

National Review of Teacher Registration

Submission from the

Teacher Registration Board of Western Australia

May 2018

The Teacher Registration Board of Western Australia (Board) thanks the Expert Panel for the opportunity to make a submission to the National Review of Teacher Registration, commissioned by the Education Council.

The following comments align to the key questions raised in the Consultation Paper published for the purposes of the review.

How is the national teacher registration framework working across Australia?

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.¹

The Teacher Registration Board of Western Australia (Board) administers the registration scheme within the provisions of the *Teacher Registration Act 2012* (TR Act). The TR Act was established following the 2011 Ministerial agreement and as a result the registration scheme in Western Australia is closely aligned to the elements of the national framework for teacher registration.

There are some key features that distinguish the way the scheme of teacher registration is applied in Western Australia. In particular, the Board is primarily a regulatory body with functions limited to those of teacher registration, administering the disciplinary and impairment review processes and the accreditation of initial teacher education programs.

As such the Board operates more purely in a regulatory role than some of its counterparts in other jurisdictions. The Board does not, for example, have an advocacy role for the profession, or a role to promote or accredit professional development for teachers.

A primary rationale for limiting the functions of the Board was to focus the attention of the Board on the protection of the public interest, especially in relation to the protection of the interests of children. Coupled with this focus in terms of its functions, the Board must in the performance of those functions make the best interests of children its paramount consideration.

These features are entirely appropriate for a regulatory body of this kind.

On the question of a 'sufficient and reliable level of service quality', the role of the Board is generally focused on ensuring that certain minimum eligibility requirements are met and maintained. These eligibility requirements are of course consistent with the elements of the national framework for teacher registration.

¹ Australian Government (2015) *Productivity Commission Research Report- Mutual Recognition Schemes* (September 2015) 116.

In addition, the Board has a role in the improvement of teaching to the extent that it administers the requirement for a teacher to meet the Professional Standards at the Proficient career stage to be granted Full Registration, and of requiring a minimum amount professional engagement (teaching) and professional learning for the renewal of registration the Board.

In terms of how current national elements of teacher registration are operating in WA, as stated above, the Board's operations and legislative underpinnings are generally aligned with the national elements of teacher registration. In broad terms, the eight elements are considered relevant and appropriate.

As to the elements of the national framework, the following matters may be worth consideration by the panel.

First, there is an assumption that all teachers granted an initial period of registration will have met the Professional Standards at the graduate career stage (Graduate Standards). This can only be said to apply to only to graduates of an *accredited* ITE program. Teacher registration is, however, also available to suitably qualified teachers whose qualifications either pre-date the accreditation scheme or were conferred by overseas institutions. Such applicants would be eligible for initial registration as a teacher notwithstanding the fact that they have not met the Graduate Standards.

Second, it is very clear that teachers are engaging with the professional standards. In particular, in the WA context, the capacity for Provisionally Registered teachers to renew that category of registration was removed except in extenuating circumstances. In practical terms, this has meant that there has been a notable increase in the number and proportion of teachers who have moved from Provisional to Full Registration. An account of the Board's policy and processes in this space is provided below but in general terms, it is vital that the registration scheme acknowledges the practical difficulties for many teachers to demonstrate proficiency against all focus areas within the standards in a timely way. This includes teachers who are not able to work in a full time capacity for a variety of reasons.

Third, there is an apparent discord between accreditation and registration requirements with respect to the minimum acceptable duration of graduate teacher programs. In the accreditation space, a postgraduate ITE program is required to be a minimum of two years in duration (e.g. Master of Teaching or equivalent). Under the current national approach to teacher registration, one year postgraduate ITE programs (e.g. Graduate Diploma of Education or equivalent) are generally accepted for registration across Australia.

Finally, efforts to harmonise how the national framework is being applied across jurisdictions needs to be grounded in acknowledgment that there are differences in the legislative, regulatory, administrative and resourcing contexts of each jurisdiction. One of the key rationales for federalism is the principle of subsidiarity. This refers to the proximity of government to the community and allows local communities to shape policies to meet local preferences. Any proposed improvements will principally need to be tested against the key reasons for establishing occupational registration regimes and in keeping with the paramount consideration noted above. Further, any proposed improvements need to be practical, not unduly onerous from an administrative perspective and not subject to unintended consequences. There is a need to ensure that administrative decision-making with respect to teachers seeking and maintaining registration is reasonable and proportionate.

Should early childhood teachers be part of a national approach to teacher registration?

