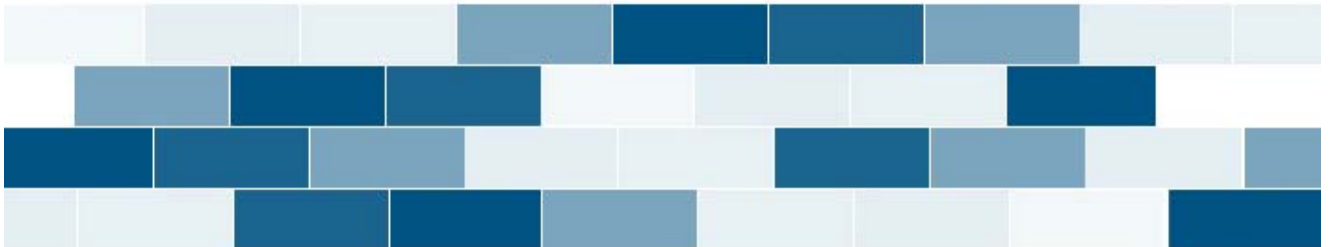




Review of the *Western Australian College of Teaching Act 2004*

Discussion Paper



Department of Education Services
February 2009

978-0-9806200-0-9

This work is copyright. You may download, display, print and reproduce this material in unaltered form only (retaining this notice) for your person, non-commercial use within your organisation. All other rights are reserved.

For copies of this report please contact:

Review of the Western Australian College of Teaching Act 2004
Department of Education Services
22 Hasler Road
OSBORNE PARK WA 6017

The discussion paper can also be accessed via the DES website at:

http://www.des.wa.gov.au/Legislative_Review/WACOT_Act.html

Table of Contents

| | |
|---|----|
| Introduction | 4 |
| 1 A brief history of teacher registration in Western Australia | 6 |
| 1.1 The 1970s | 6 |
| 1.2 Starting again – the 1990s..... | 6 |
| 1.3 The establishment of the College of Teaching..... | 9 |
| 2 Term of Reference 1: the effectiveness of the operations of the College | 11 |
| 3 Term of Reference 2: the need for the continuation of the functions, powers and activities of the College including consideration of their appropriateness relative to Government policies and priorities..... | 12 |
| 3.1 Functions of the College | 12 |
| 3.2 Basic regulatory functions – the raison d'être of the Act..... | 13 |
| 3.3 Ancillary regulatory functions..... | 13 |
| 3.4 Advocacy, research and other functions | 15 |
| 3.5 Powers of the College..... | 17 |
| 4 Term of Reference 3: the objects of the Act, in particular the question of recognising and promoting the profession..... | 19 |
| 5 Terms of Reference 4 & 5: the relationship of the College with the Minister, having regard to the Minister's accountability to Parliament and the appropriateness of the organisation's governance arrangements, having regard to similar legislative registration schemes for teachers and other professions | 22 |
| 5.1 The College's Board and committees | 22 |
| 5.2 Should the Board have a different composition? | 22 |
| 5.3 Should the Board be a different size? | 23 |
| 5.4 The role and influence of the Minister | 25 |
| 5.5 The appointment of the chairperson..... | 26 |
| 5.6 Examples of the Minister's relationship to a Board | 26 |
| 5.7 Summary of issues pertinent to terms of reference 4 and 5..... | 28 |
| 6 Term of Reference 6: the scheme of registration and information required to operate the scheme, including the criminal record checking provisions of the Act, having regard to relevant provisions in other legislation | 29 |
| 7 Term of Reference 7: disciplinary provisions and whether the State Administrative Tribunal (SAT) should have a role in relation to appeals from decisions of the College. | 33 |
| 8 Term of Reference 8: whether the College's resources are appropriate in light of its statutory functions | 36 |
| 9 Term of Reference 9: the appropriateness of the designation given by the Act to the College | 38 |
| 10 Term of Reference 10: other matters that arise in the course of the Review that are relevant to the operation and effectiveness of the Act | 40 |

Introduction

Section 90 of the *Western Australian College of Teaching Act 2004* obliges the responsible Minister to review the Act and table a report of the review in the Parliament. Section 90 reads as follows:

Review of Act

(1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 4 years from its commencement, and in the course of that review the Minister is to consider and have regard to —

- (a) the effectiveness of the operations of the College;
- (b) the need for the continuation of the functions of the College; and
- (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.

(2) The Minister is to prepare a report based on the review made under subsection (1) and as soon as is practicable after the preparation of the report, cause it to be laid before each House of Parliament.

Terms of Reference

Taking account of the provisions of section 90(1), the Minister for Education, Dr Constable, has set the following terms of reference for the review:

1. the effectiveness of the operations of the College;
2. the need for the continuation of the functions, powers and activities of the College including consideration of their appropriateness relative to Government policies and priorities;
3. the objects of the Act, in particular the question of recognising and promoting the profession;
4. the relationship of the College with the Minister, having regard to the Minister's accountability to Parliament;
5. the appropriateness of the organisation's governance arrangements, having regard to similar legislative registration schemes for teachers and other professions;
6. the scheme of registration and information required to operate the scheme, including the criminal record checking provisions of the Act, having regard to relevant provisions in other legislation;
7. disciplinary provisions and whether the State Administrative Tribunal (SAT) should have a role in relation to appeals from decisions of the College;
8. whether the College's resources are appropriate in light of its statutory functions;
9. the appropriateness of the designation given by the Act to the College; and
10. other matters that arise in the course of the Review that are relevant to the operation and effectiveness of the Act.

The College of Teaching is not being singled out for attention. Most Acts passed in WA since the 1980s have a similar requirement. The main difference between the various Acts is the specified length of time that is to expire before a review is to be carried out. After five years of operation is typical¹, although in some cases the period has only been two years.

The main reason for reviews of Acts is so Parliament can obtain feedback on the legislation it has passed: Is the legislation having the desired effect and if not, does it now need to be amended?

This is fundamentally what the review of the College of Teaching Act will be about. Any recommendations in the Minister's report to Parliament are most likely to relate to what, if anything, needs to be changed in the Act. Clearly, recommendations will need to be supported by reasoned arguments and these might include, but not be limited to, matters to do with the effectiveness of the operations of the College.

The review is being conducted by the Department of Education Services. Its main elements are:

1. the publication of this discussion paper coupled with a call for submissions from interested parties;
2. an examination of the legislation of comparable bodies in Australasia; and
3. a survey of a stratified random sample of registered teachers.

The deadline for submissions is 14 May 2009. The survey will be conducted over the period March-May 2009.

The Minister expects to receive a report of the review from the Department in mid-2009.

The purpose of this discussion paper is to elicit informed comment on any of the terms of reference from individuals, groups and organisations with an interest in the work of the College.

The Act stands as a large part² of the Parliament's current answer to the question of who should be permitted – and not permitted - to teach in Western Australian schools.

Historically, it is not the Parliament's first answer to the question – and may not be its last. For this reason, this discussion paper provides an overview of some pertinent aspects of history and it also considers the "answers" of Parliaments in other parts of Australia and New Zealand.

¹ The College of Teaching Bill when introduced to Parliament provided for a period of 5 years. The Opposition proposed that this be amended to 3 years, and the compromise of 4 was accepted by both sides.

² Another part of the "answer" is the *Working with Children (Criminal Record Checking) Act 2004*. Also relevant is mutual recognition legislation.

1 A brief history of teacher registration in Western Australia

1.1 The 1970s

Readers who were teaching in WA during the 1970s might remember that the State Parliament passed teacher registration legislation in the form of the *Teachers' Registration Act 1976*. Under that Act all teachers had to become registered by 1 February 1978. After that date unregistered teachers – and their employers - were to be subject to penalties (fines) under the Act.

Implementation of this Act got underway, but in October 1977 the operation of the legislation was suspended. At the same time the government appointed a three-person committee chaired by Dr W D Neal (then Chairman of the WA Post-secondary Education Commission) to consider the legislation.

Dr Neal's committee made several recommendations, including that the Act should be repealed. It found that the Act's mechanism for detecting, and either assisting or discharging, incompetent teachers was inadequate and that consideration needed to be given to assessing teacher competence. It also concluded, however, that the Act's object was still valid and worthwhile.

