Enhancing Teacher Registration in South Australia

Discussion Paper on reform of the
*Teachers Registration and Standards Act 2004*

April 2019
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Minister’s foreword

Teachers have a profound impact on the development and education of children and young people. The positive impact of the very best teachers will remain with students for the rest of their lives. I believe that it’s vital that teachers are supported to be the best they can be and respected for the significant role they play in children’s lives.

Promoting respect and regard for the teaching profession requires the maintenance of high standards of professional expertise and the integrity of individual teachers. The work of a teacher registration authority is fundamental to this task.

Since coming into operation in 2005, the Teachers Registration and Standards Act 2004 has provided a sound framework for the registration and oversight of the teaching profession in South Australia. The Act established the Teachers Registration Board and gave it the powers and functions it needs to ensure that teachers in South Australia are competent educators as well as fit and proper people to have the care of children.

However, the landscape for teacher registration in Australia is changing as several developments at both state and national level seek to enhance the work of teacher registration authorities to ensure the very best standards in the teaching profession.

National reviews of initial teacher education and the framework for teacher registration have made recommendations to improve teacher quality and further strengthen state and territory registration schemes.

Significant reforms of child protection law and policy both at the state and national level are also having an impact on the role teacher registration authorities play in ensuring the safety of children in schools, preschools and early childhood services.

The South Australian Government is committed to a legislative framework for teacher registration that keeps up with these developments and ensures high quality teachers are working in our schools, preschools and early childhood services – that is the purpose of this consultation.

I look forward to hearing your responses to this discussion paper. Your input will help ensure that potential reforms to the legislation will genuinely enhance teacher registration in South Australia.

Hon John Gardner MP
Minister for Education
## Terms, acronyms and abbreviations

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
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<tr>
<td>AISSA</td>
<td>Association of Independent Schools South Australia</td>
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<tr>
<td>AITSL</td>
<td>Australian Institute for Teaching and School Leadership</td>
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<td>AEU</td>
<td>Australian Education Union (SA Branch)</td>
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<td>Australian Standards</td>
<td><a href="#">Australian Professional Standards for Teachers</a></td>
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<td>CESA</td>
<td>Catholic Education Office / Catholic Education South Australia</td>
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<td>DHS</td>
<td>Department for Human Services, South Australia</td>
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<td>Education Council</td>
<td>A council of Australian education ministers responsible to the Council of Australian Governments (COAG)</td>
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<td>HALT</td>
<td>Highly accomplished and lead teacher</td>
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<td>IEU</td>
<td>Independent Education Union</td>
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<td>ITE</td>
<td>Initial teacher education</td>
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<td>National Framework for Teacher Registration</td>
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<td>National Review</td>
<td>National Review of Teacher Registration</td>
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<td>Pre-school</td>
<td>For the purpose of this discussion paper means a service that consists wholly of pre-school education for children aged between 3 and 6</td>
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<tr>
<td>Pre-school education</td>
<td>provision of courses of education, training and instruction to children under the age of 6 years</td>
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<td>Prescribed service</td>
<td>A prescribed service includes a kindergarten, a pre-school education centre established under the <em>Education Act 1972</em>, or other education and care service under the <em>Education and Care Services National Law</em> consisting of or including pre-school education, eg a long day care service</td>
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<td>Royal Commission</td>
<td>Royal Commission into Institutional Responses to Child Sexual Abuse</td>
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<td>SACAT</td>
<td>South Australian Civil Administration Tribunal</td>
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<td>TEMAG</td>
<td>Teacher Education Ministerial Advisory Group</td>
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<td>the Act</td>
<td><em>Teachers Registration and Standards Act 2004</em></td>
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<td>the board</td>
<td>Teachers Registration Board of South Australia</td>
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<td>the department</td>
<td>Department for Education, South Australia</td>
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Introduction

The Teachers Registration and Standards Act 2004 (the Act) provides a framework for the promotion and oversight of the teaching profession in South Australia. The purpose of the Act is to ensure every teacher working in South Australia is appropriately qualified, competent to teach and a fit and proper person to have the care for children and young people. The Act establishes the Teachers Registration Board of South Australia and provides it with the functions and powers it needs to administer and oversee the registration of over 35,000 teachers across the state in both government and non-government schools and early childhood services (see Fig.1).

National context

National agreements outline what teacher registration in Australia should encompass and how state and territory authorities should work together to promote quality teaching and child safety across the country. Since 2004, there have been a number of national agreements reached by Australian education ministers through the Education Council. The Education Council has also commissioned reviews into teacher education and registration. These agreements and reviews include:

1. the Australian Professional Standards for Teachers, which were developed through the cooperation of Australian states and territories and finalised by the Australian Institute for Teaching and School Leadership. The standards were endorsed by the Education Council in December 2010

2. the National Framework for Teacher Registration was agreed by the Education Council in 2011 and set out the basis for a nationally consistent scheme of teacher registration through agreed elements of registration. The national framework also embedded the Australian Professional Standards for Teachers

3. a review of the preparation of student teachers by higher education institutes in Australia, which was undertaken by the Teacher Education Ministerial Advisory Group in 2014. Significant reforms were proposed in the group’s report, Action Now: Classroom Ready Teachers. The majority of recommendations were agreed to by the Education Council and resulted in amendments to the standards and procedures for accrediting initial teacher education programs in 2015

4. the National Review of Teacher Registration was established by the Education Council in 2017 to consider how the national framework has been implemented and the role of teacher registration as a driver for teacher quality. An independent expert panel led the national review with the support of AITSL. The expert panel, in its report, One Teaching Profession: Teacher Registration in Australia found that, “There is scope to further strengthen teacher registration, building on the foundations of the current systems, within a federated model”. It made several recommendations that seek to: improve teacher quality, strengthen child safety, and streamline registration processes across Australia.

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2 Education Services Australia, One Teaching Profession: Teacher Registration in Australia, 2018
There have also been other developments both within South Australia and nationally that will impact on teacher registration in this state.

Across Australia, the introduction of administrative tribunals to assist professional bodies in their quasi-judicial role has grown significantly in the last 10 years. The South Australian Civil Administration Tribunal began its jurisdiction in 2015 and it is planned that some matters in respect to teacher registration will eventually be transferred to SACAT, such as the right of appeal to the Administrative and Disciplinary Division of the District Court under section 49 of the Act.

In addition, 2 separate royal commissions have contributed to reform of the oversight of child protection in South Australia, including changes that will require the board to work in partnership with the Department for Human Services’ screening unit from 1 July 2019 to assess a teacher’s suitability to work with children and young people.³

**Purpose of the reform of the Teachers Registration and Standards Act 2004**

The outcomes of the national review, the growing interest in lifting educational outcomes for children by improving teacher quality and the changing landscape in respect of child protection legislation, all lend weight to the argument that it is time to consider whether the Act continues to provide the best framework possible for a high quality teaching profession in South Australia.

In addition, the Act has not been subject to significant legislative review or amendment since it began in 2005. For these reasons, the South Australian Government is seeking your views on potential reform of the Act.

This discussion paper sets out some of the main features of the current Act and issues associated with its operation, relevant recommendations of the national review, and options for change. The discussion paper poses a number of questions about potential reforms to the Act.

The government seeks your feedback about the issues and questions outlined in this discussion paper. Your feedback will be used to inform the development of potential amendments to the Act to further enhance the scheme of teacher registration in South Australia.

³ Child Protection Systems Royal Commission; Royal Commission into Institutional Responses to Child Sexual Abuse
Our teachers...

35,181 Registered Teachers

- 26% Male
- 74% Female

Age groups:
- 60+ (18.8%)
- 50-59 (19.8%)
- 40-49 (21.7%)
- 30-39 (24.5%)
- 20-29 (15.1%)
- 0-9 (37.3%)

1,606 teachers transitioned to full registration during 2017-2018

78.6% of teachers hold full registration

71% of teachers were able to transition in their first 6 years of registration

11,393 renewal applications received during 2017 - 2018

- 27% Employed at a non-government site
- 54% Employed at a Department for Education site
- 19% Not employed at an education site

This shows the demographic of all teachers registered in South Australia
Feedback to the consultation

The government is seeking written submissions about potential reform to the *Teachers Registration and Standards Act 2004* and, in particular, the questions outlined in this discussion paper.

