

Response to the Review Teacher Registration and Standards Act

May 2019

The Independent Education Union (SA) represents teachers (and others) in non-government schools and Early Learning Centres in South Australia and welcomes the opportunity to respond to this review.

Purpose of the Act

1. Does the current object of the Act reflect what the Act ought to achieve?

In Minister Gardener's forward to the discussion paper setting a framework for a review of the Teacher Registration and Standards Act 2004 he makes this observation

'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.'

He goes on to say that there have been changes to this landscape over recent years regarding child protection, teacher education and a national review of the teacher registration framework in the states and territories, therefore a review is timely to respond to these changes.

While we will specifically address the consultation questions posed in the paper, we wish to note at the outset that shifts in the professional landscape, do not change the fundamental purpose of the authority (the Teachers Registration Board) as being a body that both represents the profession and regulates the profession to ensure the expertise and integrity of its members. As such, while a review may be considered timely we believe that the purpose and the composition of the Board, as determined by the Act is still fundamentally sound and needs no further narrowing.

2. Should the best interests of children be the paramount consideration in the performance of the Board's functions?

The 'best interests of children' and society are best served by an expert and competent profession that educates children and youth in a meaningful, safe and supportive environment. This maximises the opportunities for children to become the best they can be as individuals and be active adult participants in society. A well-regulated profession, regulated by members of the profession, will achieve that goal. This is the prime function of the Board. The 'best interests of children' flow directly from that, so we see no change in emphasis being necessary.

Section 7 of the Act mandating "the welfare and best interests of children" as the "primary consideration" of the Board is arguably already too narrow if one sees this only through a child protection lens. Child protection is a shared responsibility of various entities and society as a whole. It is not the prime focus of a board established to regulate professional standards.

The Board has various inter-connected considerations without singling one out as paramount, thereby relegating the others to subordinate. Society, parents and practitioners all have critical expectations of the Board's function.

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?

The Object of the Act is essentially to regulate the teaching profession. It is not clear what other persons or bodies would be intended to expand "best interests" coverage to.

In general terms we see no issue in principle with this question as under Section 7 of the Act the 'Board must have the welfare and best interests of children as its primary consideration'. It follows that all other persons or bodies exercising related functions and powers associated with the Act would also, without any need to amplify.

4. Is the current size and composition of the Board appropriate?

The Act provides for seven registered teachers to be nominated by each of the teacher unions, (the IEU and the AEU), five of whom must be practicing teachers. In addition there is a legal practitioner, two persons from the office of the Chief Executive of the Department of Education, a nominee from Catholic Education, one from the Association of Independent Schools SA, a university nominee, one from Children's Services and a parent member and Presiding member nominated by the Minister. These are all representatives of significant stakeholder groups who have a direct association with either teaching or education more broadly.

Most importantly, Section 6(k) requires that 'not less than half must be registered teachers'. This ensures that the board is genuinely representative of the profession and in a position to legitimately act as a regulatory authority for the profession. With its current size and composition it is able to manage its functions including hearings for alleged misconduct of teachers on the register in a reasonably expeditious manner.

If the Board were to be reduced in size we believe that there could result in significant delays for these matters to be dealt with which could have devastating consequences for the careers of those involved.

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?

The current membership requirements do encompass experience, perspectives and competence to fulfil the functions of the Board. It is important that a body regulating the profession, being totally funded by the profession, includes a majority of registered teachers.

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

The usual practice for appointing representational members to the Board is 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?

The IEU has experienced no issue with the current system of open tenure and would not look to introduce artificial constraints unnecessarily.

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

The current system of deputy members provides a backup pool of trained and experienced personnel.

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?

With respect to **questions 9, 10 and 11** we do not believe that the Board should appoint any non-Board member to carry out any of the Board's statutory functions. If this is being considered we believe it suggests, if anything, that the Board should have additional members to carry out its functions.

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?

All teachers should be registered regardless of the setting in which they work. The penalties set out in Section 20 are appropriately significant.

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?

The board currently reviews qualifications and experience of applicants who have received their qualifications and taught overseas. If the applicants meet the standards for provisional registration then the transition from provisional to full registration should follow the same process as it does for local teachers. We are unclear as to what is implied or foreshadowed by this question so more detail is required for further comment.

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?

Consideration should be made for teachers without continuous connection with the profession to be able to maintain registration. For example a minimal level of ongoing PL or for extended periods of absence it may be reasonable to demonstrate a more significant amount as a “refresher”.

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?

The details of this are best determined by the Board to accommodate various circumstances.

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?

There should be a category of registration associated with others who are not actively engaged in the face-to-face teaching process to maintain registration when working in an education-related area such as education administration or teacher unionism. The connection with education would mean that a lower level of PL would be required than for those who had no connection with schools during a temporary absence.

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?

Administrative efficiencies could be extracted from having a rolling registration period rather than having one fixed date each year at which (on average) one third of the registrations need renewing at the same time.