The National Quality Framework operates under an applied law system, comprising the Education and Care Services National Law and the Education and Care Services National Regulations. The purpose is to set a national standard for children's education and care across Australia.

There are clearly differential approaches being applied across jurisdictions as to the requirement for early childhood teachers to be registered.

The *Education and Care Services National Law (WA) 2012* requires centre-based education and care services (for children in the early years) to have at least one qualified teacher.

In WA, the *Teacher Registration Act 2012* requires that all teachers who teach from early childhood to Year 12, in an educational venue in Western Australia, must hold teacher registration with the TRBWA.

This includes those who are teaching in centre-based education and care services such as long day care and child care centres.

As such, the scheme of teacher registration in WA encompasses teachers who are working in these settings.

There has been some adjustment to the language of the professional standards that apply in WA to accommodate early childhood teachers and it is arguable that further amendment to those standards may be required.

Further engagement with the early childhood sector is required to determine whether the standards as currently framed are fit for purpose. If there were a movement in the direction of a national approach to teacher registration for early childhood teachers, this may be a valuable first step.

In addition, the context in which many early childhood teachers find themselves is quite different to that of teachers working in school settings. In particular, there is potentially more limited scope to develop a community of practice as commonly teachers in early childhood settings are not working with other teachers on a day to day basis. This in turn has implications for what induction into the profession looks like for these teachers and practical matters around evidencing proficiency against the standards.

What role does teacher registration play for VET teachers in school settings?

In the WA context, VET in Schools is delivered by the school itself (as a registered training organisation) or with a public or private training provider under an auspicing arrangement. There is no requirement for a VET trainer or assessor to be registered as a teacher in order to teach VET in an educational venue. The rationale is that such trainers and assessors are already regulated. In this context, there is no need for greater flexibility in the scheme of teacher registration to support schools to utilise skilled VET trainers and assessors.

How does teacher registration support entry into the teaching profession?

By definition, teacher registration processes represent a barrier/challenge to those entering the profession. They should not be 'overcome' to the extent that absence of such barriers/challenges means there can be no or limited assurance with respect to sufficient and reliable level of service quality as well as public safety.

Efforts to reduce red tape should, however, be supported and the Board considers this to be an ongoing priority.

As noted in the discussion paper, to achieve Full Registration, evidence of performance is required at the Proficient career stage of the Professional Standards for Teachers. There are essentially three groups undertaking this 'initial period': graduate teachers, teachers who have never taught in an Australian context (because they have come from overseas) and teachers who are returning to teaching after a period away (and need to re-demonstrate their proficiency).

The discussion paper points to the importance of induction as an effect on transition to Full Registration and induction being a 'shared responsibility' between a number of different players.

While many factors have a bearing on a teacher transitioning to Full Registration, the most important players with respect to successful induction are the teacher and their employer. Employers have the chief responsibility with respect to induction and it is in their interests to ensure that induction processes are 'high quality', not just to assist teachers in their endeavours to demonstrate proficiency but also because successful induction is an investment that has a bearing on the productivity of staff.

It must be acknowledged, however, that the circumstances of many teachers (including casualisation of employment opportunities) has meant that it is difficult to form the kind of relationship with an employer that would provide them the conditions to optimise their transition from a graduate to a proficient teacher. In essence, there may be extenuating circumstances that mean that graduate teachers find it difficult to evidence proficiency across all the focus areas of the standards in a timely way.

This in turn has a bearing on the need for a suitable level of flexibility in terms of teacher registration processes such that the requirements places on such teachers are not overly burdensome or unfair. The main flexibility is around providing extra time, commensurate with the extenuating circumstances, to demonstrate proficiency.

The Board has published a guide to evidencing the professional standards at the proficient level to assist applicants (this is based on AITSL's guide). There is a reasonably high bar that is applied in WA with respect to evidencing proficiency- there must be evidence against all the focus areas/descriptors under the Standards.

That said, it is acknowledged that the evidence teachers can provide will vary depending on a number of contextual issues including level of schooling, position within a school, type of school and jurisdiction.

Teachers are encouraged to use evidence that is specific to their own context. It may not always be possible to provide direct evidence against each specific descriptor (such as 1.4 Strategies for teaching Aboriginal and Torres Strait Islander students or 1.6 Strategies to support full participation with disability). In these circumstances teachers are encouraged to use annotations to draw links and explain their knowledge of descriptors that may not be directly applicable to their current teaching context.