Your feedback will be taken into consideration in the drafting of any potential legislative amendments to arise from the consultation.

You can provide your feedback either by:

- submitting your written comments to DECD.EdLawReform@sa.gov.au
- posting your written comments to the Legislation Reform unit, Department for Education, GPO Box 1152, ADELAIDE SA 5001
- participating in a stakeholder information session hosted by the Teachers Registration Board.

**Submissions must be received by 5.00pm (ACST) 31 May 2019.**

Information sessions

The Teachers Registration Board will be holding stakeholder information sessions on potential reform to the Act and forthcoming changes to the arrangements for teachers in respect of working with children’s checks.

These sessions will be scheduled over 3 weeks from 1 May 2019 to 21 May 2019.

Please see [www.trb.sa.edu.au](http://www.trb.sa.edu.au) for further information about the sessions available in your local area.

The information you provide in response to the consultation will be used for the purposes of developing and progressing potential amendments to the *Teachers Registration and Standards Act 2004* and may be disclosed for this purpose and or related purposes. Your submission to this consultation may be made publicly available or referred to in public. Please write in your submission if you do not wish your submission to be made publicly available.
The object of the Act

Part 2 sets out the object of the Act, which is to establish and maintain a teacher registration system and professional standards for teachers to safeguard the public interest in there being a teaching profession whose members are competent educators and fit and proper persons to have the care of children.

Consultation question
Does the current object of the Act reflect what the Act ought to achieve?

Teachers Registration Board

Part 3 establishes the board, sets out its functions and the primary considerations in carrying out its functions. The part outlines the degree to which the Minister can direct the board. The part provides for the membership of the board, terms and conditions of membership, and the procedures of the board. It also establishes the position of Registrar and provides for annual reporting to Parliament.

Primary consideration in performance of functions

Section 7 of the Act provides that the board must have the welfare and best interests of children as its primary consideration in the performance of its functions.

Issues

Given the focus of the education sectors on promoting the development and wellbeing of children from early childhood through to secondary school, and an increased focus more broadly on child rights and needs, consideration could be given to changing the wording in the Act to provide that the best interests of children are paramount.

The legislation guiding teacher registration in both Tasmania and Western Australia provides that the best interests of children are the paramount consideration in the performance of functions under the Act.

Currently the Act only mandates that the board give consideration to the best interests and wellbeing of children in the performance of its functions. Given the range of persons and bodies that have functions under the Act, such as the Minister, the Registrar and the District Court, for example, consideration could be given to extending the paramount consideration of the best interests of children to any person or body exercising functions or powers under the Act rather than just the board.

Consultation questions

Should the best interests of children be the paramount consideration in the performance of the board’s functions?
Should consideration of the best interests of children extend to all persons or bodies exercising functions or powers, or taking any other action, under the Act?

Functions of the board

Section 6 of the Act sets out the functions of the board, which are:

a) to administer the provisions of this Act for the regulation of the teaching profession
b) to promote the teaching profession and professional standards for teachers
c) to confer and collaborate with teacher education institutions with respect to the appropriateness for registration purposes of teacher education courses
d) to confer and collaborate with teacher employers, the teaching profession, teacher unions or other organisations and other bodies and persons with respect to requirements for teacher registration and professional and other standards for teachers
e) to confer and collaborate with other teacher regulatory authorities to ensure effective national exchange of information and promote uniformity and consistency in the regulation of the teaching profession within Australia and New Zealand
f) to keep the teaching profession, professional standards for teachers and other measures for the regulation of the profession under review and to introduce change or provide advice to the Minister as appropriate.

The first of the board’s functions is to administer the provisions of the Act for the regulation of the teaching profession and a number of sections of the Act confer functions on the board to that effect. This includes, for example, provisions in relation to granting registration as a teacher and granting special authorities to teach, maintaining a register of teachers, and conducting inquiries and taking disciplinary action in relation to a teacher’s registration.

Issues

The recommendations of the national review and changing expectations in respect to the teaching profession more generally raise questions as to the adequacy of the board’s current functions or otherwise promote the need for further change. While there is general consistency in the functions of teacher registration authorities in Australian states and territories, and the board continues to provide a high quality registration service in this state, there are a few notable differences in the functions conferred on the board when compared to teacher registration authorities interstate. These differences include the absence of specific legislative functions, or clarity of functions, for the board in relation to:

- promotion of teacher quality
- accreditation of initial teacher education programs
- development and application of codes of practice or professional ethics and
- promotion of research and collection of data.

Further discussion on these issues is included in the relevant sections of this discussion paper.
Membership of the board

Section 9 of the Act sets out the membership of the board, which consists of 16 members appointed by the Governor and nominated by the Minister and a number of other selected officers or representative organisations including the Chief Executive of the department, the AEU, the IEU, AISSA, CESA, and universities in the state. A full list of the nominees for membership to the board is provided at Appendix 2.

Issues

The membership of the board largely reflects a representative approach to determining suitable members with relevant stakeholders nominating suitable people for appointment to the board. While this ensures important stakeholder groups have direct input into the operations and performance of the board it raises questions as to whether the board will always have the right balance of skills, expertise and experience to deal with the full range of its administrative and strategic functions and responsibilities.

In 2011, the Statutory Authorities Review Committee of the South Australian Parliament held an inquiry into the board, which made findings in respect to the board’s membership, including that it should have improved parent representation and that the presiding member should be a legal practitioner.4

Relevant expertise in membership

The composition of the board should include a balance of practitioner expertise and experience, governance capability and community interest. It also needs to take into consideration the full functions and responsibilities of the board which include quasi-judicial, administrative and financial responsibilities.

The legislated composition of the governing bodies of teacher registration authorities across Australia vary significantly. The board in South Australia has the most members of any teaching registration authority in Australia with 16 members. The Teacher’s Registration Board of Western Australian has the smallest number of members with a maximum of 7 members. The majority of authorities have boards with between 12 and 14 members (Australian Capital Territory, New South Wales, Northern Territory, Tasmania and Victoria). The board of the Queensland College of Teachers has 15 members.

In most jurisdictions a select number of member positions must be held by persons nominated by relevant representative groups or stakeholders including, eg Catholic Education, independent schools associations, teacher unions, the local education department or universities.

All but one Australian jurisdiction has some form of mandated representation by nominees of relevant teachers unions. The Teacher Registration Board of Western Australia does not mandate union nominees or nominees of other representative organisations or stakeholders. While almost all jurisdictions are required to have union nominees on their relevant boards there is significant variance in the number of mandated nominees. The boards of South Australia and Victoria both have 7 union nominees (5 Australian Education Union and 2 Independent Education Union). Whereas the boards of Queensland, the Australian Capital Territory, New South Wales and Tasmania have 1 member nominated from each of

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the relevant teacher unions for that jurisdiction. Currently there is no specific requirement in South Australia for a nominee from a union representing teachers in long day care setting.

The boards of 3 jurisdictions have mandated nominees of relevant universities or teacher education institutions. The current requirement for South Australia is for a nominee of universities in the state.

Over half of the boards of teacher registration authorities in other Australian jurisdictions have mandated parent or community representation. As outlined earlier, the Statutory Authority Review Committee has previously recommended an increase in parent representation on the board. The legislation of several jurisdictions requires consideration to be given to specialist skills or expertise in selecting board members including, eg knowledge of finance, law or corporate governance. Two jurisdictions in particular, South Australia and Western Australia, require that at least 1 lawyer is appointed to their relevant registration board.

Given the quasi-judicial responsibilities of the board, it will be critical to ensure that appropriate expertise is available about the conduct of proceedings by committees of the board, as the decisions made can have a significant impact on children and on teachers’ careers.

