



Teachers Registration Board of South Australia

Member of the Australasian Teacher Regulatory Authorities Inc

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Hon. Jay Weathrill MP
Office of the Premier
GPO Box 2343
ADELAIDE SA 5001

Dear Premier,

Re: South Australian Government Boards and Committees Reform.

In a letter dated 8 August 2014 the Hon. Jennifer Rankine MP, Minister for Education and Child Development invited the Teachers Registration Board to provide a response to the proposed Boards and Committees Reform. In addition the Minister indicated this advice should also be provided to the Premier.

I attach for your consideration the letter to the Hon. Jennifer Rankine MP together with a submission in response to the South Australian Government Boards and Committees Reform, a copy of the Statutory Authorities Review Committee, *'Report on the Inquiry into the Teachers Registration Board'* and the response to the Recommendations of the Committee from the Hon. Grace Portolesi, then Minister for Education and Child Development.

The Presiding Member and Registrar of the Teachers Registration Board will arrange to meet with the Hon. Jennifer Rankine MP to discuss an exemption for the Board and its Standing Sub-Committees.

Carmel A Kerin
PRESIDING MEMBER

12 / 8 / 2014

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TEACHERS REGISTRATION BOARD OF SOUTH AUSTRALIA
SUBMISSION IN RESPONSE TO THE
SOUTH AUSTRALIAN GOVERNMENT BOARDS AND COMMITTEES REFORM

In a media release of 8 July 2014, the Premier acknowledged the Teachers Registration Board as a high profile government board performing an essential function.

Background

The Report of the Karmel Committee published in 1971 drew attention to the fact there was no registration of teachers in South Australia and that theoretically any person could be employed as a teacher. Strong support for teacher registration also came from the Australian College of Education. The College affirmed a belief that *“teaching, to be recognised as a fully professional vocation, must require of its members a body of knowledge on which its professional skill depends, a body of techniques that distinguish it from other professions, and a body of ethical principles to guide the activities of its members.”* The College further stated that *“in order to ensure the development of such a fully professional calling, it is necessary that basic qualifications for practice should be laid down”* (Education in South Australia: Report of the Committee of Inquiry into Education in South Australia 1969–1970 p148).

A provision for the regulation of the teaching profession was incorporated as Part IV of the *Education Act (1972)*. The Act was established to make proper provision for primary and secondary education in South Australia. Teachers were first registered in South Australia in 1976. By 2004 it was clear the provisions of the *Education Act (1972)* no longer met the expectations of the community or national standards required for registration of teachers. The *Teachers Registration and Standards Act 2004* (“the TRS Act”) and *Teachers Registration and Standards Regulations 2005*, established to regulate the teaching profession, were proclaimed on 31 March 2005.

The TRS Act formed part of the Government’s *“Keeping them Safe”* child protection reforms in that it supports the protection of children and recognises the professionalism of the teachers of South Australia. The welfare and best interests of children are the responsibility of the whole community and a range of agencies. Under Section 8 of the *Children’s Protection Act 1993* the Minister for Education and Child Development has the obligation to

co-ordinate strategies within Government and other organisations in relation to child abuse and neglect. The TRS Act is not intended to be in itself a “*Child Protection Act*”, but to promote the safety and welfare of children through the provision of rigorous measures and capacity for the Teachers Registration Board to ensure quality and fitness to teach. The TRS Act significantly enhanced the powers, responsibilities and functions of the Board and in so doing raised the status of the teaching profession and the professional standards required to be registered.

It should be noted that Queensland and South Australia were the only two states to continuously have a teacher registration authority from the 1970’s. Tasmania established a regulatory authority in 2000 followed by Victoria in 2001. All states and territories now have similar teacher regulation authorities with exception of New South Wales who since 2004 has accredited teachers on entry to the profession.

Legislation and Structure

The TRS Act established the Teachers Registration Board of South Australia as an independent Statutory Authority under its own legislation. The Board is a body corporate, has perpetual succession and a common seal and has the powers of a natural person and the functions and powers assigned or conferred under the TRS Act and any other Act.

The object of the Act is to establish and maintain in the public interest, a teacher registration system and professional standards for teachers to ensure members are competent educators and fit and proper persons to have the care of children. In undertaking its functions the Board has the welfare and best interests of children as the primary consideration. (Part 2, s.4)

Functions and Powers of the Teachers Registration Board of South Australia

The Board has the following functions (s.6):

- *to administer the provisions of this Act for the regulation of the teaching profession;*
- *to promote the teaching profession and professional standards for teachers;*
- *to confer and collaborate with teacher education institutions with respect to the appropriateness for registration purposes of teacher education courses;*
- *to confer and collaborate with teacher employers, the teaching profession, teacher unions and other organisations and other bodies and persons with respect to requirements for teacher registration and professional and other standards for teachers;*

- *to confer and collaborate with other teacher regulatory authorities to ensure effective national exchange of information and promote uniformity and consistency in the regulation of the teaching profession within Australia and New Zealand;*
- *to keep the teaching profession, professional standards for teachers and other measures for the regulation of the profession under review and to introduce change or provide advice to the Minister as appropriate.*

The primary consideration in the performance of the Board's function is set out in s.7:

"The Teachers Registration Board must have the welfare and best interests of children as its primary consideration in the performance of its functions".

Funding

The Board is self-funded through the collection of registration fees and receives no funding from Government. The Board is not part of the Government budget sector and therefore there is no Board and Committees Estimates budget line. There is no direct financial implication for Government and revenue does not go to Government but is used to fund the operations of the Board over which Government has no direct control. The Board employs its own staff (20 FTE's) and is a self-insured agency. The Board operates on a three year budget cycle in line with the term of a teacher's registration. The Board has an operating budget of \$15M which reflected over the three years equates to \$5M per year.