When the Minister for Education, Hon P V Jones, introduced a Bill to repeal the Act in August 1978 he told the Parliament that the Act was unworkable because of:

significant changes in educational administration since the Act was originally passed in 1976; unforeseen problems in relation to technical, part-time and preschool teachers; and an increasing awareness that many of the supposed objectives would not be fully satisfied within the legislation.³

Mr Jones said that he too accepted that the initial objective was still valid and “therefore we intend to wipe the slate clean and start again”.

The *Teachers' Registration Act Repeal Act 1978* was assented to on 26 September 1978. It repealed the *Teachers' Registration Act 1976* and ensured that all registration fees so far collected were refunded.

The “slate” was thus wiped clean. As to “starting again”, nothing further happened for nearly 20 years.

1.2 Starting again – the 1990s

On 11 March 1998, during debate on the School Education Bill, the member for Churchlands, Dr Elizabeth Constable, foreshadowed her intention to introduce a major amendment related to teacher registration. She noted that while at least 145 professions or occupations required people to be registered, teaching was not one of them.

³ Western Australia, *Parliamentary Debates*, Legislative Assembly, 3rd August, 1978 (P.V. Jones, Minister for Education).

On 23 June 1998, Dr Constable moved her foreshadowed amendment, which required the insertion in the School Education Bill of a new Part 7A with 31 clauses plus a schedule. It was a very big amendment.

Dr Constable gave three main reasons for introducing it:

1. to ensure that only fit and proper persons are registered to teach children - the protection of children being uppermost in the notion of teacher registration;
2. to ensure quality of teacher education; and
3. to formulate and maintain professional standards for teachers.

The aim was “to protect children from untrained and poorly trained teachers and from those who might be considered undesirable or inappropriate, or just plain bad”.⁴

The provisions of the amendment were to apply to all schools, government and non-government. There was to be a statutory body known as the Teacher Registration Board of Western Australia that would establish and maintain a register of teachers open to inspection by the public. The Board of 11 persons would represent major stakeholders and be chaired by a legal practitioner, the latter being “extremely important, given the nature of the board and some of its activities”.

The amendments allowed for provisional registration of persons without standard qualifications and finally, a small secretariat was envisaged to administer the system of registration.

The then Labor Opposition’s education spokesman, Hon Eric Ripper, supported the amendments, emphasising the role of registration to the status and morale of professions.

The then Minister for Education, Hon Colin Barnett, declined the amendment. He went on to say:

I am not opposed to the notion of teacher registration. I raised it at a national forum where I did not receive a lot of support. However, I do not discount it. It is not appropriate to include it in this Bill, certainly not in this format.

... If we were to progress the matter, we would start by initially commissioning a discussion paper to explore the issue, without any commitment, as a precursor before any further development of teacher registration in this State was progressed.⁵

⁴ Western Australia, *Parliamentary Debates*, Legislative Assembly, 23rd June 1998, 4466-4475 (Dr E. Constable, Member for Churchlands).

⁵ Western Australia, *Parliamentary Debates*, Legislative Assembly, 23rd June 1998, 4477 (C. Barnett, Minister for Education).

In due course, Mr Barnett established the Teacher Registration Cross-sectoral Reference Committee to oversee the development of a discussion paper. The committee first met on 27 November 1998 and concluded its deliberations in September 2000. During that time it prepared and published:

- Teacher Registration in Western Australia: An Issues Paper (March 1999)
- Teacher Registration in Western Australia: A Discussion Paper (June 1999)
- Western Australian Council of Teaching: A Position Paper (September 2000)

Respectively, these papers were written to: identify what issues would need to be addressed; prompt discussion and written submissions on these issues; and recommend a course of action to government.

The discussion paper was launched by the Minister at a forum on 24 August 1999 and around 20 000 copies were distributed to schools, parent organisations, and universities. The existence and availability of the paper was notified to the general public through advertisements in *The West Australian* at the beginning and near the end of the consultation period (August 1999 and March 2000).

The committee reported (in its position paper) that its analysis of the 348 submissions received by May 2000 showed that moves to establish a non-industrial registration body would be widely supported provided its functions were not restricted to the administration of a minimal licensing requirement.

The position paper had two principal recommendations: firstly, that Government announce its intention to establish through legislation a body known as the *Western Australian Council of Teaching*; and secondly, that a planning group be established to develop, and consult widely on, the details of the model to be implemented.

Meanwhile, between June and September 2000 the Labor Party in Opposition released *Teacher Registration and a College of Teaching* with an invitation to people to make comments which would “be taken into account in the development of Labor’s final policy”. The education policy that Labor took to the 2001 election included commitments to:

- support and facilitate the establishment of a College of Teaching, which will be self funded, independent of the Education Department and operate, at least initially, as a secretariat;
- introduce teacher registration as a prerequisite for teaching in WA – teachers will have to be registered with the College of Teaching;
- have the majority of the College’s Board made up of qualified teachers elected by their peers;
- require registered teachers to successfully complete a minimum number of hours of professional development every five years; and
- ensure the College of Teaching monitors the effectiveness of the professional development requirement.⁶

⁶ *Investing in our Teachers, investing in our future: Teacher Registration and a College of Teaching*, Printed and Authorised by A Carpenter. n.d.

1.3 The establishment of the College of Teaching

Following the election of the Gallop Labor government in February 2001 a project team was established to implement the election commitment. The two main tasks ahead were the preparation of drafting instructions for legislation to establish the College and the preparation of a business plan for the College's operations.

Cabinet approved the drafting of legislation on 29 April 2002. An Interim Board was formed in July 2002 to guide the work of the project team and provide "stakeholder input". This was chaired by Mr Brian Lindberg and had as members 10 teachers and 9 representatives of stakeholder organisations, all appointed by the Minister.

The Bill to establish the College was introduced in the Legislative Assembly on 13 August 2003 and passed there on 18 September 2003 with two amendments. The Bill went to the Legislative Council on 14 October 2003 and passed there on 13 May 2004 with 14 amendments, all of which were accepted by the Legislative Assembly on 1 June 2004. The most noteworthy of the Council's amendments was the insertion at clause 35(c) of the Bill of a prescribed police criminal record check.

The Bill was given assent by the Governor on 10 June 2004 and the Act formally commenced on 15 September 2004.

Thus it was that 26 years after the 1976 Act was repealed – and the "slate wiped clean" – that Western Australia "started again" to regulate the teaching profession.

In 1976 only two other Australian States had teacher registration: Queensland and South Australia. Now all States and Territories (except the Australian Capital Territory) have legislated bodies with functions similar to those of the WA College of Teaching. Aspects of the legislation in those other jurisdictions – and in New Zealand – are being considered for comparative purposes during the course of this review of the WA legislation.

Another piece of legislation of relevance to this review is Western Australia's *Working with Children (Criminal Record Checking) Act 2004* (the "Working with Children Act"). The Bill for this was introduced to the Parliament on 13 August 2004, a little over two months after the passage of the College of Teaching Bill. The relevance of the Working with Children Act resides in its introduction of a criminal record checking requirement in addition to the one already contained in the College of Teaching Act. The implications of this are outlined further in a subsequent section of this discussion paper.

Discussion Points – History of teacher registration in Western Australia

Comments are welcome on:

- the above brief account of the history of the College; and
- any other pertinent aspects of the College's history.

2 Term of Reference 1: the effectiveness of the operations of the College

For the purposes of this review and taking the Macquarie Dictionary definition of “effective”, the general matter to be considered under this term of reference is whether the operations of the College of Teaching have served to give effect to the purpose of the Act, thereby producing the results intended by Parliament when the legislation was passed.

Put another way, how well and appropriately has the Board of the College carried out its functions and exercised its powers under the Act?

It would be premature for the review to be at this stage making judgements and drawing conclusions on this term of reference. In fact, one of the main reasons for circulating this discussion paper is to encourage submissions on this matter from individuals and organisations who have first-hand experience of the operations of the College. The arguments advanced in submissions will have a strong bearing on the judgments that are made at the conclusion of the review.

Submissions on this term of reference need to take cognisance of exactly what are the functions and powers of the College and subsequent sections of this discussion paper should prove helpful in that regard.

The review is as interested in claims of ineffectiveness as it is in claims of effectiveness. In each case it will be submissions based on informed comment that will carry weight in the judgements and conclusions submitted to the Minister.