In respect of the size of the board, it should be of sufficient size to ensure that it can meet its functions and responsibilities however it should not be so large that it is unwieldy, ineffective or inefficient in its decision-making.

One option to address these issues could be to adopt a skills-based board model consisting of a smaller number of members with relevant expertise in teaching and board governance. Such a board could be supported by an ability to appoint persons with specialist expertise, not being board members, to committees.

**Consultation questions**

Is the current composition and size of the board appropriate?

Do the current membership requirements enable the board to include an appropriate balance of the skills, experience and expertise necessary to fulfil its statutory functions? If not, what membership composition would better fulfil these functions?

Currently the Minister and key stakeholders nominate members to the board to be appointed by the Governor. Is this selection mechanism appropriate?

**Terms and conditions of membership**

Section 10 of the Act sets out the terms and conditions for appointment of members to the board, including the maximum length of appointment and provision for reappointment, appointment of temporary members, appointment of deputies, removal of members from office and the circumstances under which the office of a member becomes vacant.

The section also provides that a member of the board may continue to act as a member despite the expiry of his or her term of office for the purpose of continuing and completing the hearing of an application under Part 5 or an inquiry under Part 7.
Issues

While the provisions set out in section 10 generally provide for adequate arrangements for the appointment, re-appointment of board members and dealing with absences or vacancies in the board membership, there are a few issues with their current operation. These issues include the absence of any limitation on reappointment, the efficiency of the process for appointment of temporary members or deputies to the board, and the adequacy of provisions for dealing with misconduct on the board.

Term of appointment

Section 10 provides for a member to be appointed to the board by the Governor for a term not exceeding 3 years. On the expiration of a term of appointment, however, members are eligible for re-appointment. There is no limitation on the number of times a member can be reappointed.

The current arrangement ensures that corporate knowledge and experience can be retained on the board and prevents against the forced loss of that knowledge and experience. However, with no limitation on the number of times a board member may be reappointed there is a risk that the board may miss out on fresh perspectives and ideas and raises the risk of sudden loss of corporate knowledge and experience without sufficient succession planning.

Appointment of temporary members and deputies to the board

In the situation of extended absence of a board member, or if a vacancy arises in the board’s membership, there is currently provision under section 10(2) of the Act for the appointment of a temporary member for a period not exceeding 6 months.

The requirement that the Governor appoint temporary members to cover vacancies of up to 6 months may be unnecessarily onerous and raises the question of operational efficiency, particularly in respect of short term vacancies, but does ensure the transparency of the appointment process.

Section 10 also provides for the appointment of deputies for members. A deputy may act as a member of the board during the absence of a member. In practice this means that deputies attend board meetings in the absence of a member to provide relevant stakeholder representation. Deputy members sit on the admissions committee but are rarely called upon to sit on Part 5 or 7 hearings as board members are available when given sufficient notice.

A number of other Australian jurisdictions also make provision for the appointment of deputy or alternate members.

Removal of members of the board, vacancy of office and administration and procedures of the board

Section 10 also sets out provisions for the removal of members of the board and conditions upon which the office of a member of the board becomes vacant. In particular, the Governor may remove a member of the board from office for: breaches of, or non-compliance with, a condition of appointment; for misconduct; or for failure or incapacity to carry out official duties satisfactorily. No guidance is provided in the Act as to what might constitute misconduct in respect of a board member and no specific provision is made for a code of conduct for board members.
Consultation questions

Should there be specified terms of appointment and tenure for board members to ensure that there is a mix of experienced and new members on the board?

Is the board adequately equipped to appoint temporary members to address vacancies in its membership?

Committees and delegations

Section 16 of the Act provides for committees established by the board to undertake functions on behalf of the board, including in respect of inquiring into disciplinary matters, and section 17 provides for the delegation of functions and powers of the board to a member of the board, to the Registrar or to a committee of the board.

Issues

Committees

Section 16 of the Act enables the board to establish committees to advise the board on any matter, or to carry out functions on behalf of the board, including the holding of inquiries into disciplinary matters, and section 17 enables the board to delegate a function or power of the board to a member of the board, the Registrar or a committee of the board.

In South Australia, committees of the board, apart from the ‘initial teacher education’ accreditation panels, comprise board members only. In all other parts of Australia, however, the relevant teacher authority is able to appoint other persons to their committees, with the exception in some jurisdictions of committees formed to hear professional conduct or capacity matters. This has the significant benefit of enabling those authorities to appoint committee members with professional expertise that is specifically relevant to the committee’s function. It also reduces the demand on members of the authority to participate in committees.

In some states and territories, any committees that are established need to include at least 1 member of the authority. In New South Wales, a committee that is exercising a delegated function of the Education Standards Authority must be chaired by an appointed member, unless the Minister determines otherwise, however a committee that is established to give advice or assistance to the authority is not subject to the same requirement.

Consultation questions

Should the Act enable the board to appoint persons who are not board members to committees of the board where those persons have expertise relevant to the work of the committee?

If so, should a committee require the appointment of at least 1 board member?
Should a committee of the board to which non-board members have been appointed be delegated the power to hold an inquiry under Part 7 of the Act, that is an inquiry into teacher misconduct, incompetence or incapacity?

**Requirement to be registered**

Part 4 of the Act sets out provisions that aim to ensure that a person providing or offering to provide pre-school education or primary or secondary education is a registered teacher.

Section 20 creates an offence for a person who is not a registered teacher to personally provide or offer to provide pre-school education or primary or secondary school education, or to perform the duties of a principal of a school or of a director of a prescribed service. It also makes it an offence for a person who is not a registered teacher to claim to be a registered teacher.

**Issues**

Australia has seen significant growth in the number of early childhood teachers in the last decade driven in part by requirements set out in the education and care services national law and regulations. This growth is likely to continue with new requirements for additional early childhood teachers in larger education and care services that are due to take effect from 1 January 2020.

Recognising the positive impact early childhood learning can make to educational outcomes and, in particular, the importance of the interaction between educator and child, the recent national review recommended that:

“all early childhood teachers in Australia, regardless of their employment setting, be required to be registered by teacher regulatory authorities, under a consistent national approach.”

South Australia has a long history of regulating the early childhood teacher workforce, having registered early childhood teachers in some form since 1976. All early childhood teachers providing pre-school education in an approved education and care service in South Australia already need to be registered by the board or have authorisation from the board to practise as a teacher. Such services include pre-school education services, kindergartens, early learning centres and the provision of centre-based long day care services that consist of pre-school education to children birth to aged 6, who have not yet started school. Consideration could be given as to whether the current requirement for the registration of early

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5 However, a person employed as a director at an out of school hours care or centre-based long day care that consists of, or includes pre-school education is exempt from this requirement under Regulation 5 of the Teachers Registration and Standards Regulations 2016


7 Education Services Australia, One Teaching Profession: Teacher Registration in Australia, September 2018 p.28

8 Teachers working in kindergarten and pre-school education settings were registered, however early childhood teachers were not required in long day care services until 2014
childhood teachers continues to adequately cover early childhood teachers regardless of their employment setting.

**Consultation question**

Is the current requirement to be registered set out in section 20 still adequate in respect to ensuring early childhood teachers are registered in South Australia regardless of the type of early childhood service they are employed in?

**Registration**

Part 5 sets out the basis for a scheme for the registration of teachers including setting out the requirements a person has to meet to be eligible to be registered as a teacher, the administrative arrangements for applications for and the granting of registration, provisions for conditions of registration and offences for breaching such conditions, the term of registration, requirements for provision of information to the board; the establishment of the Register of teachers, and certificates of registration.

Section 21 sets out the basic requirements for eligibility for registration as a teacher including the necessary levels of qualifications and experience, relevant professional standards, and that the person is fit and proper to be registered as a teacher.

Applications for registration are made to the board and are to be accompanied by the fee prescribed by regulation. It is the role of the board to assess applications for registration and the Act provides the necessary powers to the board to undertake this task.