A determination as to whether the Standards at the proficient level have been met is generally based on a recommendation from the teacher's school or workplace. This recommendation is made by an 'appropriate person' (a fully registered teacher who is a reasonable position to assess an applicant against the standards).

The Board considers that it is entirely appropriate that as much as possible the main source of advice as to whether a person meets the standards at the proficient level should come from a person who is in a suitable position to make an assessment within the educational venue. As noted above, there may be certain circumstances where a teacher has not been able to form a relationship with an employer that would enable this kind of judgment to be made. There is scope in WA for teachers to make direct submissions to the Board in these circumstances.

A final theme that is broached in the discussion paper under this question is the desirability of 'pre-registration'. There are few examples of comprehensive student registration in Australia (the model in place for the Australian health profession is a partial exception). It is unclear what the purpose of such a scheme would be so it is difficult to comment on its viability.

In WA, the TR Act specifically excludes pre-service teachers, undertaking a professional placement, from the definition of 'teaching'. The teacher registration scheme does not extend to pre-service teachers, except in cases where pre-service teachers may be engaged/employed by a school under a Limited Registration, prior to the conferral of their teaching degree.

A pre-service/student registration scheme can provide a consistent and comprehensive way to capture data about students enrolling in and graduating from ITE programs. It can also provide a framework for enculturation of ITE students into the teaching profession. If these are the prime purposes of student registration, however, then it may be that there are other more efficient ways to achieve the same purpose.

For example, as to 'enculturation of students', in WA, if a person wishes to teach in an educational venue, they must engage with the Teacher Registration Board.

There are a range of modes that the Board communicates with prospective teachers about registration requirements. In particular, there is comprehensive information available through the Board's website and the Board undertakes presentations to students in all local universities to provide clarity around the requirements.

Public safety is also a key consideration. In the WA context, the issues of public safety may already be considered to be sufficiently addressed through the requirement of student teachers to undertake Working with Children checks in the WA context as well as criminal record checks undertaken by employers.

Finally, the costs for students paying for 'pre-registration' may be considered to be unduly prohibitive.

On balance, the arguments in favour of pre-registration are outweighed by those against it.

How can we ensure that registered teachers satisfy the fit and proper person requirement?

The following is in two parts. First, there is a brief overview of how the Teacher Registration Board of WA ensures the 'fit and proper' requirement of registration. Second, matters of national consistency are discussed.

In Western Australia, as noted above, the Board must in the performance of its functions regard the best interests of children as its paramount consideration.

This provision has a particular bearing on how the Board undertakes the functions of determining whether a person is fit and proper to be initially registered and whether they are eligible to renew their registration, the formulation and investigation of complaints against teachers for matters of serious misconduct or serious incompetence, disciplinary outcomes following investigation of these complaints and investigation and regulatory decision-making with respect to dealing with matters of impairment regarding teachers.

While keeping the paramount consideration in mind, the Board also works to ensure its policy and processes reflect procedural fairness. This includes a commitment to ensuring that serious allegations are the subject of thorough investigation and that persons who are the subject of proceedings are provided with the appropriate opportunity to be heard before a decision that may impact their interests is made.

As to investigation of complaints, the Board applies a risk-based approach to undertaking them and has a small but highly experienced and professional team of investigators committed to producing fair and balanced assessments regarding allegations that are made.

This is coupled with sound relationships with key stakeholders including the Department of Education, Catholic Education Western Australia the Association of Independent School in Western Australia, the WA Police, the Working with Children Screening Unit and the Department of Communities.

The Board itself does not make disciplinary decisions but does have a role in determining the forum in which a disciplinary matter is considered and a decision is made. Disciplinary decisions are made by Disciplinary Committees and the State Administrative Tribunal (SAT). The scheme of the Act in Western Australia provides that the seriousness of the disciplinary matter to be dealt with (either relating to misconduct or incompetence) will have a bearing on the forum in which a disciplinary matter will be decided. Less serious allegations of incompetence (those that fall below the threshold of a person being unfit to be registered at all) may be heard by one of the Board's Disciplinary Committees. Less serious allegations of misconduct are not considered to be disciplinary matters under the scheme of the Act. It is important to note that Disciplinary Committees are required to include an Australian lawyer. Having someone with legal training and with experience in administrative law as part of the Disciplinary Committee provides a useful check.