Generally speaking, there are likely to be two possible reasons for operational ineffectiveness: shortcomings in the design of the Act itself or shortcomings in the arrangements for the implementation of the Act’s provisions. It would be helpful if submissions were as clear as possible in relation to this distinction.

Discussion Point - The effectiveness of the operations of the College

Comments are welcome on your experience as an individual, group or organisation of the effectiveness of the operations of the College and the extent to which any change for which you see a need relates to a need to amend provisions of the legislation.

Note: it may be the case that your comments on this term of reference are best drafted after you have considered all the other terms of reference.

3 Term of Reference 2: the need for the continuation of the functions, powers and activities of the College including consideration of their appropriateness relative to Government policies and priorities

3.1 Functions of the College

Section 90(1)(b) of the Act's review provisions specifically requires consideration of "the need for the continuation of the functions of the College". The College's 10 functions are at section 16 of the Act:

16. Functions

The functions of the College are:

- (a) to enhance the status of the teaching profession by facilitating the professional growth and development of teachers throughout their careers;
- (b) to establish and promote professional standards and values relating to teaching in schools;
- (c) to provide and foster professional leadership within the teaching profession;
- (d) to identify areas of priority for research in relation to teaching and education in schools and the education of teachers and, where appropriate, to promote, subsidise or conduct such research;
- (e) to confer and collaborate with persons who employ or engage teachers, teacher education institutions, the teaching profession, teacher organisations and the general community in relation to standards of courses of teacher education acceptable for the purpose of teacher registration and to provide advice on this to the Minister;
- (f) to promote and encourage —
 - (i) the continuing education of teachers in the practice of teaching; and
 - (ii) increased levels of skill, knowledge and competence in the practice of teaching;
- (g) to encourage and facilitate diversity, flexibility and responsiveness in the education of teachers;
- (h) to advise the Minister on matters to which this Act relates;
- (i) to administer the scheme of registration under Part 4; and
- (j) to perform —
 - (i) the disciplinary and other functions that are conferred on the College by this Act; and
 - (ii) any functions conferred on the College by any other Act.

In essence, the Act's functions form a list of activities the College may undertake in pursuit of the Act's overall objective. In considering the continuation of each one a number of questions are pertinent. Is the function:

- One that requires an Act of Parliament for its operation?
- Clearly related to the Act's object? (see discussion under Term of Reference 3 below)
- Elaborated in greater detail elsewhere in the Act?
- Similar to a function in Acts in other jurisdictions?

With these considerations in mind, the comments below on the College's functions are not listed in the same order as they are listed in the Act. Instead, they have been organised under three sub-headings: Basic Regulatory Functions; Ancillary Regulatory Functions; and Advocacy, Research and Other Functions.

3.2 Basic regulatory functions – the raison d'être of the Act

The College's basic regulatory functions – the registration and disciplinary functions - are in section 16(i) and section 16(j)(i). They have a clear connection to the Act's stated objective. They require an Act of Parliament for their operation, primarily because they are linked to offence provisions elsewhere in the Act. Each of these two functions is elaborated extensively in subsequent sections of Act: the registration function in sections 30–48 as is the disciplinary function in sections 60–80.

These two functions are replicated in the Acts of all other teacher registration bodies in Australasia. While the wording and subsequent elaboration varies from Act to Act, it is the registration and disciplinary functions that form the backbone of each Act.

If these functions were discontinued there would no longer be a need for the Act.

3.3 Ancillary regulatory functions

The activities inherent in the following functions well and truly pre-date the advent of the College of Teaching legislation. The issuing of statements of professional standards, the setting of requirements for professional development, and conversing with universities about standards for teacher education courses are activities that employers of teachers have engaged in over many years to varying effect. Such activities do not *per se* require an Act of Parliament to be carried out. They do however, take on a different complexion when they are linked in legislation to a person's capacity to obtain - and then retain – the registration required to work as a teacher in a school.

The function at section 16(b) – “to establish and promote professional standards and values relating to teaching in schools” – is one that closely accompanies the two basic regulatory functions. Professional standards established by the College underpin College decisions on who may be registered or given permission to teach and its determinations of “unprofessional conduct” (see for example, sections 63(1)(b) and (c)). The Acts of all other jurisdictions include a similar provision (see for example, section 235 of the *Education (Queensland College of Teachers) Act 2005*, which is quite extensive).

The function at section 16(f), which relates to ongoing professional development, is also closely related to the two basic regulatory functions. Under section 41(3)(c) of the Act, renewal of registration or provisional registration is conditional on the person meeting “any prescribed further professional education or development requirements”. Under section 56(1)(ii) membership of the College may be cancelled if the person has not complied with such requirements. The Acts of New Zealand, New South Wales, Queensland, Tasmania and Victoria all contain a similar provision.

All the Acts in other Australasian jurisdictions have provisions related to teacher education. In the WA Act the function at section 16(e) is “to confer and collaborate with persons who employ or engage teachers, teacher education institutions, the teaching profession, teacher organisations and the general community in relation to standards of courses of teacher education acceptable for the purpose of teacher registration and to provide advice on this to the Minister”. A related function is at section 16(g) which provides for the College “to encourage and facilitate diversity, flexibility and responsiveness in the education of teachers”. Both these functions have some bearing on the basic regulatory functions in as much as elsewhere in the Act (sections 33 and 35) it is specified that the first requirement for provisional and full registration is that the applicant “holds a qualification in teaching approved by the College for registration”.

Section 16(e) provides for the College to give advice to the Minister on acceptable standards for teacher education courses. The question is: What is the Minister to do with such advice? Most teacher education is carried out by universities, which are self-accrediting institutions and not, under their Acts of establishment, subject to direction from the Minister.⁷ A small amount of teacher education is conducted by authorised non self-accrediting institutions (NSAIs). In Western Australia NSAIs have to be authorised – and their courses accredited – by the Minister under the *Higher Education Act 2004*. Advice provided by the College under section 16(e) could be heeded by the Minister provided it is available when applications from NSAIs for authorisation and accreditation to deliver teacher education are being considered.

The two activities at 16(e) – “confer, collaborate and advise”- and (g) – “encourage and facilitate” - clearly contemplate the College exercising some role in the preparation of teachers by Western Australian institutions.

Sections 33 and 35 both confer a wide discretion on the College: the discretion either to approve – or not approve - a qualification held by an applicant for registration.

As to how this discretion is being exercised, the College’s teacher education policy⁸ states among other things that:

College approval means that a course has met a broad range of criteria. Graduates from these courses will, among other prerequisites specified by the College criteria, have specified periods of supervised classroom experience; meet set literacy and numeracy standards; and have acquired content knowledge relevant to their curriculum and stage of school specialisation.

⁷ Put bluntly, a university is under no obligation to heed advice from a State Minister on courses.

⁸ <http://www.wacot.wa.edu.au/index.php?section=67>

Operationally, the College has a “Preservice Accreditation Committee”⁹ whose stated purposes are to ensure:

that preservice teacher education programs enable graduates to meet the Western Australian Professional Standards for Teaching. Its roles are to:

- make recommendations to the Board on the approval of preservice teacher education programs;
- confer and collaborate with stakeholders on accreditation policies and procedures;
- work in partnership with tertiary institutions in establishing an accreditation framework;
- ensure linkage between the accreditation framework and the College's professional learning framework;
- consider consistency between the accreditation framework and the Australasian Forum of Teacher Registration and Accredited Authorities Framework for the National Recognition of Approved Preservice Teacher Education Programs;
- develop policy advice on the approval of teacher education programs; and
- ensure consistency and reliability in the process for the approval of preservice teacher education programs.

These stated purposes may be taken to mean that the College is involving itself in the accreditation of programs, as distinct from approving qualifications that have already been awarded by universities or other institutions following the completion of programs that were legitimately accredited under their Acts of establishment (in the case of universities) or another Act (in the case of NSAs).

The above notwithstanding, state-based registration bodies which have a power to accredit programs are not, under their Acts, in a position to accredit programs outside their own jurisdictions in Australasia or overseas. They need a separate process for deciding whether or not to accept qualifications from other jurisdictions. In Australasia a certain amount of such decision making is handled through mutual recognition arrangements when the applicants are already registered in the jurisdiction of origin.

