement for employers to report serious impairment affecting the behaviour or competence of a teacher.

7- FEES AND RESOURCING THE BOARD'S OPERATIONS

Topics for comment:

- the fees in the current Schedule
- the principle of cost recovery for the provision of registration services
- the annual fee amount compared with those in other professions

The treatment of fees under the scheme of the TR Act

The Western Australian College of Teaching became the Teacher Registration Board of Western Australia in December 2012. At that point the fee structure was inherited and amendments made to consolidate certain fees charged.

The Board is self-funding and receives no appropriation from government. All expenditure incurred by the Board is financed entirely from external sources, being registration fees from the teaching profession. 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 ancillary to its core registration, accreditation and disciplinary functions.

It is important to note that in 2017-18, the TRBWA has forecast a surplus in anticipation of providing funding for replacing its legacy customer relationship management software in 2018-19.

The predominant revenue source for the TRBWA is the annual fee which accounts for approximately 80% of total fee revenue. It can be said that this fee cross subsidises all other fees and charges, however the annual fee applies equally to all 53,000 registered teachers and therefore is a key driver in achieving full cost recovery. In this regard, it is also important to note that there are certain categories of application that are currently subject to no fee at all.

It was noted in the Review of the *Western Australian College of Teaching Act 2004* that the financial situation of the College at the time was due to its administration- the College had not sought to have its fees regulations amended annually to accommodate rising costs.

In contrast, under the TR Act, fees and charges globally have been increased by CPI from a budgetary perspective in order to cover all operating costs. In 2015-16 the renewal fee was increased by 56.25% from \$32 to \$50 to cover the cost of processing the spike in renewals of registration which are cyclical and occur once every five years. In 2015-16, 17,910 renewals of registration were budgeted generating an additional \$895,000 in revenue.

Review of Tariffs Fees and Charges – Historical CPI Increases

2013-14	2%
2014-15	2.6%
2015-16	2.6%
2016-17	1.1%
2017-18	1.75%

Since 2012-13, the TRBWA's legacy customer relationship management software PIVOTAL has undergone a technical upgrade, but has not been subjected to a version upgrade. The current version will become unsupported in 2018-19. In preparation the TRBWA has been applying

successive CPI increases to fees and charges to enable the funding of the PIVOTAL replacement project in 2018-19.

There are several further observations to be made concerning the current fee structure.

- With respect to the accreditation of ITE programmes, the *Teacher Registration (Accreditation of Initial Teacher Education Programmes) Regulations 2012* (TR Accreditation Regulations) enables providers of ITE programmes to submit an application for the accreditation of a programme. A fee, currently \$2,075, is payable by an education provider in respect of each programme submitted for accreditation or reaccreditation. This fee does not represent full cost recovery and it is recommended that it be reviewed accordingly.
- Applicants with overseas qualifications seeking registration are charged a higher application fee than those applicants with Australian or New Zealand qualifications. The differential in fees associated with applicants who hold qualifications conferred in Australia or New Zealand and those holding overseas qualifications acknowledges the additional administrative effort required to assess overseas qualifications for equivalence to an accredited initial teacher education programme. The current TR Act does not however, differentiate between an applicant with overseas qualifications who has been previously registered and one seeking initial registration. For a previously registered applicant, the Board would not need to undertake a full reassessment of their qualifications. From an equity perspective, the Board is of the view that the fee in these circumstances should reflect the same charged for an applicant with a 'locally' conferred qualification.
- From time to time, the Board is asked to provide a letter of recognition/statement of professional standing or similar. It is suggested that a new fee be introduced to cover this activity.

SUBMISSIONS

That the principle of cost recovery for the provision of registration services be retained.

That fees associated with the accreditation of initial teacher education programmes be reviewed.

That fees applied to holders of overseas qualifications who have previously been registered with the Board be reviewed.

That a new fee, to cover the activity of the Board providing a letter of recognition or statement of professional standing be introduced.

That fees generally are reviewed to accommodate any of the relevant amendments that might be pursued following the review.

8- PUBLIC AND PROFESSIONAL REGISTERS

Topics for comment:

- information that should be available on each register
- who should have access to the professional register
- ease of access for professional purposes

Information that should be available on each register

The TR Act requires the Board to keep accurate and up-to-date registers that include information on each registered teacher: name, category of registration, registration number, date of commencement of registration, and any other information prescribed by regulation (section 36).

The following additional information is prescribed by regulation:

- the teacher's date of birth and gender;
- the date of expiry of the teacher's 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 TR Act;
- any conditions imposed on the teacher's registration —
- by the Board under section 26 of the TR Act; or
- by order made under Part 5 of the TR 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 TR Act made by a disciplinary committee or by the State Administrative Tribunal (regulation 21A).

The TR Act refers to two types of register: the teacher register information (professional) (TRIP) and the public register. The TRIP is all the information on the register. The public register is the information on the register other than the information prescribed by regulation (section 37).