The board can grant either provisional registration as a teacher or registration as a teacher. Most teachers are first registered with provisional registration and it is currently a condition of provisional registration that the teachers move to being fully registered as soon as possible. Provisional registration reflects that a teacher does not yet have the prescribed professional experience required for registration as a teacher but is otherwise eligible for registration. The ability for the board to grant provisional registration before a teacher progresses to (full) registration reflects the continuum of ongoing development from pre-service to career-long learning and aligns with the first 2 career levels in the Australian standards: ‘graduate teacher’ level and ‘proficient’ teacher level.

**Issues**

Feedback from the board suggests that the provisions for registration generally create an adequate framework for the granting of teacher registration and support the object of the Act. However, the board has noted some issues for teachers and or the board in respect of the current scheme. These matters include: the recognition of overseas teaching experience, the maintenance of registration of teachers who are not actively practicing as a teacher during the full period of registration, the term of registration, and the structure of fees associated with registration.
In addition, both the national review and the Royal Commission made findings about the information that should be recorded on registers of teachers, eg in relation to ‘highly accomplished’ and ‘lead teacher’ (HALT) status and information relevant to child protection.

Recognition of teaching overseas

One of the agreed elements of the national framework is provision for an initial (provisional) period of registration. Provisional registration allows a new teacher to be employed as a teacher and undertake workplace learning and development that will equip them to meet requirements for becoming registered.

The national framework sets out several components that must be met for a teacher to transition from provisional registration to (full) registration, including that:

- registration decisions should be based on a recommendation at the workplace level about whether the teacher meets the standards at the ‘proficient’ career stage of the Australian Professional Standards for Teachers
- regulatory authorities will specify a minimum time period (of no less than 80 days of teaching and not exceeding the equivalent of 1 year full-time teaching) in an Australian or New Zealand education setting in which the teacher demonstrates they have met the standards to the satisfaction of the regulator before an applicant may apply for (full) registration.9

In South Australia, Regulation 6(2) of the Teachers Registration and Standards Regulations 2016 sets out that the experience required to transition from provisional registration to (full) registration as a teacher is 1 year’s full-time (or part-time equivalent of 200 days’) satisfactory service as a teacher at a school or pre-school in Australia or New Zealand.

The time period specified by other jurisdictions in respect of required teaching experience to transition to (full) registration varies significantly, from the minimum 80 days in Victoria to 1 year (200 days) in Queensland and South Australia.

The national review heard that there is a variation in both the processes used and the evidence expected of teachers in transitioning from provisional registration to (full) registration, depending on a teacher’s place of employment and or the sector or jurisdiction in which the process is undertaken. The national review recommended the development and implementation of a national strategy to ensure national consistency in the judgements made about whether teachers meet the ‘proficient’ career stage of the Australian Standards (Recommendation 2).10

An increasing number of South Australian provisionally registered teachers are teaching overseas in the United Kingdom, Europe and Asia and approach the board seeking to have this teaching experience counted towards obtaining (full) registration. Many of these teachers have indicated that they are teaching the Australian Curriculum in international schools or early childhood services and are meeting the Australian Professional Standards for Teachers under the supervision of teachers holding Australian teacher registration.

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9 https://www.aitsl.edu.au/teach/start-your-career/registration/nationally-consistent-teacher-registration#2
10 National Review, p.III
The board also currently permits initial teacher education students from South Australian providers to undertake a portion of their placement overseas under certain conditions (providing it is not their final placement), teaching the Australian Curriculum and supervised by a registered teacher.

Given the increased international mobility of the teaching profession, it may be appropriate to consider whether some or all of overseas teaching experience could be recognised for transition to (full) registration. It could be argued that overseas teaching experience in an increasingly mobile global workforce can only add to the growth of an early career teacher in particular.

The implications of such a change would, however, need to be carefully considered to:

- ensure appropriate safeguards were in place to protect the integrity and professional standard of the teaching practice
- determine how the board would monitor conduct, competency and capacity issues
- determine what reporting requirements would be enforceable in relation to overseas employers, teacher regulators, government and statutory authorities
- establish whether the board would have the ability to obtain and have confidence in the criminal histories of teachers teaching overseas
- determine the administrative and policy framework that would be required to implement such a change
- assess the implications for mutual recognition of teaching registration in Australia.

**Consultation question**

Subject to agreement with other jurisdictions under the national framework, do you support overseas teaching practice being recognised for the purposes of a teacher’s transition from provisional registration to (full) registration?

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**Maintenance of registration of teachers who are not actively practising**

In order to be eligible to renew their registration registered teachers are required to demonstrate that they have met minimum professional learning and professional practice requirements during each 3-year registration period.

For both registered and provisionally registered teachers, this includes 60 hours of professional learning referenced to the Australian Standards.

Teachers with (full) registration must also complete 60 days of employment as a teacher or principal at a school, or as a teacher or director at a school in a pre-school or a teacher in a long day care service in Australia or New Zealand. Teachers who are unable to meet this requirement can renew their registration subject to an annotation being placed on their registration verifying that they had not met the professional practice requirement.

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11 However, directors in out of school hours care or long day care services are exempt from this requirement, see [https://www.trb.sa.edu.au/professional-practice](https://www.trb.sa.edu.au/professional-practice)
There are a significant number of teachers, however, who, for a range of reasons, do not actively practise in Australia or New Zealand for an extended period of time. This may be, for example, because they are teaching overseas, working in higher education, choosing to take a career break or experiencing a long-term illness. As a result, some of those teachers would be unable to meet the professional learning for the renewal of their registration, and so their registration would lapse. If such a teacher later wished to return to practise in South Australia, they would be required to submit a new application for registration.

In some other parts of Australia, options exist for registered teachers to retain their registration despite not practising in Australia or New Zealand for an extended period of time. In Western Australia, for example, a non-practising teacher category of registration is available for a teacher who holds registration or provisional registration but does not intend to teach for a period of time. A teacher can transition from non-practising registration back to registration or provisional registration on meeting certain requirements in respect of professional practice or learning.

The results of a recent survey conducted by the board of teachers who did not renew their registration suggested support for similar provisions to be available to teachers registered in South Australia.

**Consultation questions**

Should there be provision in the Act for a category of registration to provide for registered teachers who are absent from teaching for a substantial period, e.g., over 2 terms of registration, and are not able to maintain professional learning?

If so, what requirements for professional practice and or professional learning should a teacher have to undertake to be eligible to transition back to full registration?

**Recognition of professional practice in a non-teaching role**

Many registered teachers move into education based roles from time to time that use their skills, expertise and experience as a teacher but do not involve direct teaching practice. Under current arrangements this work cannot be taken into account in respect of the minimum requirements for a teacher to be eligible to renew their registration. Currently a registered teacher is required to undertake at least 60 days of professional practice within the term of their registration in order to avoid having an annotation placed on their registration at the time of renewal. The annotation would indicate that they had not met professional practice requirements.

In some professions, such as nursing and midwifery, any role in which the individual uses their skills and knowledge as a practitioner counts toward professional practice requirements regardless of whether it is in a direct practice setting.

Consideration could be given to recognising the equivalency of practice for registered teachers working in other education settings where they are using their skills and professional knowledge to support teaching.

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12 This includes Victoria; Western Australia and Northern Territory, noting that the Northern Territory does not have a non-practising teacher registration category, as such. Teachers who have previously held full registration but, at the time of renewal, cannot show the requisite professional learning are given ‘provisional’ (F) registration, which offers a simpler alternative path back to full registration.
practice. Practice would not be restricted to direct teaching of children in education services. For example those teaching in an initial teacher education program, working in educational management or administration, undertaking educational research, or undertaking an education related advisory, regulatory or policy development role.

**Consultation question**

Should there be provision in the Act to recognise professional practice in non-teaching roles, such as educational advisory, policy, management or teacher education roles?