3.4 Advocacy, research and other functions

The remainder of the functions of the WA Act have no direct bearing on the two basic regulatory functions.

The function at section 16(a) is the only function to be framed as a cause-effect relationship. The cause (facilitating the professional growth and development of teachers throughout their careers) is to give rise to the effect of enhancing the status of the teaching profession. It's no secret that many people – not only teachers - are concerned over the comparatively poor perception of the status of teaching as a profession. Public discussion raises many reasons as to why this is so and what needs to be done about it. Retention of the function at section 16(a) will depend, at least in part, on people's perception of the validity of the cause-effect relation that it embodies.

The function at section 16(c) is “to provide and foster professional leadership within the teaching profession”, which links back to that part of the Act's object which refers to

⁹ <http://www.wacot.wa.edu.au/index.php?section=18#7>

recognising and promoting the teaching profession. It is seen by teachers as an “advocacy” function, meaning that they expect the College to take a stand on issues. Some public comments by teachers suggest that the College has let them down on important issues such as OBE and negotiations related to salary and conditions. The College itself feels that (a) industrial matters are out of bounds¹⁰ – the College is a compulsory registration body, not a union- and (b), because there is no unanimity among members on issues like OBE it cannot speak on behalf of all members and therefore should reserve its position. Arguments for the retention of this function will turn on a satisfactory resolution of these issues and concerns and possibly, an amendment to the Act’s objects.

The function at section 16(d) is “to identify areas of priority for research in relation to teaching and education in schools and the education of teachers and, where appropriate, to promote, subsidise or conduct such research”. For teacher registration bodies in other jurisdictions, research is not listed as a function in the South Australian and New South Wales Acts. Where research is included as a function, there are differences in the general nature and possible focus of the research contemplated by each Act’s functions. In Victoria the function is “to undertake and promote research about teaching and learning practices”. In Queensland it is “undertaking or supporting reviews and research relevant to the regulation of the teaching profession, including reviews and research commissioned and funded by the Minister”. In Tasmania it is simply “to undertake relevant reviews and research projects” and in the Northern Territory it is “to research and promote best practice in teaching in the Territory”. In New Zealand it is “to identify research priorities and, where appropriate, to promote and sponsor research according to those priorities”. The general nature of the activities includes undertaking or conducting research, supporting it, promoting it, sponsoring it, subsidising it and identifying priorities for it.

As to the contemplated foci, the research functions in the Tasmanian and New Zealand Acts are open ended, whereas those of the Victorian, Northern Territory, Queensland and Western Australian Acts contain some specification. These range from “best practice in teaching” in the jurisdiction (NT), “teaching and learning practices” (Vic), “regulation of the teaching profession” (Qld) and “teaching and education in schools and the education of teachers” (WA). The WA College’s research function also needs to be read in conjunction with the College’s powers listed in section 17 – in particular the power at section 17(3)(b), which says in effect that for the purpose of performing *any* of its functions the College may “conduct research and produce and publish information”. This particular power, read in conjunction with the College’s functions, considerably expands the College’s potential research activities. None of the other relevant Acts includes research in the registration body’s powers (as distinct from functions).

¹⁰ In fact, section 7(5) of the NSW Act expressly rules out industrial matters: “The functions of the Institute do not extend to industrial matters concerning teachers (such as the salaries of teachers or their conditions of employment).”

The function at section 16(h) is “to advise the Minister on matters to which this Act relates”. This is an open-ended statement that mirrors an earlier section of the Act -- section 14 – which provides that the Minister may give advice to the College. In effect, the Act contemplates two-way provision of advice between the College and the Minister with neither party bound to accept the advice of the other.

The function at section 16(j)(ii) is “to perform any functions conferred on the College by any other Act”. Probably the most relevant “other Act” is the *Mutual Recognition (Western Australia) Act 2001*, section 17(1) of which is as follows:

17 Entitlement to carry on occupation

- (1) The mutual recognition principle is that, subject to this Part, a person who is registered in the first State for an occupation is, by this Act, entitled after notifying the local registration authority of the second State for the equivalent occupation:
- (a) to be registered in the second State for the equivalent occupation; and
 - (b) pending such registration, to carry on the equivalent occupation in the second State.

Also relevant is the *Trans-Tasman Mutual Recognition (Western Australia) Act 2007* which enables mutual recognition of teachers registered with the Western Australian College of Teaching and the New Zealand Teachers Council.

3.5 Powers of the College

The powers of the College are set out in section 17 of the Act.

17 Powers

- (1) The College may do all things that are necessary or convenient to be done for, or in connection with, its functions.
- (2) The College may not acquire, hold or dispose of real property other than premises used, or to be used, by it as office premises.
- (3) Without limiting subsection (1), the College may, for the purpose of performing a function:
- (a) conduct courses for the professional education and development of teachers;
 - (b) conduct research and produce and publish information; and
 - (c) develop and turn to account any technology, software or other intellectual property that relates to the function, and, for that purpose, apply for, hold, exploit and dispose of any patent, patent rights, copyright or similar rights.

Section 17(1) is a standard provision in the legislation of statutory bodies such as the College and does not give the Board a power to “do as it likes”. It is, generally speaking, a power that would only be invoked in exceptional circumstances and after advice were taken.

Sections 17(2) and 17(3)(b) and (c) are typically included in the powers of statutory bodies generally.

The power at 17(3)(a) is worthy of closer consideration to the extent that it creates the possibility of conflict of interest. This is because, as mentioned in a previous section, renewal of registration is conditional upon the meeting of ongoing professional development requirements prescribed under section 41(3)(c) of the Act. As things stand, the College is in a position not only to set the requirements, but also to then conduct the courses – perhaps on a commercial basis – that enable teachers to satisfy the requirements.

Discussion Points - The need for the continuation of the functions, powers and activities of the College including consideration of their appropriateness relative to Government policies and priorities

Comments are welcome on:

- the retention or otherwise of the Act's functions as they are currently stated;
- the re-ordering of the Act's functions along the lines suggested in this discussion paper;
- the College's effectiveness in carrying out any or all of its functions;
- the need to reword any of the current functions;
- the nature of the relationship of the College with teacher education institutions locally, interstate and overseas;
- the scope of the College's function and power in relation to research; and
- the effect of other legislation.

4 Term of Reference 3: the objects of the Act, in particular the question of recognising and promoting the profession

An Act's "object" or "objects" is a succinct statement at or near the beginning of the Act which sums up the overall purpose of the legislation. It is, if you like, an "advance organiser" for readers before they dive into the Act's detailed provisions.

The statement of object/s assists in communicating the intended spirit and scope of the Act and may be used for the purpose of interpreting the Act as a whole. In drafting an object, vagueness and looseness of expression are avoided so far as is compatible with the need to generalise.

In some Western Australian Acts the objects are listed under their own heading as in, for example, the four objects listed in section 4 of the *Curriculum Council Act 1997*. In other cases, including the *College of Teaching Act*, the object is incorporated in the long title of the Act.

The long title of the *College of Teaching Act* tells us that it is an Act to establish the College and set the College's membership rules and "to recognise, promote and regulate the teaching profession in Western Australia".

In examining the express objects of other teacher registration legislation in Australia and New Zealand, there are three main observations that may be made.

First, some of the Acts have stated objects for teacher registration, while others do not. The Victorian and Tasmanian Acts do not express objects, but they may be inferred from their functions and powers. In relation to other jurisdictions:

- The objects of the *Education (Queensland College of Teachers) Act 2005* are:
 - to uphold the standards of the teaching profession; and
 - to maintain public confidence in the teaching profession; and
 - to protect the public by ensuring education in schools is provided in a professional and competent way by approved teachers.
- The *Institute of Teachers Act 2004* (NSW) is an Act "to make provision for professional teaching standards and the accreditation of school teachers in relation to those standards".
- The object of the *Teachers Registration and Standards Act 2004* (SA) 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".
- The objective of the *Teacher Registration (Northern Territory) Act 2007* is "to ensure that only persons who are fit and proper, and who are appropriately qualified, are employed as teachers in the Territory...The objective is to be achieved by establishing a Teacher Registration Board to register persons as teachers and to facilitate the continuing competence of teachers in the Territory".