The Board keeps both registers in electronic formats that are accessible via web interfaces (section 36(2)). The TRIP is accessible to prescribed persons via a secured login. The public register is available to the general public via a gateway on the TRBWA web site.

The Board has arrangements in place whereby the Department of Education, the Catholic Education of Western Australia and the Association of Independent Schools of Western Australia provide access by Principals to information contained on the TRIP. Consistent with the legislative framework, the Principals can then delegate access to their representatives.

The TRIP has been well utilised by the Catholic Education Sector, with 99% of their schools nominating a Prescribed Person. 81% of Independent Schools and 84% of Department of Education schools have nominated a Prescribed Person.

It is important to note, however, that there have been delays in the rollout to employers of early childhood teachers in the Early Childhood Education and Care sector. This is proposed to be addressed through planned system upgrades in 2018/19.

Prior to rolling out the TRIP, the main request from employers was to be able to access information relating to a teacher's registration expiry date and information as to whether a teacher is up to date with Annual Fee payments. This information is now available to employers via the TRIP. During the period since the implementation of the TR Act and the provision of both registers, the Board has not received any negative feedback in respect of the information that is available on the registers.

The Board considers that the information currently available on both the public register and the TRIP is fit for purpose.

Who should have access to the professional register (TRIP)

As mentioned above, the professional register is currently available to Government and Non-Government schools and it is proposed that access will be available to the Early Childhood Education and Care sector.

Section 37 (3) provides for registered teachers, employers of teachers, Principals and other prescribed persons to access the TRIP.

The Board does not consider there is a need to change the current requirements under section 37(3).

Ease of access for professional purposes

TRIP is deployed through a secure web portal that ensures that information relating to registered teachers is provided in an accurate, up-to-date and secure format.

Since TRIP was implemented, the Board has received positive feedback from schools and employers.

There have been requests to incorporate additional functionality within the TRIP to allow for better management of short term and relief teachers. These functions are also being considered as part of an upgrade plan. The proposed changes will add additional functionality and do not require alteration to the current legislation.

With the exception of facilitating access to certain persons already prescribed, the Board considers the current deployment of TRIP to be sufficient.

Other matters- mandating the use of the professional register

There are significant advantages for employers and schools of teachers arising from engagement with the TRIP. In particular, the information provides employers with notice as to whether a teacher's registration is about to expire or, in certain circumstances, where it may be at risk of cancellation. It also provides employers with notice of any conditions that may exist on a teacher's registration (including existing staff at their school and persons they might be intending to employ). This assists employers in terms of fulfilling their own obligations under the TR Act (by, for example, ensuring that employers are only employing registered teachers).

Advantages of engagement with the TRIP were highlighted in the recent 'spike' in the number of teachers whose registration was due for renewal. This spike occurs on a five year cycle and begins on the anniversary of the implementation of teacher registration in Western Australia.

During the most recent spike period (July 2015 until January 2017), the Board approved more than 23,000 applications for the renewal of full registration. The TRIP includes information of registration expiry dates and highlights when expiry of a person's registration is imminent. Principals who actively engaged with TRIP were more aware of when a teacher's registration was due to expire, and were able to assist their staff through the renewal of registration process. This meant that schools were able to ensure that teachers applied for renewal within the required timeframe, ensuring that registration was maintained through the renewal process, and did not expire. This in turn, resulted in minimal disruption to their schools and their students.

Engagement with the professional register has also assisted Principals to manage their staff through the Board's annual fee cycle. A teacher who fails to pay annual fees by the required date will have their registration cancelled by the Board. Again, the TRIP includes information of when annual fees are due and highlights those teachers at the school who have not yet paid. By engagement with the TRIP, Principals were made aware those teachers who, by virtue of not having paid the annual fee, may be at risk of cancellation. This meant that schools were able to ensure that their teachers were up to date with annual fee obligations, so as to ensure that registration was maintained and disruption to their schools and students was minimised.

Engagement with the professional register also means that the Board has a much clearer gauge on the location of a particular teacher within the education sector. The need for this information is most acute when urgent concerns regarding a teacher's conduct arise.

Despite these advantages, there is currently nothing in place compelling the use of the professional register. As noted above, there is a proportion of schools in the education sector that have not yet engaged with it.

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.

National Initial Teacher Education and Teacher Workforce Data Strategy

In December 2016, Education Council agreed to initiate Phase 1 of a National Data Strategy for Initial Teacher Education and Teacher Workforce data (NDS).

The NDS is being managed through the Australian Institute for Teaching and School Leadership (AITSL) and has been developed as a means to facilitate research on and to better understand the teacher workforce. Teacher regulatory authorities have been identified as the key source for teacher data in each jurisdiction.