**Term of registration**

The Act currently sets out a 3-year term of registration for a teacher, therefore each year a different cohort of teachers is due to renew. In effect, there are 3 cohorts of registered teachers of not less than 10,000 in number and each year the registrations of 1 of these 3 cohorts will be due for renewal before 31 January.\(^\text{13}\) Most applications for renewal are received between the months of October and January. In addition, applications for new registrants and for transition of a teacher from provisional registration to (full) registration are also received during this period each year.

The confined period in which the board is required to process this large number of applications for the renewal of the registration, applications for new registrants, and applications for transition from provisional to (full) registration, results in peak workload for the board during the October to January period and requires a small number of short-term contract employees to support permanent staff. In addition, the administrative burden resulting from applications for transition from provisional to (full) registration falls on not only board staff but also school principals and directors who may need to be contacted during this period to clarify transition documentation.

There are options for modifying the arrangement of registration cycle to improve the ability of the board to manage the registration process. These options include changes to the length of the registration period and or the date at which registration is due to expire.

There is no consistent approach to the legislated period of registration in the regulation of teacher registration in Australian states and territories. However, most Australian jurisdictions register teachers for a period of at least 5 years.\(^\text{14}\) While most jurisdictions have a fixed date upon which the relevant registration period expires, there are various dates used including: 31 March, 30 September, 31 December and 31 January. Two jurisdictions fix the date for the expiry of registration by reference to the day registration is granted.

In Queensland, for example, the Education (Queensland College of Teachers) Act 2005 sets a 5-year period of (full) registration with renewal of registration due on the anniversary of the date on which registration was granted. An application for renewal of registration, however, must be made not less than 1 month before the expiry of registration.

\(^{13}\) A teacher’s registration remains in force until 31 January in the third year following the year in which registration was granted or last renewed. An application for renewal of registration, however, must be made not less than 1 month before the expiry of registration.

\(^{14}\) QLD, TAS and WA all have 5 year terms of full registration; NSW has a 5 year period before an audit of maintenance of accreditation is required; The NT has a prescribed term of 6 years for full registration.
registration was first granted. This arrangement may spread the application workload over a longer period of the year.

If such an arrangement were adopted in South Australia, there would need to be a transition period to manage new registrants but it would likely result in a steady reduction in the number of renewals at the end of each year, and potentially promote more cost-effective management of the renewal process. The value of such benefit is difficult to quantify, however, as it would be subject to any transitional arrangements of current registrations and its influence on the timing of new applications for registration. Under current arrangements most new registrations are being granted between October and January.

Retaining a fixed renewal date but moving it away from the end of the school year to the end of March or September is another option that may reduce pressure on teachers dealing with end of year reporting and commitments. It may also improve engagement with registered teachers as it avoids the need for them to renew registration over the holiday period.

Another option, on its own or in combination with a change to the renewal date, would be to extend the term of full registration to 5 years as per arrangements in most other Australian jurisdictions. Extension of the term would, over time, reduce the annual administrative burden of renewals on the board. It would also reduce the administrative burden on individual registered teachers. Extending the period of registration to 5 years would result in a 5-year registration fee that would be considerably higher than the current 3-year fee. The impact of a higher fee on renewal could be mitigated by providing for annual fee payment. This is further discussed under the section on registration fees.

While extending the period of registration may give rise to administrative benefits, it would also result in less frequent assessment of teacher fitness and propriety by the board. This may be mitigated in part by the fact that from 1 July 2019 teachers will be subject to the new system of working with children checks under the Child Safety (Prohibited Persons) Act 2016. Under the new system teachers will be required to obtain a working with children check from the Screening Unit of DHS and that check will be subject to continuous monitoring by that unit. However, not all offences relevant to the registration of a teacher will be a matter of relevance for a working with children check and the board will still rely on the declarations made by registered teachers in regard to their conduct and any information shared by the South Australia Police and the Director of Public Prosecutions, in accordance with sections 50 and 51 of the Act.

Consultation questions

Should the date of registration renewal remain a fixed date or be on the anniversary of the initial granting of a teacher’s registration?

Should the term of registration be extended up to five years, or remain as a 3-year term?

Should the expiry date of registration be changed from 31 January?
Registration fees

The operations of the board are funded entirely by the collection of fees for registration. It does not receive any government funding or grants. To maintain a sustainable business, a minimum operating balance must be preserved to allow for unforeseen expenditure over a 3-year registration cycle. Therefore financial planning is based on this 3-year cycle.

Section 22 (1) of the Act provides for applications for registration to be accompanied by a fee prescribed by regulation. The current fee is $330 payable on initial application for registration and on renewal every 3 years. There is an additional fee of $120 if the board is required to assess qualifications of the applicant obtained outside Australia or New Zealand. There is also a further $100 fee applicable if the application is made by a person whose name has been removed from the register following a failure to apply for renewal of registration before the expiry of the registration. A teacher is also required to pay a fee for the costs of obtaining a criminal history check at the time of registration or renewal.

Advice from the board suggests that some registered teachers find it difficult to pay the 3-year registration fee in one payment, particularly those teachers who are not permanently employed. Any move to extend the period of registration would further increase such difficulty. This issue could be addressed by amending the Act to provide for an annual fee for registration.

South Australia is the only Australian jurisdiction that does not apply an annual fee for teacher registration. Several jurisdictions apply an initial fee for the first registration in addition to an annual registration fee while other jurisdictions have a flat annual fee for registration. Some jurisdictions offer the option of paying annual fees in advance up to the end of the period of registration. A few jurisdictions have additional fees for assessing qualifications that have been obtained outside of Australian and New Zealand.

The adoption of an annual fee for teacher registration in South Australia would provide a more consistent revenue stream for the board and improve its ability to budget year on year. However it may also result in increased administrative burden from more frequent fee transactions, including in relation to the recovery of fees. In the legislation of jurisdictions that apply annual fees continued registration is contingent on the payment of the annual fee and a failure to pay the fee may result in the cancellation or suspension of registration.

Consultation question

Should there be an annual fee regardless of the term of registration?

Register of teachers

Section 28 of the Act requires the board to keep a register of teachers and sets out a list of information that the register must include in relation to each registered person.

The information the register must include is:

a) the person's full name, personal address and business address (if any)

b) the qualifications for registration held by the person
c) details of any specialist qualifications held by the person and determined by the Teachers Registration Board to be appropriate for inclusion on the register

d) details of any condition of the person’s registration

e) the expiry date of the person’s registration

f) the person’s registration number

g) details concerning the outcome of any action taken against the person by the board under Part 7, and may include other information as the board thinks fit.

Under section 28 the registrar is required to make certain information available for inspection on application to the registrar. In addition, the full name of each registered teacher, the expiry date of the person’s registration and the person’s registration number must also be available for inspection on a website established by the board.

Issues

There has been significant debate in recent years about the information that ought to be recorded on registers of teachers in Australia. In particular, both the Royal Commission into Institutional Responses to Child Sexual Abuse and the national review made recommendations about the particular types of information that should be recorded and the need for national consistency in the information recorded.15,16

Royal Commission and teachers registers

The Royal Commission noted that teacher registers provide an important platform for sharing information about teachers who may pose a risk to children however, the efficacy of registers as sources of information about such risks depends on the information recorded on the register and who may access it. The Royal Commission noted significant inconsistencies across Australia in the information held on teacher registers.17

The Royal Commission made specific recommendations to improve the sharing of information relevant to child safety through state and territory teacher registers. It recommended that the Education Council consider the need for nationally consistent state and territory legislative requirements about the information recorded on teacher registers (Recommendation 8.9). It is understood these recommendations are to be considered by the Education Council in the near future.

Further detail about relevant findings of the Royal Commission is outlined in the section on information sharing.

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15 Royal Commission into Institutional Responses to Child Sexual Abuse, Final Report: Volume 8: Record Keeping and Information Sharing, Barton, ACT, 2017 pp.15-16

16 One Teaching Profession: Teacher Registration in Australia, p.iv

17 Royal Commission, pp.15-16
Special authority to teach

Part 6 of the Act empowers the board to grant a person who is not a registered teacher a special authority to teach. A special authority can be issued to enable a person with particular expertise to teach specific subjects where a school or pre-school is unable to employ a registered teacher to undertake the role. This might include, for example, a school in a remote area engaging a person with relevant expertise to fill a staff vacancy until a registered teacher was able to be employed.