The second observation is that while some of the Acts refer to the public interest, others do not. Queensland's refers to public confidence and protecting the public and South Australia's refers to safeguarding the public interest as the reason for having a teacher registration system. The Acts of New South Wales, the Northern Territory and Western Australian Acts do not refer to public interest considerations.

The third observation is that there is a further point of difference concerning whether, in addition to the regulation of teachers, the Act's object extends to the recognition and promotion of the profession.

Legislation in South Australia, Tasmania, Queensland and Victoria includes reference to the "promotion of the profession" either as an object or as a function. The Northern Territory's Act has the narrower function, "to promote best practice in teaching".

The New South Wales and New Zealand legislation does not include "promotion" either in objects or functions.

As to the WA legislation, the then Minister, Hon Alan Carpenter, said when introducing the Bill to the Parliament in 2003 that: "The main emphasis in the Western Australian College of Teaching Bill 2003 is on its advocacy role on behalf of all teachers and the teaching profession".¹¹

Victoria's legislation is of particular interest because it has recently been reviewed. Under Victoria's *Education and Training Reform Act 2006* (as currently framed), the Victorian Institute of Teaching's (VIT) first function is very similar to the WA College's object: "recognise and promote the profession of teaching and regulate members of the teaching profession". Three recommendations of the Victorian review are:

- That "regulation" and "promotion" be separated in the Act into two distinct functions. Promotion be defined and limited to the promotion of the role and activities of the Institute.
- That VIT no longer have a role to advocate on behalf of the profession. This function should be performed by other organisations.
- That VIT promote its revised core roles, responsibilities and activities and continue to communicate regularly with registered teachers about matters of mutual interest which relate to its objectives and functions but discontinue its broader promotion of the profession.¹²

The review goes on to further recommend that the objective of the Institute should be: "to effectively regulate the teaching profession in Victoria and maintain professional standards to ensure the quality of teaching and thereby contribute to public confidence in the profession".

¹¹ Western Australia, *Parliamentary Debates*, Legislative Assembly, 13th August 2003, 9858 (A. Carpenter, Minister for Education)

¹² FJ and JM King and Associates, March 2008, *Review of the Victorian Institute of Teaching*, Victorian Department of Education and Early Childhood Services. p.171.

Discussion Points - The object of the Act, in particular the question recognising and promoting the profession

Comments are welcome on:

- whether the objects of the College of Teaching Act should be retained as currently stated;
- whether recognition and promotion of the profession ought to be retained as part of the Act's objects; and
- whether there should be reference in the Act's object to:
 - setting and upholding standards;
 - maintaining public confidence;
 - safeguarding the public interest;
 - protecting children;
 - ensuring teachers are competent;
 - ensuring teachers are fit and proper persons; or
 - promoting best practice in teaching?

5 Terms of Reference 4 & 5: the relationship of the College with the Minister, having regard to the Minister’s accountability to Parliament and the appropriateness of the organisation’s governance arrangements, having regard to similar legislative registration schemes for teachers and other professions

5.1 The College’s Board and committees

The College is governed by a 19-member board of management.

Under section 9(1) nine of these members are appointed by the Minister, each for a term of office of up to three years, on the nominations of 8 stakeholder organisations: one each from the Department of Education and Training, the Catholic Education Commission, the Association of Independent Schools, the Independent Education Union, the State School Teachers’ Union, the WA Council of State School Organisations, and the Parents and Friends’ Federation of WA, and two from WA’s five universities.

The remaining 10 members of the Board are elected under section 9(2) of the Act. They must all be registered, practising classroom teachers: seven from government schools, two from Catholic schools and one from independent schools. The “electorate” in each case is registered, practising classroom teachers from the respective school system or sector. The term of office for an elected member is normally three years after the occurrence of the vacancy (Schedule 1 of the Act sets out details for the filling of casual vacancies among the elected members).

The chairperson and deputy chairperson of the Board are elected from the 19 members of the Board, by the Board members.

Under section 13 the College may establish committees to assist it in the carrying out of its functions. Membership of committees is not restricted to Board members; they may include any other persons the Board sees fit. The current committees of the College are as follows:

- Registration and membership committee
- Professional practice and conduct committee
- Finance and administration committee
- Consultation and communication committee
- Professional learning and standards committee
- Pre-service accreditation committee

5.2 Should the Board have a different composition?

The question of the composition of the Board turns on two main issues:

- What categories ought there to be among those elected? At the moment elected members are in three categories: teachers from government schools, Catholic schools, and independent schools.
- What categories ought there to be among those appointed? At the moment there are 8 categories corresponding to the stakeholder groups mentioned above.

The composition of comparable bodies elsewhere in Australasia is similar to that of the College Board, with some interesting differences:

- The New South Wales Quality Teaching Council includes a person who, in the opinion of the Minister, represents the interests of school-age children.
- The Council of the Victorian Institute of Teaching includes two elected principals (one from a Government School and one from a non-Government school, each elected by registered teachers) and two principals nominated by the Minister (one from a school under the Catholic Education Commission and one that is not).
- The Queensland College of Teachers includes a Ministerial nominee who must represent the interests of the community generally in the conduct and practice of the teaching profession and is not a practising teacher.
- The South Australian Teachers Registration Board includes a person nominated by the person holding or acting in the office of Director of Children's Services, a parent of a school student nominated by the Minister to represent the community interest and a legal practitioner nominated by the Minister.
- The Teacher Registration Board of the Northern Territory includes two teachers nominated by the Northern Territory Branch of the Australian Education Union (of whom one is to be based at a remote school) and one Indigenous teacher, at a government school, nominated by the Chief Executive.
- The New Zealand Teachers Council includes 4 elected members: one teacher each from the early childhood sector, the primary sector, the secondary sector and a principal.

From a comparative perspective, this raises the issue of whether any of the following ought to be specifically provided for on the Board of the WA College:

- school principals;
- indigenous persons/teachers;
- persons/teachers from rural and remote areas;
- other members of the community;
- legal practitioners;
- the early childhood sector, the primary sector and the secondary sector; and
- the Department of Child Protection (the Western Australian equivalent of South Australia's Children's Services agency).

5.3 Should the Board be a different size?

There does not seem to be a definitive view in the Australasian registration Acts on the size of governing bodies (see Table 1). In the literature on management generally, some argue that a small board allows for more vigorous, free-flowing and effective debate than can occur in a larger body. Others argue that a larger body allows for a broader range of views to be heard and point to examples of successful organisations which have large governing bodies.

Table 1 summarises the sizes of the governing bodies comparable to the WA College and the balance of elected to non-elected members of the governing bodies.

The addition of any new category of appointed member to the College Board would increase its overall size by two if elected members are to remain in the majority. For example, if three new categories of appointed member were added, the size of the Board would increase from 19 to 25, unless, of course, three existing categories of appointment were dropped at the same time.

Table 1: Sizes of governing bodies and numbers elected

| | Number of members | Number Elected |
|-----|--|--|
| NSW | 21 members on the Quality Teaching Council and 5 members on the overall board of governance. | Board of Governance – 0 Quality Teaching Council - 10 |
| VIC | Not more than 20 members | 10 |
| QLD | 17 members | 3 |
| WA | 19 members | 10 |
| SA | 16 members | 0 |
| TAS | 10 members | 0 |
| NT | 12 members | 0 |
| NZ | 11 members | 4 |

If it is considered advantageous to reduce the size of the College Board, there are several ways this could be achieved:

- by reducing the number of stakeholder nominations (this could be done by having only one nomination from “like-minded” groups; for example by having only one instead of two union representatives, one instead of two from the universities, one instead of two from the parent organisations); or
- by reducing the number of elected teachers.

Another way of reducing the number of appointed members would be to change the basis for appointment from being representative of stakeholders to that of expertise and experience in relation to the Board’s functions. For example, the Board could be composed of 6 elected teachers and 5 people appointed for their experience and expertise by the Minister. This approach could also serve to limit the possibility of conflicts of interest arising between a member’s allegiance to a nominating body and the member’s duty to serve the interests of the College.

5.4 The role and influence of the Minister

As an Act in force, the College of Teaching Act is assigned to the Minister for Education. This means that any issues raised in the Parliament – or by the media - are directed to that Minister. For example, the Minister is obliged to provide answers to Parliamentary questions with or without notice. To this extent the Minister is accountable to the Parliament and the broader public interest for the actions of the College.