In general terms, it is acknowledged that there are merits in having a comprehensive national data set to assist with workforce planning and that to date there has not been a single source which provides reliable and timely data.

That said, from the Board's perspective there are two key concerns. The first is whether what is proposed through the NDS is in keeping with the Board's functions. The second is the legal effect of provisions within the TR Act concerning confidentiality and the treatment of information.

Notwithstanding that under section 37, the Board is required to make certain information available to public inspection (name of teacher, category of registration, registration number, and date of commencement of registration), 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.

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.

SUBMISSIONS

That the information currently available on both the public register and the professional register is fit for purpose.

That the current legislative provisions in respect to access to TRIP are appropriate and should remain unchanged.

That consideration be given to the benefits of mandating the use of the professional register by employers.

9- ACCREDITATION OF INITIAL TEACHER EDUCATION PROGRAMMES

Topics for comment:

- the pros and cons of the Board having a statutory function to accredit initial teacher education programmes

It is noted that Chapter 12 of the *Information Paper and Call for Submissions* includes comment on the role of TEQSA in the registration of higher education providers and the accreditation of higher education programs.

It is important to note that the nature of accreditation undertaken by TEQSA and the nature of accreditation undertaken by the Board, under the TR Act, are fundamentally different. Although both processes are referred to by the same name, the two processes serve very distinct purposes, and should not be confused. Accreditation by TEQSA goes essentially to an institution's ability to legally deliver a program. Without TEQSA accreditation of a program, a provider may not lawfully deliver the program.

Accreditation by the Board, however, 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.

It should be noted that graduates of a non-accredited program may also be eligible for teacher registration, albeit in a category other than Provisional Registration (e.g. Non-Practising Registration or Limited Registration, both of which would entitle a person to teach). These categories do not require that the Graduate Standards have been met. Such graduates may include overseas trained applicants and those who have graduated from an Australian teacher education program which has not been accredited.

The qualification requirements for teacher registration in the categories of Full, Provisional and Non-Practising Registration are the same. These are that a person:

has a teaching qualification —

- (i) from an accredited initial teacher education programme; or*
- (ii) that the Board recognises as equivalent to such a qualification⁶;*

⁶Sections 15, 16 and 18 of the *Teacher Registration Act 2012*

In respect of (ii) above, the Board's assessment of the equivalence of non-accredited programs aligns with a long-standing national approach to teacher registration and involves an assessment of the duration of higher education, the academic level of the qualification(s), the extent and nature of the professional teacher education of the program and the amount of supervised teaching practice with the program.

More specifically, a qualification or combination of qualifications which exhibit the following characteristics would generally, and in accordance with the nationally agreed approach to teacher registration, be accepted by the Board for teacher registration⁷:

- qualifications demonstrating at least 4 years of full-time higher education study;
- including at least a 4 year teacher education program at the undergraduate level or a 1 year teacher education program at the postgraduate level;
- including at least one year of professional teacher education subjects (including supervised teaching practice);
- including at least 45 days satisfactory supervised teaching practice undertaken at a primary or secondary school or other recognised educational venue;
- is/are comparable, in terms of academic level, to an Australian Bachelor degree (or Australian Graduate Diploma in the case of a postgraduate program).

In general terms, initial teacher education programs currently delivered in Western Australia by Western Australian higher education institutions would arguably, notwithstanding whether or not they were accredited, meet these qualification requirements for Full, Provisional and Non-Practising Registration.

From a registration perspective, the main distinction between a program that is accredited and one that is not, is that an accredited program has undergone an assessment of the appropriate teaching and assessment of the Graduate Standards, and would therefore automatically render a graduate eligible for Provisional Registration. Non-accredited programs have not undergone such an assessment and therefore graduates of such programs would likely be eligible for Non-Practising and Limited Registration (categories which do not include a Graduate Standards criteria). In terms of teacher registration, therefore, accreditation serves to determine the category of teacher registration, rather than representing a specific precursor for teacher registration itself.

Of course, there are other benefits to the accreditation of initial teacher education programs. Accreditation is considered to serve as an important quality indicator and accredited programs are widely accepted for the purposes of teacher registration by all other Australian teacher regulatory authorities.

⁷Board policy - Teaching Qualifications - Full, Provisional and Non-Practising Registration
<http://www.trb.wa.gov.au/SiteCollectionDocuments/Policy%20-%20Qualifications%20Policy%20POL11%20v4.1.pdf>

Given that, in practice, the accreditation process operates primarily as a determinant of initial category of teacher registration, it may be useful to consider the Board's submission in respect of initial categories of registration.

This submission (in respect of Registration Categories, eligibility criteria and conditions – (Section 5)) makes reference to two possible options in respect of categories of initial registration:

- Option 1 – Provisional Registration with two sub-categories (Graduate Teacher and Continuing Teacher or similar)
- Option 2 – One category of initial registration (that is, including early career, overseas and returning teachers) - Provisional Registration – removing the Graduate Standards requirement

Should option 2 be adopted and should the registration scheme move to one category of initial registration, with the associated removal of the Graduate Standards requirement, then there may be implications for the Board's ITE accreditation scheme, in terms of its relevance to registration outcomes.