Provision for an alternative authorisation to teach is an agreed element of the national framework.

Special authorities to teach are generally only granted for a short period, 1 to 3 years, to cover temporary workforce shortages or recruitment difficulties, or while the person granted the special authority works toward obtaining qualifications as a teacher. Special authorities are granted to enable individuals to teach in a range of areas and some of the common holders of special authorities include instrumental music instructors, providers of Anangu education, religious or spiritual educators, exchange teachers, or vocational education instructors.

The granting of a special authority to teach is at the board’s discretion, and is subject to conditions specified by the board. These conditions must include limitations on the places or circumstances in which the holder of the special authority may teach. The board is required to keep a register of persons granted special authorities. The board may vary or revoke the special authority at its own discretion, without the need for a hearing or other process.

While the board’s decision to grant a special authority is discretionary, providing the board with wide scope to determine requirements for eligibility to be granted authority, the Act does not currently specify that, to be considered for a special authority, an applicant must consent to a criminal record check and meet any requirements prescribed by regulation.

Consideration could be given to expanding these essential requirements, to include, for example, that an applicant must be fit and proper. Including provision in the legislation specifying that special authorities may only be granted to persons who are fit and proper to teach would make it clear that the holders of special authorities are expected to meet the same threshold requirements as registered teachers in this regard.

Similarly, although the board may impose conditions subject to which the special authority is granted, including a provision mirroring the conditions that apply to teacher registration under section 24(2), that is, requirements that the person report to the board in relation to relevant charges, convictions, dismissals or resignations, would make it clear that all holders of special authorities to teach must meet the same obligations with regard to self-reporting.

To ensure that the board has access to relevant information pertaining to the ongoing suitability of a person to hold a special authority to teach, it may be appropriate to extend some of the reporting and information sharing provisions related to teachers in Parts 7 and 10 to capture the holders of special authorities, including, for example, the:

- obligations on an employer under sections 37 and 39 of the Act to report to the board concerns about impairment of a teacher’s capacity, or the dismissal or resignation of a teacher following allegations of unprofessional conduct
• information sharing arrangements between the board, the Director of Public Prosecutions and the Commissioner of Police under sections 50 and 51

• requirement under section 52 for the Registrar to provide information to an employer and heads of relevant education sectors and the Director of Children’s Services if the Registrar becomes aware that the person has been charged with or convicted of a relevant offence.

Consultation question

Are the current provisions for granting a special authority to teach adequate to meet the needs of practice and, in particular, in relation to specialist learning areas, while maintaining a focus on a high quality teaching profession?

Should existing fitness and propriety assessments, conditions on registration pertaining to self-reporting, and appropriate reporting and information sharing provisions be extended to apply to holders of special authorities to teach?

Professional standards for teachers and teacher quality

It is a function of the board to promote professional standards of teachers and to confer and collaborate with teacher employers, the teaching profession, teacher unions or other organisations and other bodies and persons with respect to requirements for teacher registration and professional and other standards for teachers.

Through these functions the board plays an important role in building trust and confidence in the teaching profession. It aims to ensure only teachers who meet high professional standards in their practice remain in the teaching profession. It does this in a number of ways not least of which is the promotion of the Australian Professional Standards for Teachers.

Issues

Certification of ‘highly accomplished’ and ‘lead teacher’ status

There has been significant focus at a state and national level in recent years to improve the quality of teaching, including through promotion of these Australian standards. The standards set out 4 career stages for teachers: graduate, proficient, highly accomplished, and lead. The ‘graduate teacher’ stage is reflected in the current scheme for teacher registration in South Australia through the board’s ability to grant provisional registration to a teacher. The second career stage under the standards is that of ‘proficient’ teacher level. A teacher at ‘proficient’ level is, in effect, eligible for (full) registration. The last 2 career stages under the Australian standards are the ‘highly accomplished’ and ‘lead teacher’ (HALT) levels. These are voluntary career stages that aim to promote career aspiration for teachers in the classroom and provide recognition for excellence in teaching. They are not currently recognised under the Act.
In April 2012 a national scheme for the certification of HALT status was endorsed by the Education Council. National certification uses the Australian standards as a basis for making rigorous and consistent judgements for the certification of teachers at the HALT career stages.

Whilst AITSL has responsibility for the standards and processes that underpin the certification process, the certification itself is undertaken by different authorities in each jurisdiction. In South Australia certification occurs through the South Australian Certification Committee. The committee was established as a ministerial advisory committee and consists of an independent chair and representatives from the 3 schooling sectors. Administrative support and coordination for the committee is provided by the department. Workplace assessment of teachers as part of the certification process is conducted by nationally trained assessors. In a number of Australian jurisdictions the certification process is administered by the relevant teacher regulation authority.

The HALT status of registered teachers is not currently recognised under the Act or annotated on the register of teachers. However there is growing support for greater recognition of HALT status including in respect of teacher registration. This could be achieved through the amendment of the Act to include provision for the certification of HALT status, conferring the function of certification on the board, and or recognising such status on the register of teachers.

A number of Australian jurisdictions either have legislative provision for certification of HALT status or are seeking to establish such provision. The Australian Capital Territory’s Teacher Quality Institute, for example, has the function of determining standards, including assessment and certification standards, for the teaching profession within the national framework. In Queensland, the Education (Queensland College of Teachers) Amendment Bill 2019 seeks to establish a legislative framework for the certification of HALT status in Queensland and will confer the function of certification on the Queensland College of Teachers.

There would be administrative costs for the board if the function of certification of HALT status were conferred on it. However, the likely cost will depend on the nature of the certification function. In respect of the current administrative scheme for certification the department receives specific funding to offset administrative costs. Such costs could however be offset by the application of fees for certification. Under the legislative proposal for Queensland, provision is made for the charging of fees for certification. The fee structure proposed in Queensland is in line with the staged process of certification.

Recording ‘highly accomplished’ and ‘lead teacher’ status on register

The national review recommended that teacher regulatory authorities be required to record the HALT status of nationally certified teachers in registration records.

Annotating the status of certified HALT on the register of teachers is a relatively straightforward process that would not require legislative change. The board already must include on the register details of any specialist qualifications held by a teacher the board deems appropriate for inclusion on the register and could implement this change with little impact on its current resources.

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18 The Australian Capital Territory, Northern Territory and New South Wales
19 Australian Capital Territory and New South Wales have such provisions; Queensland and Northern Territory Parliaments are currently considering such changes to their relevant legislation
20 See section 11, ACT Teacher Quality Institute Act 2010
21 The Queensland College of Teachers is the teacher registration body in Queensland
However, to fully implement the recommendation of the national review the Act would need to be amended to **require** the board to record HALT status. This could be achieved by expressly including HALT status in the list of information the register must include set out in section 28.

**Consultation questions**

Should the board have the function of certification of HALT status? If so, should there be provision for the charging of fees for certification?

Should the board be specifically required to annotate the HALT status on the register of teachers?

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**Research and data collection**

By virtue of its role in regulating the teaching profession the board collects a large amount of data on the teaching workforce in South Australia and in promoting professional standards for teachers and regulating the teachers generally the board draws on relevant research associated with teacher quality and high quality professional practice and undertakes surveys of teachers from time to time. The board does not, however, currently have any specific legislative function in respect to the promotion of research on teaching and teaching practice or for the collection of data related to its functions.

The teacher registration authorities of four Australian jurisdictions have legislated functions related to undertaking and or promoting research in relation to teaching practice.²² The Queensland College of Teachers, for example, has the function of undertaking or supporting reviews of research and collecting relevant data while the Tasmanian Teachers Registration Board has the function to undertake relevant reviews and research projects and make recommendations to the Minister.