At the same time, however, the College operates at arms length from the Minister. The Minister does not appoint the chairperson of the Board and has no discretion in relation to the appointment of the non-elected members of the Board. The Act does not contemplate the Minister declining to appoint the nominations received from the named bodies. The Minister has some discretion in the filling of casual vacancies among elected members when the vacancy is for less than one year (longer vacancies are filled through by-elections).

Unlike other statutory bodies (e.g. the Curriculum Council), the Minister has no power to direct the governing body of the College. The Minister may only give (under section 14) “advice” to the College and while the College is “to give due regard” to such advice, it is not bound to accept it.

Other Western Australian Acts regulating occupations and professions generally give the Minister a power to direct. The Acts regulating nurses and midwives, builders, occupational therapists, physiotherapists and psychologists are five such examples. The typical scheme for this purpose is that the Minister may direct the Board in writing with respect to the performance of its functions except in relation to a particular person, a particular qualification, or a particular application, complaint or proceeding. In all relevant Acts, the text of any ministerial direction must be included in the agency’s annual report and in some cases the Act requires that it also be laid before each House of Parliament within a specified period (typically 14 days).

The relationship between the Minister and the Board of the College can be viewed from two perspectives.

From the Board’s perspective, it is the Board that makes judgements about professional standards and the necessary qualifications and experience for registration. If the Minister has influence in such matters, the Board’s objectivity might be compromised.

From the Minister’s perspective, there may be times when the meeting of other portfolio responsibilities in the public interest might be compromised by the Board’s decisions. For example, the School Education Act prescribes 12 years of compulsory education, including the provision of a wide choice of options in education, employment and training in years 11 and 12. The Minister has a legitimate stake in ensuring that the quality of teaching during these years, regardless of the sector, is in the public interest. The Minister therefore has a consequential interest in the

competence and efficiency of the College and in any College decisions that impede the State's obligations in respect to the provision of compulsory education.

The issue is how to balance these wider perspectives. The factors to consider include:

- whether the Board should have more elected members than members appointed by the Minister or Governor;
- whether the chairperson of the Board is appointed or elected; and
- whether the Minister has a power to direct the Board.

Table 2 summarises the position for Australasian teacher registration bodies, including the College.

Table 2: Governance of Teacher Registration Bodies

| | NSW | VIC | QLD | WA | SA | TAS | NT | NZ |
|--|-----|-------|-----|----|-----|-----|-----|-----|
| Board has more appointed members than elected members? | Yes | 50:50 | Yes | No | Yes | Yes | Yes | Yes |
| Minister appoints the Board's chairperson? | Yes | Yes | Yes | No | Yes | Yes | No | Yes |
| Minister has a power to direct the Board? | Yes | No | Yes | No | Yes | Yes | No | Yes |

5.5 The appointment of the chairperson

The chairperson plays important roles in ensuring good governance in accord with the functions and powers of the Board and in being the official spokesperson for the organisation to the public and the Minister.

In New South Wales, Victoria, Queensland, South Australia, Tasmania and New Zealand, the chairperson is nominated or appointed by the Minister. That is, Western Australia and the Northern Territory are exceptions in this regard - chairpersons are elected by board members in these two jurisdictions.

5.6 Examples of the Minister's relationship to a Board

In two jurisdictions (Victoria and the Northern Territory) the Minister is explicitly charged with the approval of certain settings with respect to teacher registration. The Victorian Institute of Teaching recommends, "for the approval of the Minister, qualifications, criteria and standards for the registration and renewal of registration of teachers in schools in Victoria". The Northern Territory's Registration Board makes "recommendations to the Minister in relation to the minimum qualifications and other requirements for registration".

In Queensland, South Australia, New Zealand and New South Wales¹³ the Boards are subject to Ministerial direction within certain limits.

Under section 272 of Queensland's Act the Minister may give the College there a written direction about a matter relevant to its functions if the Minister is satisfied it is necessary to give the direction in the public interest. However, under section 272(3), the direction cannot be about:

- a decision to grant, or refuse to grant, an application for:
- registration or permission to teach; or
- the renewal or restoration of full registration; or
- the renewal of permission to teach;
- a decision to approve or not approve a pre-service teacher education program;
- a disciplinary order made or to be made by a disciplinary committee;
- a decision about whether to take or continue proceedings for an offence (against the Act); or
- a review decision made or to be made by the college.

Similarly, under section 8(1) of South Australia's Act, the Minister may give directions to the Registration Board when it appears to the Minister to be necessary in the public interest. However, under section 8(2), the Minister may not give a direction that relates to: (i) a particular person; or (ii) a particular application or inquiry; or (iii) the performance by the Teachers Registration Board of its function of determining qualifications or experience for registration. The Minister must consult with the Teachers Registration Board before giving it a direction; and must cause a copy of the direction to be laid before each House of Parliament (within 3 sitting days after giving it).

The relevant Minister does not have a power to direct in Victoria and Western Australia. However, in both these States, the Board (in WA) and the Institute (in Victoria) must give "due regard" to any advice given by their respective Ministers in relation to the exercise of their powers and the performance of their functions (section 14 of the WA Act).

Under section 15 of the WA Act, the Minister is also entitled to information in the possession of the College. However, this power is limited in that, under section 15(4), the Minister is not entitled to information in a form that discloses the identity of a person involved in a particular application, complaint, proceeding or inquiry; or might enable the identity of any such person to be ascertained (unless that person has consented to the disclosure).

¹³ Under section 8 of the NSW Act "the Institute is subject to the direction and control of the Minister (except in relation to the preparation and content of any report or recommendation made by the Institute to the Minister).

5.7 Summary of issues pertinent to terms of reference 4 and 5

The following points of comparison emerge from an examination of the legislation for teacher registration bodies in Australia and New Zealand:

- The same five main groups that are represented on other teacher registration bodies (that is, employers, teacher educators, union representatives, parent representatives and teachers themselves) are also represented on the WACOT Board.
- Some stakeholders represented in other jurisdictions are not directly represented on the WA College Board.
- The WA College Board is the third largest of the governing bodies (behind those of New South Wales and Victoria).
- Unlike other jurisdictions, the WA College Board has more elected members than appointed members.
- Unlike in other jurisdictions, in Western Australia and the Northern Territory the relevant Minister does not nominate or appoint the Board chairperson.
- Unlike in other jurisdictions, in Western Australia and Victoria the relevant Minister does not have the power to direct the Board (even within certain limits).

Discussion Points – College governance and the College’s relationship with the Minister

Comments are welcome on any specific changes you would like to see made to the Act's provisions in relation to:

- the College’s Board and Committees;
- the composition of the Board;
- the size of the Board;
- the role and influence of the Minister; and
- the appointment of the chairperson of the Board.

6 Term of Reference 6: the scheme of registration and information required to operate the scheme, including the criminal record checking provisions of the Act, having regard to relevant provisions in other legislation

Virtually everybody with an interest in this review will have had some direct experience of matters pertinent to this term of reference and hence be well placed to make a comment.

The scheme of registration in the College of Teaching Act is typical of registration schemes the world over. The foundation of these schemes is to make it unlawful to practise the regulated occupation or profession unless the person has the requisite “license” or registration. And conversely, to make it unlawful to employ a person who is not licensed or registered.

For the College of Teaching this foundation is laid in sections 30 and 31 of the Act, which deal respectively with “persons who may teach in schools” and “persons who may be employed, engaged or given permission to teach in schools”. A breach of either provision incurs a penalty of \$5 000 for a first offence and \$10 000 for second and subsequent offences.

Under a provision of section 3 of the Act:

teaching means undertaking duties in a school that include —

- (a) the delivery of an educational programme designed to implement the curriculum framework approved under the *Curriculum Council Act 1997* and the assessment of student participation in such an educational programme; or
- (b) the administration of any such educational programme, but does not include duties of the kind undertaken by —
- (c) a teacher’s aide, a teacher’s assistant or a student teacher; or
- (d) an unpaid volunteer, unless the volunteer is undertaking duties in a school of a kind, or to an extent, prescribed by the regulations for the purposes of this paragraph

Under another provision of section 3, “school” has the same meaning as that word has in the *School Education Act 1999*: “a government or a non-government school”.¹⁴

The superstructure that is constructed on the foundations of registration schemes relates to the requirements a person must meet to obtain registration and typically has two components: “capability” and “character”.