Currently, as discussed above, although not a determinant for registration *per se*, the accreditation scheme serves to determine the category of registration for which an applicant may be eligible.

The adoption of one initial category of registration – for graduates of both accredited and non-accredited programs (a position which reflects the current situation in all other Australian teacher regulatory authorities), would mean that this distinction would effectively fall away. Regardless of whether or not an applicant has graduated from an accredited program, should the applicant meet the nationally agreed qualification requirements for teacher registration, the person would be eligible for registration in this sole initial category of registration.

Accreditation may still serve as a quality indicator and providers may still seek the accreditation of their programs. That said, under a one-category system of initial registration, the relevance of accreditation to the Board's teacher registration scheme – in terms of an assessment of the Graduate Standards - would certainly be lessened.

The accreditation process administered by the Board is based on a national approach coordinated through AITSL – one which has recently been the subject of a thorough national review (see Section 11 of this submission). It is a rigorous, albeit lengthy and resource intensive process – which currently, from a teacher registration perspective, serves only to determine eligibility for a particular initial category of registration. Should there be amendment to the teacher registration scheme to move to one-category of initial registration without a Graduate Standards requirement, then the Board's role in the administration of an accreditation scheme may need to be further considered.

Should a two-category system of initial registration remain, however, then there would be some benefit to the Board retaining an accreditation function (as it would involve a determination of the teaching and assessment of the graduate level standards in the course, in addition to the 'ancillary' benefits of being a 'quality indicator' and ensuring recognition of WA graduates in other States and Territories).

That said, there is one aspect of the current legislation, relating to the Board's accreditation function, which may need to be considered.

Under sections 89(b) and (c)(i) TRA, two of the current functions of the Board are ‘to facilitate and assist in the establishment of an accreditation scheme for initial teacher education programmes that may apply throughout Australia’ and to ‘work with and join associations of teacher regulatory authorities...to establish such a scheme’.

The current accreditation scheme that applies throughout Australia is probably best described as one that it is a product of cooperative federalism. To suggest that a single, national accreditation scheme currently exists misrepresents where the locus of decision-making lies. In this regard, it is noted that there are references to a national accreditation scheme included in the *Teacher Registration (Accreditation of Initial Teacher Education Programmes) Regulations 2012* (see Regulation 12).

There is no one national regulator in the ITE accreditation (or teacher registration) space. The Teacher Education Ministerial Advisory Group (TEMAG) report into ITE accreditation recommended the establishment of a national accreditation body. This recommendation was not supported by the Australian Government (and relatedly has not been put to State Governments for consideration regarding their position on the matter).

As such, the accreditation of initial teacher education programs remains a State-based system. Each teacher regulatory authority is responsible for the administration of an accreditation scheme in its own jurisdiction. While the Board continues to actively engage with other regulatory authorities and with AITSL in line with its functions under the TR Act, there are differences for each teacher regulatory authority with respect to their role, function, core focus and the manner in which they undertake their registration/accreditation function. Further discussion on this matter is provided in Chapter 11.

Any revision to the TR Act and associated regulations should make clear that the accreditation scheme in Western Australia, and the manner by which it is administered, is a matter for the Board. As such, it is recommended that in terms of the Board’s function, the current references 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. This may require amendment or removal of the function contemplated in sections 89(b) and 89(c)(i) TR Act.

SUBMISSION

That current references 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. This may require amendment or removal of the function contemplated in sections 89(b) and 89(c)(i) of the TR Act.

10- THE BOARD

Topics for comment:

- the size, composition and qualifications of members of the Board
- the independence of the Board
- the Board's functions and duties

The size, composition and qualifications of members of the Board

Provisions within the TR Act place responsibility for determining the composition of the Board in the hands of the Minister. It is noted that there is no formula based on stakeholder representation reflected in the relevant provisions. In the interests of Ministerial accountability, the Board considers that this is entirely appropriate. Movement away from this principle might only be justified if the essential experience and expertise necessary for a Board of this kind could not result from Ministerial appointment alone. There is no evidence that this is the case.

The quorum of the Board is currently five members (section 100). Although the Board is enabled to meet remotely (section 104), it can still be difficult, from time to time, to achieve a quorum of five. By comparison, the Training Accreditation Council is a 7-member Board with a quorum of 4.