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

Administrative efficiencies could be extracted if teacher registration and WWCC expiries aligned, but the proportional 5 year fee could start to be burdensome especially for new registrants, part time & relieving teachers and those returning from unpaid leave.

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

The IEU would support a rolling registration period, but any meaningful transition to a more even administrative work flow would not occur naturally for some time.

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

An optional annual fee would assist some, especially if registration was extended to 5 years (akin to vehicle registration optional periods). Perhaps an annual fee could be pro-rata plus a small administration fee for the extra processing over the full term.

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?

The IEU has no issue with the current processes.

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?

The IEU believes that the conditions and obligations of fully and provisionally registered teachers should apply to those with special authorities.

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?

SA was an early mover on the HAT and LT front. As much as consultation with the profession was totally lacking in its establishment, there is now a functioning tri-partite inter-sectorial structure in place.

The role of the Board could be expanded to take on that role, but it would mean an expansion of the Board's workforce and cost structure. As the Board is totally funded by the teachers it regulates, that cost would fall to teachers in terms of increased fees if the application fees did not cover costs.

At the moment each employer strikes its own application fees which involves employers subsidising any shortfall, rather than the whole teaching workforce (including those who do not apply for HAT or LT status)

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

As HAT and LT are nationally accredited, the IEU has no issue with the Board recognising this on certificates. Practical difficulties arise when HAT and LT status expiries do not align with registration periods. Moving to an electronic (real time) teacher registration certificate would alleviate this and the need to return a physical certificate for whatever reason or to seek a replacement for a lost certificate.

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

The TRB is ideally placed to produce de-identified data of teacher demographics, experience, qualifications and disciplinary history. This would be valuable for policy development and planning if it did not increase costs to teachers significantly.

Initial teacher education (ITE)
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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?

As the Board evaluates applicants' qualifications, it is appropriate that the Board be involved in the accreditation of SA initial teacher programs. If other jurisdictions performed similar functions a system of mutual recognition could produce a desirable level of confidence and administrative efficiency.

It is appropriate that the Board charge a realistic fee to cover the costs of the ITE accreditation.

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?

The IEU has found that the degree of alleged unsatisfactory performance that would equate to reportable "unprofessional conduct" by an employer is not commonly understood. Teachers are sometimes put through unnecessary stress and self-reporting requirements for all future registrations (and most employment applications) because of employer over-reporting either through a surfeit of caution or less altruistic motives.

This leaves the teacher with the uncertainty as to whether they need to self-report or not.

As much as “incompetence”, “disgraceful” and “improper” have well-established precedents in case law, the nuances are not readily comprehended by school-based people either side of the industrial fence.

Good, workable clarity would be appreciated. If however the wordsmithing becomes too convoluted any benefit is lost in the unintended meanings or gaps.

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

The practical application of aspirational codes is that they too often become blunt, indiscriminate disciplinary tools where broad high-minded concepts are given narrow, particular and trivial expression – all to the teacher’s detriment.

With so many competing single-employer, multi-employer and system codes in existence (at least in the non-government sector) any more would become a hindrance to clarity rather than an assistance.

Provisions related to proceedings of the TRB

Although no specific question was put regarding inquiries and applications, the IEU has found the processes to be in accord with natural justice and procedural fairness. No changes are suggested.

The IEU would object strongly to any move to have SACAT take on the hearing of applications and inquiries. The TRB is funded by the profession, inclusive of the profession and we should allow the profession to judge the profession against the professional standards and understandings that these professionals bring to the task.

Appeals

The IEU has no particular preference for the external appeal body, as long as the initial judgements are made by the Board.

Information sharing and confidentiality
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29. Should the Act be amended to require the board to share particular information to strengthen children’s safety and improve teacher workforce mobility?

There are already significant recent changes in place regarding information sharing with respect to convictions, charges and general child protection.

The IEU is very concerned about the potential for untested information to be shared with (and by) employers without the knowledge of the person and without any rights to appeal or correct. There is already in place an inter-sectorial information sharing protocol whereby a secret “black list” is created by the employers in the three sectors.

Any information sharing must be transparent and open to correction and appeal if it involves deleterious personal information.

Conclusion

While we have no disagreement in principle with most of the consultation questions posed, it will not be until we see any actual proposals to amend the legislation that we will be able to express a particular view. We would expect to be further involved.

In essence, the IEU believes that the current structure and operation of the Teachers Registration Board is appropriate and effective. Professional teachers as nominated by their respective unions must be a majority of the board that sets, monitors and enforces professional standards.

A better comparison for involvement of the profession in a professional board would be to consider nurses, doctors and lawyers rather than other more recently established teacher registration boards which reflect a different political environment rather than a different professional environment.

The public does deserve to have confidence in the safety and professionalism of the education system, but by the same token it is the professionals who are best placed to understand and regulate the profession. After all, society has insisted they pay for it.

Glen Seidel, Secretary IEU(SA)

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