**Consultation question**

Should the board have a specific function in relation to research and the collection and or use of data?

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**Accreditation of initial teacher education (ITE)**

It is a current function of the board to ‘confer and collaborate’ with teacher education institutions. In addition, the board has a role in determining the qualifications required for a person to be eligible to be registered as a teacher. The board works with local universities and other ITE providers to ensure the

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²² Northern Territory; Queensland; Tasmania; Victoria
education programs delivered to prospective teachers in South Australia provide the best possible preparation for a successful teaching career.

ITE programs in Australia are accredited by state and territory teacher regulatory authorities in accordance with nationally agreed standards and procedures developed and published by the AITSL. The national standards and procedures set out the requirements that must be met by ITE programs to be nationally accredited.

**Issues**

The board is responsible for the accreditation of ITE programs in South Australia in accordance with the national standards and procedures. However, there is a tension between the role of the board in implementing these national standards and procedures and the limits of the board’s current function in respect to ITE programs. The board’s function is to confer and collaborate with education providers. It has no specific legislative function to approve or accredit ITE programs.

The board’s lack of specific legislative functions in relation to the accreditation of ITE represents a significant disparity with the functions of teacher registration authorities in all other Australian jurisdictions, which have functions to either accredit or approve ITE programs.

Given the current role of the board in accrediting ITE programs, the agreement at a national level to improve the ITE oversight within Australia and the increased rigour and complexity of the national accreditation process, there is a strong argument for legislative recognition of the board’s functions in respect to the accreditation of ITE programs.

Some Australian jurisdictions have provisions to charge fees for the accreditation of ITE programs, including those for re-accreditation or renewal. While these fees are nominal and would only cover a portion of the actual cost of the accreditation process, the imposition of them may encourage providers to submit programs only when they are fully developed and suitable for the consideration by an accreditation panel, thereby increasing the quality of the applications considered by the board. If the board was to be given legislative function of accrediting ITE programs consideration could be given to applying fees to offset some of the costs of the accreditation process.

**Consultation questions**

Should the Act provide a legal framework for the function of ITE accreditation by the board? If so, should the Act provide for the charging of fees associated with the accreditation of ITE?

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23 AITSL, *Accreditation of initial teacher education programs in Australia*, Melbourne, 2018

24 Initial teacher education programs are also known as preservice teacher education program in some jurisdictions

25 In Western Australia, for example, an application for the accreditation of a program is to be accompanied by the fee of $2,142.50 and an equivalent fee applies for an application for re-accreditation.
Requirement for registered teachers to be fit and proper persons

Suitability to be a teacher is one of the 8 elements within the national framework. It is a requirement that a person be suitable to both work with children and be a teacher, based on an assessment of their character and criminal history.

A number of provisions in the Act deal with the requirement that a person must be a fit and proper person to be a teacher including, eg the object of the Act, as set out in section 4 and the requirements, in section 21, for eligibility for registration as a teacher, which provides that, among other things, a person must be a fit and proper person to be a registered teacher.

The board’s assessment of a person’s fitness and propriety to be a teacher takes into account a range of information including conduct in their personal life so far as it may impact on their suitability to be a registered teacher.

Section 33 of the Act provides that disciplinary action may be taken if the teacher is not a fit and proper person to be registered and sections 50, 51 and 52 of the Act enable information to be shared by specified parties in specific circumstances that is relevant to the consideration of a person’s fitness to be, or continue to be, registered as a teacher.

Issues

The national review considered the suitability requirement of teacher registration, and specifically measures of fit and proper persons. These considerations occurred in the context of recommendations of the Royal Commission.26

The national review heard that ensuring all registered teachers are suitable to teach, including considerations of whether they are fit and proper, is a key area of public interest and contributes to community confidence in the profession.

The national review indicated that while all teacher regulatory authorities have common principles that drive their approach to suitability to teach and what is determined to be ‘fit and proper’, there are legislative and regulatory differences across jurisdictions. The review report further noted that investigation and decision-making processes may compound the differences in policies, leading to diverse outcomes. Recommendation 11 of the National Review states:

“The Panel recommends that a national policy on suitability to teach, including considerations of ‘fit and proper’, be developed and implemented by all teacher regulatory authorities or other relevant bodies, using current instruments/statements as a starting point.”27

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26 National Review, pp.38-41
27 National Review, p.vi
Unprofessional conduct and incapacity of teachers

Under the Australian standards, teachers are required to “meet codes of ethics and conduct established by regulatory authorities, systems and schools”. In recognition of this requirement and its functions in respect to promoting professional standards for teachers the board publishes a code of conduct for teachers in South Australia.

Part 7 of the Act provides for the board to take action in relation to unprofessional conduct by a teacher, if they are not a fit and proper person to be registered as a teacher and also deals with the impairment of a teacher’s capacity to teach. This includes setting out the circumstances in which there is to be proper cause for disciplinary action against a teacher, providing for initial investigation of matters by the Registrar, providing for formal inquiries and disciplinary action by the board, and requiring employers to report unprofessional conduct and teacher incapacity.

Section 3 of the Act defines ‘unprofessional conduct’ as:

a) a contravention of this Act or the repealed provisions; or

b) a contravention of a condition of registration as a teacher under this Act or the repealed provisions; or

c) incompetence; or


d) disgraceful or improper conduct.

Issues

Unprofessional conduct, incompetence and incapacity

It is a condition of registration that a person dismissed, or who resigns, from employment as a practising teacher in response to allegations of unprofessional conduct must make a notification to the board within 14 days. While unprofessional conduct is defined to clearly include incompetency and incapacity, the board has noted there have been occasions when it has not been advised because of apparent misunderstanding of the requirements.

An option to address such issues would be to more clearly articulate the separate matters of unprofessional conduct, fitness and propriety, incompetence and issues of physical or mental incapacity.

If this option were to be adopted, the Act could also be amended to clearly include provision for separate reporting obligations for employers and registered teachers for each of these distinct matters.

Codes of conduct

Unlike the legislation in a number of other Australian jurisdictions the Act does not set out an express function for the board in respect to the development or application of a code of ethics or a code of conduct.

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28 See section 24(2)(a)(ii) of the Act
The teacher’s registration legislation of a majority of Australian jurisdictions confers the function of developing and applying a code of practice or professional ethics on that jurisdiction’s teacher registration authority. The Queensland College of Teachers, for example, has the function of developing and applying codes of practice and, in Victoria, the Institute of Teachers has the function to develop, maintain and promote a code of conduct.

The Act could be updated to more clearly set out the role of the board in respect to the development of the code of ethics and or a code of conduct for registered teachers in South Australia.

**Consultation questions**

Should the Act be amended to clearly recognise each of the following areas as grounds for formal proceedings under the Act: unprofessional conduct, fitness and propriety, incompetence, and incapacity, and make explicit the consequent reporting requirements?

Should the board have the function of developing a code of conduct for registered teachers in South Australia?

**Provisions related to proceedings of the Teachers Registration Board**

Part 8 of the Act sets out administrative and arrangements for proceedings of the board on an application for registration or on an inquiry. Part 8 requires the board to observe the rules of natural justice in proceedings, sets out provisions for the receipt of evidence and the adoption of any relevant findings, decisions, judgements, or reasons for judgement of any other court, tribunal or body, provides the board with the power to issue summons, sets principles governing proceedings, provides protections for children giving evidence in proceedings as a witness, and sets out provisions for legal representation and assistance in proceedings.

**Appeals**

Part 9 of the Act establishes a right of appeal to the Administrative and Disciplinary Division of the District Court against particular decisions of the board under the Act.

It is anticipated that jurisdiction for appeals will eventually be transferred to the SACAT as part of the final phase of the project to transition relevant jurisdiction to the SACAT.

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29 Australian Capital Territory; Northern Territory; Queensland; Tasmania; Victoria
Information sharing and confidentiality

Part 10 of the Act provides for a range of miscellaneous and administrative matters associated with the exercise of the powers and functions of the board including access to information, information sharing, and the confidentiality of information collected by the board.