The independence of the Board

On the matter of the Board's independence and the general issue of external governance arrangements, the former review of the Western Australian College of Teaching Act noted a number of deficits in the accountability relationship between the then College and the Minister and the Parliament. There has been a considerable improvement in the accountability relationship as a consequence of changes reflected in the TR Act. For example:

- The Minister now has the power to direct the Board (section 93). While the Minister has not exercised the power to give written directions to the Board with respect to the performance of its functions (either generally or with respect to a particular matter), the Board considers that any diminution of the Minister's power to direct would not be in the public interest.
- The Minister has approved professional standards for teachers developed by the Board (section 20 of the TR Act) and those standards have been applied in the registration requirements for Provisional and Full Registration.
- The Minister has approved accreditation standards for initial teacher education programmes developed by the Board (regulation 9 of the TR Accreditation Regulations) and those standards have been applied in the accreditation process.
- The Board has established a strategic plan (2014-2017) in close consultation with key stakeholders, which included consideration by the then Minister.
- The Board provides frequent briefings to the Minister and the Board Chair meets with the Minister personally on a quarterly basis. The Minister has also met with the Board as a whole.

The Board is generally of the view that the existing settings concerning the accountability relationship between the Board, the Minister and the Parliament are sound.

The Board functions and duties

There are two key features of the Board's current functions and duties.

The first is that, by design, they are narrower than the functions and duties assigned to its predecessor. In particular, the Board does not have an advocacy function on behalf of the profession

and those functions which potentially reflected a conflict of interest (conducting courses for the professional education and development of teachers, for example), have been removed.

The functions of the Board have instead been focused on the core requirements of teacher registration, dealing with disciplinary matters and the accreditation of initial teacher education programmes. These functions are central to the Board's Strategic Plan (which will shortly be subject to review itself).

In particular, the Board's vision is to be an effective regulator for the teaching profession in WA that reflects the highest standards of expertise and professional conduct. As to mission, the Board is committed to serving the public interest in WA by ensuring that teachers are registered and teacher education programmes are properly accredited in accordance with the TR Act.

In general terms, while there are suggestions for refinements of the legislative scheme throughout this submission, it is the Board's view that the functions and duties that have been assigned to it under the existing legislation are sound (noting the comments provided above with respect to the accreditation function).

The second key feature is that the Board is to make the best interests of children its paramount consideration in all decisions. The current functions and duties assigned to the Board are consistent with achieving the objective of protecting the interests of children.

This consideration has been embedded in all aspects of the Board's operations but there are several key points to note:

- In the interests of making timely decisions in certain high-risk circumstances, the Board has delegated functions to an interim disciplinary order (IDO) Committee with powers to make IDOs pursuant to section 59 and section 60 of the TR Act. The Board has also developed and applied a procedure for the making of such orders. Data on the making of IDOs has been published in the Board's annual report.
- The Board has developed and disseminated *Teacher-Student Professional Boundaries- A Resource for WA Teachers* in January 2017. This resource was developed, following consultation with key stakeholders, to assist teachers to be better informed about the professional boundaries they should observe in their dealing with students. It has contributed to the goal of making WA schools as child safe as possible. Schools have used the resource to help with the professional development of their staff and it has been used successfully to promote reflective behaviour.
- The scheme of delegations to the position of Director Teacher Registration under the *Children and Community Services Act 2004* has meant that child welfare matters arising in non-government schools, that may also have a bearing on matters of teacher registration, are quickly brought to the attention of the Board.
- Since 1 July 2015, all applicants who have resided in a country other than Australia, for a cumulative period of 12 months or more, must provide a criminal record check from that country. Although not specified as a requirement for registration in the current TR Act, the Board requires such information from applicants through the provisions of section 13 which gives the Board the authority to request such further information relevant to the application as the Board requires.

The Board considers that the requirement to make the best interests of children the paramount consideration in all decision-making should not change.

SUBMISSIONS

That the discretion for determining the composition of the Board and key appointments to the Board be left wholly in the hands of the Minister, with no prescriptions concerning stakeholder representation.

That the quorum of the Board is reduced from five members to four.

That existing settings concerning the accountability relationship between the Board, the Minister and the Parliament are maintained.

That the requirement for the Board to make the best interests of children its paramount consideration in all decision-making remain unaltered.

11- NATIONAL CONSISTENCY

Topics for comment:

- the pros and cons of nationally consistent teacher registration and programme accreditation
- how national consistency may be best achieved

What are the pros and cons of nationally consistent teacher registration and programme accreditation?

To consider the pros and cons of a nationally consistent teacher registration, it is useful to consider both the rationale for occupational registration in the first place and the rationale for cooperative federalism.

Rationale for occupational registration

There are two key reasons commonly put forward for establishing occupational registration regimes.

- To protect the safety of consumers and/or the public; and
- To ensure a sufficient and reliable level of service quality.⁸

The need for regulatory intervention does not necessarily follow from the desire for safety and quality. There must also be a rationale for government intervention. The rationales are generally to address information failures and to account for externalities or 'spillover effects'.