The most serious decisions concerning registration (those which involve whether a decision that a person is not entitled to be registered or not eligible to apply for registration for a period of time) are ultimately the subject of more formal proceedings within the SAT. In particular, the SAT has jurisdiction to determine whether matters of serious incompetence or serious misconduct may result in cancellation of a person's registration and to hear appeals from teachers from a finding by the Board that they are not fit and proper and therefore do not meet the eligibility requirements for registration.

There are relative advantages in having such decisions made independently in a more formal judicial setting.

As to determinations on whether a person is considered 'fit and proper' to be registered, the Board runs criminal record checks (both Australian and international) on all persons seeking registration and renewal of registration and this is coupled with consideration of any material that might be relevant to the question of a person's fitness to be a teacher that the Board holds. Applicants for registration are required to provide comprehensive information on a broad range of matters that may have a bearing on that consideration.

The Board applies a fit and proper policy that recognises that not all offending renders a person unfit to be a teacher. The Board focuses on offences which suggest that, in the opinion of the Board the person might pose a risk to the safety of children, the person cannot be regarded to be able to provide proper moral guidance to children for whom they may be responsible, an impairment may be present or the person shows a selfish disregard for the safety of children. When considering criminal offences, factors the Board will consider include the seriousness and frequency of any offending, the nature of any sentences imposed and the age of the offences.

The Board is confident that in general terms, the scheme of the Act along with processes that it has in place are reasonable and proportionate and produces decisions regarding the fitness of teachers and disciplinary decisions consistent with the paramount consideration noted above.

The Board recognises that the information that is exchanged and the determinations that are made under the mutual recognition principle are so important. There is a need to ensure that that information and those determinations are sound so that there is a high level of confidence that teacher travelling to WA to work are also 'fit and proper'.

There is a distinction to be drawn between teachers who come from another State and make a mutual recognition application and those who make a *de novo* application.

Mutual recognition arrangements generally aim to reduce inefficiencies and regulatory barriers. The relevant legislation relates to how people registered to practise an occupation in one Australian jurisdiction are entitled to practise an equivalent occupation in other Australian jurisdictions. For those who make a mutual recognition application in WA, there is a requirement to provide a valid notice pursuant to s 19 of the MR Act and s 18 of the TTMR Act respectively.

The notice must:

- state that the person is registered for the occupation in the first State/jurisdiction and specify that State/jurisdiction;
- state the occupation for which registration is sought and that it is being sought in accordance with the mutual recognition principle;
- specify all the States in which the person has substantive registration for equivalent occupations; state that the person is not the subject of disciplinary proceedings in any State (including any preliminary investigations or action that might lead to disciplinary proceedings) in relation to those occupations;
- state that the person's registration in any State is not cancelled or currently suspended as a result of disciplinary action;
- state that the person is not otherwise personally prohibited from carrying on any such occupation in any State, and is not subject to any special conditions in carrying on that occupation, as a result of criminal, civil or disciplinary proceedings in any State; and
- specify any special conditions to which the person is subject in carrying on any such occupation in any State; and
- give consent to the making of inquiries of, and the exchange of information with, the authorities of any State regarding the person's activities in the relevant occupation or occupations or otherwise regarding matters relevant to the notice.

There are several important points to note about this list.

First, a valid notice does not ask the applicant to make a statement regarding their *previous* disciplinary history (where for example, an applicant has previously been the subject of

disciplinary proceedings that has resulted in a particular disciplinary outcome and which may have been dealt with in a particular way).

Second, there is a reasonable reliance on the quality of the information that is being sought from other jurisdictions. The 'quality of the information' encompasses both the fact that the information provided is clear and easily understood as well as whether the information about a teacher reflects both disciplinary processes and outcomes that are commensurate with WA's own commitment to investigation processes that are sound, disciplinary processes that are suitably independent and open to scrutiny, an overall commitment to the paramount consideration as outlined above and to procedural fairness.

In this context, there are clear differences in the regulatory frameworks that operate from one jurisdiction to another and there are differences in the mode and means by which disciplinary decisions are made.

That said, the notion of attempting to generate some kind of national fit and proper policy would be the wrong approach. In particular, each jurisdiction operates in a different legislative context. It is a matter for each jurisdiction to determine who is fit to work as a teacher in that jurisdiction and how that determination is made.

It does not follow, however, that there may not be some benefit in harmonising the approach with respect to how such determinations are made. There has been discussion between jurisdictions in this space.

The way such harmonisation might take place ought to be the subject of legal advice but a starting point may be improved sharing of the policy and guidelines that operate in each jurisdiction in making determinations regarding suitability to determine differences in approach and assess whether, how and should such differences be addressed.