Capability is related to a person’s qualifications and in the College of Teaching Act this is basically covered off by a qualification in teaching approved by the Board and proficiency in the English language.

Character relates to a person’s behaviour. For the College of Teaching the basic requirement is that the person “has not been convicted of an offence the nature of which renders the person unfit to be a teacher”, the basic test of which is a criminal record check.

¹⁴ Taken together, these sections of the College Act and the *School Education Act 1997* can mean that a TAFE lecturer delivering a VET in schools course at a TAFE College would not be subject to the requirements of the College Act. However, if the delivery takes place at a school, the lecturer would be subject to the Act. Note that in both situations, the lecturer would be subject to the requirements of the *Working with Children Act 2004* (*Criminal Record Checking*).

Like teacher registration schemes generally, the Act's foundation provisions at sections 30 and 31 are satisfied by two categories of registration – provisional and full – and a third category, called “limited authority to teach”. There is also a fourth category – associate membership of the College – but such membership does not meet the requirements of sections 30 and 31 (that is, an associate member is not “licensed” to teach in a school).

Applicants for provisional and full registration must meet the same basic capability and character requirements mentioned above. The essential difference between the categories is the amount of recent teaching experience: you cannot obtain full registration unless you have had at least one year's teaching experience (not necessarily full-time) within the past five. Applicants for full registration must also satisfy the College that they have not breached any of the College's approved standards of professional practice.

A provisionally registered teacher is typically a recent graduate, but the category also includes people who are returning to teaching after quite a long break.

Provisional registration is granted for three years and is renewable, but normally after the first three years the person would make the transition to full registration provided he or she has satisfied any College professional development requirements.

Full registration is for a period of five years and is renewable provided the applicant has met the College's professional development requirements and undergone a further criminal record check.

A limited authority to teach may be granted to a person with specialist skills (e.g. an ability to teach music) or a completed teaching qualification that does not meet the College's requirements for registration as a teacher, and who has been offered employment in a school as a teacher. It may be offered for a period of up to two years and is renewable.

An associate member is a person who has a teaching qualification or who has made a significant contribution to education, has a clear criminal record, but does not wish to work as a teacher in a school. Associate membership is granted for a period of one year and is renewable.

Under the Act the College may prescribe (by regulation) application requirements in addition to those mentioned above (see sections 33(d), 35(g), 37(1)(e) and 39(c). Under the current Regulations there is no further requirement for associate members. For the other three categories there is one further requirement and it is the same in each case: the applicant must not be prohibited under a law of the Commonwealth, a State or a Territory from engaging in paid work as a teacher in Australia.

Under section 43 of the Act the College in granting an application may attach conditions “relating to the practice of teaching by that person”. Conditions may not be imposed when granting application for associate membership.

Taken altogether, persons who have current provisional or full registration or a limited authority to teach or who are associate members make up the “membership of the College”.

As to the information the College requires to operate its scheme of registration, the College is given a broad discretion under section 42 of the Act in relation to the information it may request applicants to provide. The ways in which the College has implemented this section is evidenced in its application forms¹⁵ that have to be completed for various purposes, whether they be an initial application, a renewal of membership, or a transition from provisional to full registration. The basic information requirements for an application relate to:

- Australian Citizenship / Residency / Visa Requirement
- Personal Details
- 100 Point Check
- Teaching and other Qualifications
- English Language proficiency
- Teaching Experience
- Criminal Record Check (see also sections 53 and 54)
- Statutory Declaration

Part 5, sections 49 – 52 include provisions related to certain information about members that is to be given to the College during the course of their membership.

- Under section 49 the Director of Public Prosecutions or the Commissioner of Police is to give information related to criminal proceedings involving teachers (committals, convictions, discontinuations of proceedings, mistrials or acquittals).
- Under section 50 employers must notify the college if they have suspended or dismissed a teacher and the reasons why (serious incompetence or serious misconduct).
- Under section 51 members must notify the College if they have either been ordered to pay damages or compensation as a result of civil proceedings arising from their work or been convicted of an offence where the statutory penalty includes imprisonment.
- Under section 52 members must notify the College if an essential qualification is withdrawn or cancelled by the conferring institution.

Under the Act and Regulations all applicants for College membership or renewal of membership (except associate membership in the latter case) must either tender a current (less than 12 months old) criminal record check or consent to having one carried out.

College of Teaching members are also subject to the requirements of a separate piece of WA legislation: the Working with Children Act. Under this Act all people working with children, including teachers, have to obtain -- and continue to hold -- a "Working with Children Card", the basic requirement for which is to satisfactorily undergo a criminal record check (as specified under this Act). The card must be renewed following a further criminal record check every three years.

The provisions of each Act under which an application may be declined on the basis of a person's criminal record are similar, but not the same. In principle, a person may be granted a WWC Card but be declined College registration. And, *vice versa*.

¹⁵ These may be viewed at <http://www.wacot.wa.edu.au/index.php?section=24>.

The provisions of the College of Teaching and Working with Children Acts combine to make teachers seemingly the most frequently criminal record-checked profession in Western Australia.

The requirements of the Working with Children Act were phased in such that by far the majority of College members are not yet required to hold a WWC Card. Under the phasing-in provisions of the Working with Children Act all teachers registered under the transitional provisions of the College of Teaching Act (see Schedule 4 clauses 2 and 3) are exempt from the requirements of the former Act until such time as they need to renew their College registration. As College registration is for five years these teachers will not have to obtain a WWC Card until 2010.

Discussion Points – The scheme of registration and information required to operate the scheme

Comments are welcome on:

- the retention or otherwise of the four categories of college membership;
- the requirements for each of the four categories of membership, in particular any changes you would like to see made;
- the “capability” requirements for full and provisional registration and for a limited authority to teach;
- the “character” requirements for the four categories of college membership;
- the periods for which registration/membership is granted;
- the application forms used by the college; and
- the need for teachers to comply with the working with children act in addition to complying with the college of teaching act.

7 Term of Reference 7: disciplinary provisions and whether the State Administrative Tribunal (SAT) should have a role in relation to appeals from decisions of the College

Just as the College may grant applications for membership and renewal of membership it may, on the “flip side”, decline an application and cancel, suspend or place conditions on memberships.

The disciplinary provisions are set out in Part 7 of the Act. Under section 62 the College may order that disciplinary action be taken if a College inquiry has found that the member has engaged in unprofessional conduct. Under section 63 a member has engaged in unprofessional conduct if that person has:

- been convicted of an offence the nature of which renders the person unfit to be a teacher;
- engaged in serious misconduct¹⁶ the nature of which renders her/him unfit to be a teacher;
- been seriously incompetent¹⁷ as a teacher;
- contravened the Act; or
- contravened a membership condition relating to the way he/she practises teaching.

Under section 64 the following disciplinary actions may be ordered by the College:

- imposition of a condition relating to the way the member practises teaching;
- suspension of membership for a period not exceeding 2 years;
- imposition of a penalty not exceeding \$5 000; or
- cancellation of membership.

Section 81, which reads as follows, provides that persons aggrieved by College decisions may appeal to the District Court.

81 Review

A person who is aggrieved by:

- (a) the refusal of an application under Part 4;
- (b) the granting of an application subject to a condition under section 43(1);
- (c) an order under section 62; or
- (d) the cancellation of membership under section 46(2), 55, 56 or 57, may apply to the District Court for a review of the decision.

¹⁶ The meaning of “serious misconduct” is set out in Regulation 21(2): A person has engaged in **serious misconduct the nature of which renders the person unfit to be a teacher** if (a) despite being warned or counselled by a supervisor, the person has consistently or repeatedly used language or engaged in behaviour that is offensive, indecent or improper, having regard to the standard of conduct expected of a teacher by members of the teaching profession; or (b) the person has used language or engaged in behaviour that is profoundly offensive, indecent or improper, having regard to the standard of conduct expected of a teacher by members of the teaching profession.

¹⁷ The meaning of “seriously incompetent” is set out in Regulation 21(1): A person has been **seriously incompetent as a teacher** if, without reasonable excuse, the person has consistently or frequently carried out his or her duties as a teacher at a standard that is significantly lower than the standard that can reasonably be expected of the person, having regard to (a) the person’s education, training and experience; and (b) the standard met by other teachers with comparable education, training and experience when carrying out similar duties.