As to information failures, individual professionals have specialized knowledge not available to the average consumer, including information about the nature of the service and their own ability or quality. For consumers, information is either costly to obtain (perhaps requiring significant search efforts) or cannot be obtained (given that consumers cannot measure the attributes of certain services before using them). An externality or 'spillover' arises when one person's actions result in uncompensated benefits or costs to others.

In favour of federal solutions

At a recent function hosted by the Commonwealth Government to assist in the evaluation of the TEMAG reforms, the Chair of TEMAG, Professor Greg Craven described the work prompted by those reforms as a great exercise in 'cooperative federalism'. What does this mean? Cooperative federalism refers to a concept of federalism where the different levels of government interact cooperatively and collectively to solve common problems.

One of the key rationales for federalism is the principle of subsidiarity.⁹ This refers to the proximity of government to the community. It allows local communities to shape policies to meet local preferences. In social terms, it means that local communities can choose the types of regulation that they prefer. Further, subsidiarity encourages retention of control at the sub-national level unless there are clear reasons to do otherwise. In the interests of allowing greater direct accountability and diversity of experience, many matters are left at the sub-national level in federal systems. Another reason is that there may be no consensus on what constitutes the best approach to a given problem.

⁸ Australian Government (2015) *Productivity Commission Research Report- Mutual Recognition Schemes* (September 2015) 116.

⁹ Council for the Australian Federation (2009) *Common Cause: Strengthening Australia's Cooperative Federalism, Final Report to the Council for the Australian Federation* (May 2009), 9.

While subsidiarity provides a rationale for federalism, it says little about the kinds of functions that should be executed by the State or the national level of government. The theory of assignment of responsibilities in federal systems is instructive in this regard.¹⁰ The alignment of responsibilities principle holds that responsibility for undertaking a particular government activity should lie with the level of government whose boundaries the geographical scope of that activity most closely approximate.

This is because the effects of a particular policy, law or service which extend beyond the boundaries of the jurisdiction exercising authority are unlikely to be taken into account by the responsible government. The effects of the activity that extend beyond the jurisdiction of the government involved are called 'spillovers'. Undesirable ('negative') spillovers need to be curtailed and desirable ('positive') spillovers encouraged.¹¹

As noted above, spillovers may, of course, be regulatory in nature.

Thus, an example of a positive spillover is where a teacher regulatory authority has information about a teacher that may have a bearing on considerations concerning their fitness and propriety (following, for example, a disciplinary process) and that information is shared with other jurisdictions, in the best interests of children (not only in the host State but throughout Australia). An example of a negative spillover might be that such information is not shared.

The alignment of responsibilities principle holds that the presumption in favour of diversity may give way to uniformity (that is, national consistency) where:

- there are extensive policy spillovers;
- mobility of certain actors has an adverse impact on policy choices; or
- there are significant economies of scale.¹²

As to the matter of spillovers in the area of teacher registration, the benchmarks that are transparently met in each jurisdiction to entitle teachers to be registered (and thereby to teach) along with the practices of States and Territories in sharing information regarding teachers who leave one jurisdiction for another to work, will have a bearing on the perceptions of employers who have people from other jurisdictions apply for work, the safety of children and overall public confidence in the scheme of teacher registration.

As to the matter of mobility, it is important to note that the mutual recognition principle applies with respect to teachers in Australia and in that regard, the proportion of mutual recognition registration applications granted as a proportion of all registration applications in Western Australia in the three years from 2014-15 to 2016-17 was a mere 3%. Settings with respect to teacher registration may, of course, have an impact on workforce supply which is a significant argument in favour of retaining the registration function at the State level.

The matter of economies of scale is beyond the scope of this submission but it is instructive to note that in each jurisdiction, there are differences in the fees applied and it would seem logical that there would be economies of scale for teacher regulatory authorities operating in larger jurisdictions.

¹⁰ Ibid 10.

¹¹ Ibid.

¹² Ibid 11.

As discussed elsewhere in this submission, the Education Council, in September 2017, noted that the Australian Institute for Teaching and School Leadership, in consultation with States, Territories and other key stakeholders, would undertake a national review of teacher registration to consider its rigour and quality, with a view to improving national consistency. The final review report will be provided to Education Council for agreement and it is understood that the timeline for completion is mid-2018.

Accreditation of initial teacher education programs

As to the matter of accreditation of initial teacher education programs, Ministers first approved relevant Standards and Procedures in 2011.¹³ The standards set out entry criteria and conditions, program structure and content, as well as expected graduate outcomes. The procedures set out a nationally consistent process for the accreditation of programs, including panel establishment and composition, assessment by these panels and the reporting of accreditation decisions. The implementation of those Standards and Procedures meant that the accreditation function was essentially State-based.

In 2014, the Australian Government established TEMAG. TEMAG considered that the accreditation process at the time needed 'greater rigour to ensure the quality of all initial teacher education programs'.¹⁴ As a consequence, TEMAG recommended 'an overhauled national accreditation process for initial teacher education programs administered by a national regulator'.¹⁵

This recommendation was not taken up by the Australian Government.