These information related provisions include:

- provisions requiring the Commissioner of Police to provide information to the board relevant to a registered teacher’s fitness to be, or continued fitness to be, registered as a teacher
- arrangements for reports to be made to the board by the Director of Public Prosecutions and the Commissioner of Police regarding the laying of charges for offences relevant to teacher registration
- the requirement for the Registrar to notify employers and educator sectors of concerns regarding a particular teacher’s fitness to be, or continue to be, registered as a teacher
- confidentiality of information
- relevant offences related to the provision of information and fraudulent registration.

Issues

Access to relevant information about registered teachers and persons seeking registration as a teacher is vitally important for the board to undertake its functions. Given the mobility of the teaching workforce, gaining access to such information will, by necessity, require the board to work with teacher registration authorities and other relevant bodies in other jurisdictions.

It is a function of the board to confer and collaborate with other teacher regulatory authorities to ensure effective national exchange of information and promote uniformity and consistency in the regulation of the teaching profession within Australia and New Zealand. But in exchanging information with other teacher registration authorities the board also has a duty to ensure that necessary safeguards are in place to ensure information is not improperly disclosed or misused.

Section 53 of the Act provides some of these protections by prohibiting a person engaged or formerly engaged in the administration from the Act from divulging or communicating personal information obtained in the course of official duties. While doing so it also sets out a series of exceptions to this general prohibition to allow appropriate disclosure of personal information including, for example, disclosure to another teacher regulatory authority.

The sharing of information between teacher regulatory authorities was a matter of particular interest for both the Royal Commission and the national review. The Royal Commission in particular noted the importance of information sharing to the protection of children from child sexual abuse and found that:
“Information sharing between institutions with responsibilities for children’s safety and wellbeing, and between those institutions and relevant professionals, is necessary to identify, prevent and respond to incidents and risks of child sexual abuse.”  

The Royal Commission recommended in particular that the Education Council consider:

- the need for nationally consistent teacher registration laws providing teacher registration authorities to make information on teacher registers available to authorities in other states and territories and to teachers’ employers (Recommendation 8.10)
- the need to ensure that teacher registration authorities notify authorities in other states and territories and teachers’ employers of certain information relating to allegations or incidents of child sexual abuse, such as information about disciplinary actions, investigations and outcomes, and resignations or dismissals from employment (Recommendation 8.11)
- what safeguards are necessary to protect teachers’ personal information (Recommendation 8.12).

While the Act clearly permits the board to disclose relevant information to other teacher regulatory authorities, there is no specific legislative requirement that it notify those authorities of relevant information.

The national review also noted the importance of information sharing between teacher regulatory authorities to promote the safety of children. The national review’s expert panel recommended that:

“jurisdictions amend legislation and/or policies to require teacher regulatory authorities to share information with other teacher regulatory authorities to strengthen children’s safety and improve teacher workforce mobility (Recommendation 9).”

While the current Act provides sufficient scope for the board to participate in national arrangements for the sharing of information necessary to promote the protection of children, the extent of any information shared would be at the discretion of the board and subject to its policies. Nothing in the Act currently requires the board to share the particular information in the way contemplated by the national review.

**Consultation question**

Should the Act be amended to require the board to share particular information to strengthen children’s safety and improve teacher workforce mobility?
Appendix 1 – Summary of consultation questions

Purpose of the Act

1. Does the current object of the Act reflect what the Act ought to achieve?
2. Should the best interests of children be the paramount consideration in the performance of the board’s functions?
3. Should consideration of the best interests of children extend to all persons or bodies exercising functions or powers, or taking any other action, under the Act?

Composition of the board

4. Is the current composition and size of the board appropriate?
5. Do the current membership requirements enable the board to include an appropriate balance of the skills, experience and expertise necessary to fulfil its statutory functions? If not, what membership composition would better fulfil these functions?
6. Currently the Minister and key stakeholders nominate members to the board to be appointed by the Governor. Is this selection mechanism appropriate?
7. Should there be specified terms of appointment and tenure for board members to ensure that there is a mix of experienced and new members on the board?
8. Is the board adequately equipped to appoint temporary members to address vacancies in its membership?
9. Should the Act enable the board to appoint persons who are not board members to committees of the board where those persons have expertise relevant to the work of the committee?
10. If so, should a committee require the appointment of at least 1 board member?
11. Should a committee of the board to which non-board members have been appointed be delegated the power to hold an inquiry under Part 7 of the Act, that is an inquiry into teacher misconduct, incompetence or incapacity?

Registration

12. Is the current requirement to be registered set out in section 20 still adequate in respect to ensuring early childhood teachers are registered in South Australia regardless of the type of early childhood service they are employed in?
13. Subject to agreement with other jurisdictions under the national framework, do you support overseas teaching practice being recognised for the purposes of a person’s transition from provisional registration to (full) registration?
14. Should there be provision in the Act for a category of registration to provide for registered teachers who are absent from teaching for a substantial period, eg over 2 terms of registration, and are not able to maintain professional learning?
15. If so, what requirements for professional practice and or professional learning should a teacher have to undertake to be eligible to transition back to full registration?

16. Should there be provision in the Act to recognise professional practice in non-teaching roles, such as educational advisory, policy, management or teacher education roles?

17. Should the date of registration renewal remain a fixed date or be on the anniversary of the initial granting of a teacher’s application for registration?

18. Should the term of registration be extended up to 5 years, or remain as a 3-year term?

19. Should the expiry date of registration be changed from 31 January?

20. Should there be an annual fee regardless of the term of registration?

**Special authority to teach**

21. Are the current provisions for granting a special authority to teach adequate to meet the needs of practice and, in particular, in relation to specialist learning areas, while maintaining a focus on a high quality teaching profession?

22. Should existing fitness and propriety assessments, conditions on registration pertaining to self-reporting, and appropriate reporting and information sharing provisions be extended to apply to holders of special authorities to teach?

**Quality teaching**

23. Should the board have the function of certification of HALT status? If so, should there be provision for the charging of fees for certification?

24. Should the board be specifically required to annotate HALT status on the register of teachers?

25. Should the board have a specific function in relation to research and the collection and use of data?

**Initial teacher education (ITE)**

26. Should the Act provide a legal framework for the function of ITE accreditation by the board? If so, should the Act provide for the charging of fees associated with the accreditation of ITE?

**Professional conduct**

27. Should the Act be amended to clearly recognise each of 3 areas as grounds for formal proceedings under the Act: unprofessional conduct, incompetence and incapacity, and consequent reporting requirements?

28. Should the board have the function of developing a code of conduct for registered teachers in South Australia?

29. Should the Act be amended to require the board to share particular information to strengthen children’s safety and improve teacher workforce mobility?
Appendix 2 – Membership of the Teachers Registration Board

Under Section 9 of the Act, the membership of the Teachers Registration Board will consist of 16 members of the board appointed by the Governor of whom:

(a) 1 must be a person nominated by the Minister, who will be the presiding member of the board
(b) 2 must be persons nominated by the person holding or acting in the office of Chief Executive of the Department for Education
(c) 5 must be registered teachers (including at least 4 practising teachers) nominated by the Australian Education Union (SA Branch) after the holding of an election in accordance with the regulations
(d) 1 must be a person nominated by the Association of Independent Schools of South Australia Incorporated
(e) 1 must be a person nominated by the Catholic Education Office
(f) 2 must be registered teachers (including at least 1 practising teacher) nominated by the Independent Education Union (SA Branch) after the holding of an election in accordance with the regulations
(g) 1 must be a person employed in the field of teacher education nominated jointly by the universities in South Australia
(h) 1 must be a person nominated by the person holding or acting in the office of Director of Children's Services
(i) 1 must be a parent of a school student nominated by the Minister to represent the community interest
(j) 1 must be a legal practitioner nominated by the Minister
(k) not less than half of the members must be registered teachers.

In addition, the Minister must ensure, as far as practicable, gender balance on the board.