Term of reference 7 asks the reviewers to consider whether the State Administrative Tribunal (SAT) should have a role in relation to appeals from decisions of the College (essentially replacing the District Court as the avenue for review of a decision of the College).

As to the potential role of the SAT in reviewing decisions of the College, such reviews by SAT are known technically as “merits reviews”.

Merits review refers to a process whereby an independent body reconsiders the facts, law and policy aspects of a decision. The process has been described as “stepping into the shoes” of the decision-maker.

Generally, the result of a merits review is an affirmation of the original decision, a variation of the original decision or, sometimes, a referral back to the original decision-maker to remake the decision.

The principal objective of merits review¹⁸ is to ensure that the decisions being reviewed are “correct” and “preferable”:

- correct – in the sense that they are made according to law; and
- preferable – in the sense that, if there is a range of decisions that are correct in law, the decision settled upon is the best that could have been made on the basis of the relevant facts.

Merits review also has the broader objectives of:

- improving the quality and consistency of the decisions decision makers make in the first place; and
- enhancing the openness and accountability of decisions made by government bodies.

The SAT was established by the *State Administrative Tribunal Act 2004* (“the SAT Act”) and the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* (the “Conferral Act”). Under its legislation the SAT may review decisions made under more than 130 other WA Acts. But, the College of Teaching Act is not one of them.

The question of whether the SAT should replace the District Court in this process has arisen in the context of a review of the SAT Act arising from section 173 of that Act:

As soon as practicable after the end of the period of 2 years after the day on which section 7 comes into operation [that period ended on 1 January 2007] an inquiry into the jurisdiction and operation of the Tribunal is to be conducted....

On 7 June 2007, the Legislative Council agreed that this inquiry would be undertaken by the Parliament’s Standing Committee on Legislation.

On 23 May 2008, the Chair of the Standing Committee wrote to the then Minister for Education and Training seeking his views on whether SAT should conduct merits reviews of

¹⁸ <http://www.ag.gov.au/agd/WWW/arcHome.nsf/Page/FAOS>

College decisions. In his reply the Minister undertook to consider the matter in the context of the section 90 review of the College Act.

Possible advantages that may flow from merits review being transferred to the SAT include:

- the removal of confusion in the public mind because one overarching tribunal is identified as the place where people can seek redress;
- less formal, less expensive and more flexible procedures than used in traditional courts by using a more inquisitorial and less adversarial approach;
- the development of best tribunal practices - both procedural and in terms of common decision-making principles across various jurisdictions; and
- improved quality and consistency in decision making.

Discussion Points – Disciplinary provisions and whether the SAT should have a role in relation to appeals from College decisions

Comments are welcome on:

- the nature of the Act's disciplinary provisions and any change you see needed;
- the operation of these provisions, especially if you have direct experience of them; and
- whether the SAT should take on merits reviews of College decisions.

8 Term of Reference 8: whether the College's resources are appropriate in light of its statutory functions

Under this term of reference it is open to the reviewers to conclude that the resources of the College are more than adequate or less than adequate: in the past (during its first couple of years when it was becoming established "from scratch"); at the present time, given the College's functions; and in the future, especially if the review recommends changes to the Act's current functions and powers.

Until 30 June 2006 the source of the College's funding was a government grant of \$500,000 per annum – it had no power as yet to collect fees. From 1 July 2006 the College has been funded almost entirely from the membership fees prescribed under its Act.

New members, or those returning to the College after a lapse in membership, pay a non-refundable \$20 application fee. Additional fees are then determined by the category of membership sought (as follows).

For provisional registration or a limited authority to teach, a \$50 registration fee, \$33 for a Criminal Record Check (if a current police clearance is not provided) and a \$70 annual membership fee – a total of \$173.

For full registration, a \$70 registration fee, \$33 for a Criminal Record Check (if the applicant does not have a current police clearance) and a \$70 annual membership fee – a total of \$193.

For associate membership, \$33 for a Criminal Record Check (if a current police clearance is not provided) and a \$20 annual membership fee – a total of \$53.

All provisionally registered and registered members pay a \$70 annual fee to remain members of the College of Teaching. Payment is due each year on March 31 and may be paid up to five years in advance. The fee is tax deductible.

College membership, by category, as at 31 March 2008 was as follows¹⁹:

| | |
|------------------------------------|----------------------|
| Registered Teachers: | 37,098 |
| Provisionally Registered Teachers: | 7,392 |
| Limited Authority to Teach: | 503 |
| Associate Members: | 29 |
| TOTAL: | <u>45,022</u> |

The College's audited financial statements may be inspected in the College's Annual Reports and are not rehearsed in any detail in this discussion paper. The Annual Reports are published on the College's website.²⁰

¹⁹

http://www.wacot.wa.edu.au/files/resourcesmodule/@random46ce42c4b0dba/1231826782_FINAL_WACOT_Annual_Rept_pdf_2008_updated_jan09.pdf

²⁰ <http://www.wacot.wa.edu.au/index.php?section=37>

Total reported revenues for the years 2005-2008 are as follows:

| | |
|------|-------------|
| 2005 | \$685,138 |
| 2006 | \$1,508,823 |
| 2007 | \$3,313,295 |
| 2008 | \$3,834,075 |

For the College's 2007/08 financial year, the surplus from ordinary activities was \$738,248.

Discussion Points – Whether the College's resources are appropriate in light of its statutory functions

After consideration of the College's Annual Reports, your comments would be welcome on:

- the appropriateness of the College's resources at the present time or at any previous time; and
- the appropriateness of the College's resources for the forthcoming period.

9 Term of Reference 9: the appropriateness of the designation given by the Act to the College

What's in a name?

This issue was canvassed in the third of the papers prepared during the late 1990s (*Western Australian Council of Teaching: A Position Paper - September 2000*). There the point was made that finding the “right” name for the proposed registration body was not a trivial matter. It was argued that “Teacher Registration Board” had become dated because it suggested a body whose function is licensing, pure and simple, failing to signal the importance of other important related functions.

For most of its life since the 1970s the Queensland body was known as the “Board of Teacher Registration”. However, following the passage of quite extensive amendments to its parent Act in 2005, it is now known as the “College of Teachers”.

South Australia’s body, which also commenced in the 1970s, has retained the same name throughout subsequent legislative amendments: the “Teachers Registration Board”, which is the same name as the Tasmanian body. In the Northern Territory the agency is known as the “Teacher Registration Board”.

The New Zealand body is known as the “New Zealand Teachers Council”. In New South Wales the body is known as the “Institute of Teachers” and in Victoria it is the “Institute of Teaching”.

The names of similar bodies elsewhere include “General Teaching Council” (England, Scotland and Wales), Teaching Council (Ireland), College of Teachers (Ontario and British Columbia) and Council of Educators (South Africa).

One point of difference is the presence or absence of the word “registration”.

Another is whether the name picks out the people being regulated (teachers) or their profession (teaching).

The 2000 paper proposed the name “Council of Teaching” on two grounds. One was a “Council of Teachers” might be taken by people outside WA to mean that the body was an industrial body. The second was the proposition that a Council of Teaching could establish itself as a repository of knowledge and wisdom on the best ways to teach WA school children and thereby complement the work of the Curriculum Council. The idea was that the Curriculum Council would be expert in the “what” and “why” of school education and the Council of Teaching would be expert in the “how”.

Discussion Points – The appropriateness of the designation given by the Act to the College

Comments are welcome on the appropriateness of the designation: “Western Australian College of Teaching”. Should this designation be changed? If so, to what?

10 Term of Reference 10: other matters that arise in the course of the Review that are relevant to the operation and effectiveness of the Act

This discussion paper has not canvassed all sections of the Act. The paper has been confined to those sections that have a direct bearing on the terms of reference. This is not to say that submissions on other sections of the Act would not be welcomed.

This tenth term of reference enables readers – and the reviewers – to consider any matters of concern that they have not been able to comfortably include under any of the other nine terms of reference.

Discussion Points – Other matters relevant to the operation and effectiveness of the Act

Comments are welcome on any matters not canvassed in this discussion paper that should be considered in the formulation of a report to the Parliament.