The Government notes the Report recommendation for a new national regulator of teacher education courses, but does not believe establishing a new body will necessarily deliver better quality assurance nationally. Instead, the Government will utilise the expertise of existing bodies to achieve this outcome. AITSL will be given greater responsibility for driving improvement in the quality of initial teacher education and will work with state and territory teacher regulatory authorities to increase the rigour of assessment of courses for accreditation.¹⁶

¹³ Ministerial Council for Education, Early Childhood Development and Youth Affairs 2011. Communique of the Eleventh MCEECDYA Meeting, Melbourne (15 April 2011).

¹⁴ Teacher Education Ministerial Advisory Group 2014. *Action Now: Classroom Ready Teachers* (December 2014)
https://docs.education.gov.au/system/files/doc/other/action_now_classroom_ready_teachers_accessible.pdf
10.

¹⁵ Ibid vii.

¹⁶ Australian Government 2015. *Teacher Education Ministerial Advisory Group Action Now: Classroom Ready Teachers- Australian Government Response*. (February 2015).
https://docs.education.gov.au/system/files/doc/other/150212_ag_response_-_final.pdf.

As a consequence, the accreditation function remains State-based. That said, there have been several key drivers working in the direction of national consistency.

The work of TEMAG culminated in the development, by AITSL, of a revised set of accreditation standards – endorsed at Education Council in December 2015.

In August 2016, the former WA Minister for Education, approved revised WA Accreditation Standards for use in the WA accreditation scheme. These substantially mirror the nationally agreed standards with some minor amendment to reflect:

- the terminology of the WA accreditation scheme’s governing legislation (i.e. ‘accreditation’ and ‘re-accreditation’).
- the fact that the Graduate Teacher Standards in WA differ slightly from the national Graduate Teacher Standards, in that the language used is inclusive of early childhood settings.
- the fact that the standards approved for use in Western Australia are the Western Australian Standards for the Accreditation of Initial Teacher Education Programs.
- the Board’s position with respect to Program Standard 5.2 concerning overseas professional experience.

The revised standards substantially reflect the requirements of the previous accreditation standards, albeit with significant new requirements centred on the following:

- the demonstration of program impact;
- the selection of program entrants;
- the national literacy and numeracy test;
- written professional agreements between providers and schools; and
- primary specialisation.

This process is designed to provide the Board with a degree of reassurance that ITE providers are meeting, or satisfactorily moving towards meeting, the new standards.

There are some tensions in the accreditation space – primarily the conflict between the role of AITSL in driving a nationally consistent approach to accreditation and the Board’s legislative authority and autonomy to administer its accreditation scheme in a manner that it considers appropriate. The post-TEMAG landscape has led to increased AITSL/Commonwealth influence over the Board’s legislative function to administer the WA accreditation scheme. This has been accompanied by a move towards a national accreditation approach which could, in some areas, be characterised as overly burdensome and disproportionate from a regulatory perspective.

As noted above, one of the key recommendations of the TEMAG report was to establish a single national regulator for the accreditation of ITE programmes. This recommendation was not endorsed by the Australian Government. Instead, AITSL was tasked with co-ordinating a nationally consistent approach to accreditation across all States and Territories. There have been difficulties in this regard, given that it remains the case that the accreditation of ITE programmes is undertaken at the State and Territory level and that the Australian Government/AITSL do not have any legislative jurisdiction. The Board is mindful that maintaining an appropriate degree of consistency with other jurisdictions in the way that it undertakes its function is desirable. It is also cognisant that the post-TEMAG revisions to the accreditation scheme have been promoted as part of a national quality agenda to improve initial teacher education across Australia. That said, the Board also has an important obligation to ensure that its authority to administer an accreditation scheme for WA is not unduly fettered and that its regulation of ITE providers is fair, reasonable and proportionate.

The Board considers that its accreditation scheme should reflect an appropriate balance between regulatory rigour and reasonableness, and this will continue to inform the administration of its accreditation function. Some aspects of the AITSL-proposed approach and some of the AITSL-developed material do not necessarily reflect this. As a result, the Board has, where considered necessary, amended the AITSL templates, processes and guidance for use in the WA accreditation context. AITSL has been advised of and acknowledges the Board's approach.

Another source of tension arises from the decision-making processes that operate in each jurisdiction to help make a determination that a programme ought to be accredited. Under the agreed national process, the regulatory authorities convene accreditation panels to assess programs against the Accreditation Standards. It is important to note that in the WA context, the panels are not the decision-makers *per se*. Rather, consistent with the TR Accreditation Regulations, decisions are made by the Board. TEMAG made the following observation with respect to the panel process:

Greater consistency in the accreditation process also depends on having panels composed of highly qualified assessors who are able to assess the evidence supporting each program and the proposals for measuring program effectiveness. It is possible that the current process of local-level assessments undertaken by jurisdiction-based panels contributes to the lack of rigour. State and territory based panels may not be adequately qualified or trained to make the hard decisions needed to genuinely improve the quality of the teacher education system nationally.

AITSL is providing training to new panel members under the revised accreditation scheme and the Board has promoted that training locally. In addition, AITSL is in the process of establishing a Teacher Performance Assessment (TPA) Expert Panel to 'provide advice to accreditation panels and Teacher Regulatory Authorities' to 'ensure consistent and rigorous assessment of evidence in relation to TPAs' (Program Standard 1.2). The TPA Panel's role is to:

- Assess those TPAs developed through AITSL's TPA grant program against Program Standard 1.2.
- Provide advice to AITSL and Teacher Regulatory Authorities on the assessment of TPAs developed through the TPA grant program.
- Provide advice to TRAs and accreditation panels on:
 - TPA's as part of the accreditation process
 - How to assess/monitor whether TPAs are implemented appropriately (ongoing fidelity).
- Provide advice to ITE providers in developing, implementing and maintaining TPAs.

The role of the 'Expert Panel' is intended to be advisory but has been put in place presumably as another measure in the interests of national consistency. It appears to be another step towards a more centralised model for making accreditation decisions.

As reflected in the Information Paper, there is of course a national regulator for the higher education sector- the Tertiary Education Quality and Standards Agency (TEQSA). TEQSA's functions, which are set out in section 134 of the *Tertiary Education Quality and Standards Agency Act 2011*, include registering higher education providers, accrediting higher education courses of study and conducting compliance assessments or quality assessments on matters related to registered higher education providers or courses of study.

It is important to note that should the accreditation function is moved to administration by a central, national regulator (but not the registration function), the Board would still need to be satisfied that graduates from initial teacher education programs meet the graduate standards and thereby meet requirements for registration.

The benefits of federalism

In considering issues of national consistency, it is instructive to generally reflect on some of the benefits that arise from operating in a federal system:

- Checks on power – Federalism divides and limits power, protecting the individual from an overly powerful government. It ensures that there is greater scrutiny of government action and helps to reduce the incidence of corruption.
- Choice and diversity – Federalism gives citizens a greater range of choices. They can move from one State to another if they prefer the latter's policies or they can seek to have another government's policies implemented by their home State. If one level of government lets them down, they can seek redress from the other.
- Customisation of policies – Federalism allows policies and services to be tailored to meet the needs of people and communities they directly affect. Differences in climate, geography, demography, culture, resources and industry across our nation mean that different approaches are needed to meet local needs. Federalism accommodates these differences and brings democracy closer to the people, allowing them to influence the decisions that affect them most.
- Competition – States and Territories are constantly compared with each other and must compete with each other. This gives States the incentive to improve their performance. It increases efficiency and prevents complacency.
- Creativity – States and Territories need to be innovative and to experiment in order to compete with other jurisdictions. The successful innovations of one State will often be picked up by other States and sometimes implemented nationally. At times, States and Territories lead the Commonwealth in proposing reform.
- Co-operation – The need to co-operate to achieve some types of reform means that proposals tend to be more measured and better scrutinised. The agreement of all jurisdictions to implement a difficult reform brings together all parts of the nation in a common endeavour and gives the reform greater insight, legitimacy and support.¹⁷

How national consistency may best be achieved

If national consistency is the goal, there is no doubt that the best way to achieve it is to move in the direction of a national regulatory body underpinned by national legislation, where there is limited scope for variation in the way that legislation is applied.¹⁸

There are a range of mechanisms ranging from informal and non-legal means (where, for example, State governments agree to a high level policy framework and commit to shared goals) to 'devolved' legal mechanisms to facilitate cooperative reform (the use of a scheme of complementary applied laws and mirror legislative schemes) to referral of powers. At the devolved end of the spectrum, States have greater discretion for variability.

The value of achieving national consistency through some kind of single national body that would have jurisdiction to deal matters of teacher accreditation and/or teacher registration needs to be weighed against what would be lost if such an approach were adopted. This includes:

- Customization of policies within jurisdictions, in line with the principle of subsidiarity.
- The scope for States and Territories to experiment and innovate with particular policy solutions.

¹⁷ Anne Twomey and Glenn Withers (2007), *Federalist Paper 1- Australia's Federal Future: Delivering Growth and Prosperity- A Report for the Council for the Australian Federation*, 4.

¹⁸ Council for the Australian Federation, 18.

- The need for States to cooperate with each other and with the Commonwealth, which means that reforms are more measured and better scrutinized.

SUBMISSION

That the arguments in favour of a national regulator with respect to the accreditation of initial teacher education programmes are significantly stronger than those for a national regulator with respect to the registration of teachers.