Membership

The membership of the Teachers Registration Board is provided for in s.9 of the Act and the Board is comprised of 16 members appointed by the Governor. The membership reflects the community expectation for an independently constituted Board to represent the public interests of the community and key stakeholders. The Minister nominates the Presiding Member, a person to represent the community interest and a legal practitioner (on the recommendation of the Law Society of South Australia). Nominations are made by the Department for Education and Child Development (2), the Australian Education Union (SA Branch) (5) and Independent Education Union (SA Branch) (2) after the holding of elections, the Association of Independent Schools of South Australia Incorporated (1), the Catholic Education Office (1), the Universities of the State (1) and the Office of the Director of Children's Services (1). The Board is of the view that the current composition of the Board provides the most effective means for community engagement as it is representative of the community and key stakeholders in the government and non-government sectors. It is also comparable to teacher regulatory authorities in other jurisdictions and is the best structure to

deliver the functions and services required of a regulator of a profession having the welfare and best interests of children as the primary consideration.

The members are **not** appointed to the Board to represent the interests of their nominating organisations or of the Minister but to serve the public interest.

The duty of each member is to promote the public purpose for which the Board has been established i.e. the regulation of the teaching profession. Every member of the Board must undertake their responsibilities as a Board member in accordance with the Act ensuring that the welfare and best interests of children is the primary consideration in all matters which come before the Board, regardless of the mechanism of their appointment. The Board is established as a specialist body and members bring their respective specialist advice to their overall responsibilities as a Board member e.g. teacher education, employment of teachers, teaching profession, the community, legal profession and an independent chairperson.

The Board can only exercise the powers and functions provided by the Act and it must comply with its statutory obligations. Further, the Board must comply with administrative law in exercising its powers and functions. The Board has the power to delegate some matters to sub-committees for more effective governance. Ad hoc sub-committees are constituted to deal with matters arising under Part 5 (eligibility and conditions of registration) and Part 7 (disciplinary and incapacity) of the Act.

Standing Committees of the Board

The Board also has four Standing Committees, Office Procedures, Admissions, Teacher Education Professional Issues (TEPI) and Publicity.

These Standing Sub-committees are established under Part 3, s16 of the Act. Members of these sub-committees are nominated by the Board for the term of the Committee.

The Office Procedures Committee meets monthly to consider and monitor financial, administrative and legislative responsibilities. This committee provides a governance function to the Board in respect to its fiduciary responsibilities and presents financial and work health and safety reports on a monthly basis to the Board. The Committee will also review and forward to the Board for approval submissions related to the setting of registration

and associated fees. The Office Procedures Committee is integral to the effective governance and financial management of the Board as it provides an oversight role, internal audit and a risk/control approach to the management of the Secretariat.

The Admissions Committee meets monthly to develop policy proposals in relation to qualifications and/or to consider non-standard applications relating to admission to the Register of Teachers. This committee makes determinations for registration on the provision of relevant evidence by an applicant and may hold Admissions Hearings for this purpose. The committee provides written reports and an audit of all matters on a monthly basis to the Board.

The Teacher Education and Professional Issues (TEPI) Committee meets on an as needs basis to consider a broad range of educational and professional issues including the development of professional teaching standards. The committee prepares submissions and responses to Ministerial, State and Federal matters related to a broad range of child, community, educational and legislative matters on behalf of, and for consideration of the Board.

The Publicity Committee meets on an as needs basis to develop communication strategies relating to the promotion and celebration of the teaching profession including the preparation of the Annual Newsletter.

Other Ad hoc Panels are formed on a needs basis.

Remuneration

Eligible Board members (non-government employees) are remunerated for attendance at Board and Sub-Committee meetings in line with the remuneration levels recommended by the Department of the Premier and Cabinet and approved by the Governor. Members eligible for remuneration and levels of payment are published in the Annual Report each year. Of the 16 members (15 deputies) there are 8 members (8 deputies) who are entitled to remuneration, 7 members (7 deputies) are not entitled to remuneration. For the period 2013-2014 a total of \$49,350 (including superannuation) was paid to eligible Board Members.

External Review

In 2008, on the direction of the Legislative Council of the Parliament of South Australia the Statutory Authorities Review Committee undertook an independent Inquiry into the Teachers Registration Board of South Australia. The Board at that time had been in operation for four years.

It was within the purview of the Committee to inquire into, consider and report on any statutory authority referred to it under this Act, including—

- (i) *the need for the authority to continue in existence;*
- (ii) *the functions of the authority and the need for the authority to continue to perform those functions;*
- (iii) *the net effect of the authority and its operations on the finances of the State;*
- (iv) *whether the authority and its operations provide the most effective, efficient and economical means for achieving the purposes for which the authority was established;*
- (v) *whether the structure of the authority is appropriate to its functions;*
- (vi) *whether the functions or operations of the statutory authority duplicate or overlap in any respect the functions or operations of another authority, body or person;*

On 26 July 2011, the Hon. C Zollo MLC, Presiding Member of the Statutory Authorities Review Committee tabled the 54th Report of the Statutory Authorities Review Committee - Inquiry into the Teachers Registration Board of Australia. The Committee indicated in its report that *'the main function of the Inquiry was to inquire into, consider and report on the operations of the TRB'*. (SARC, 2011 p.8) The Committee made 12 formal recommendations.

The then Minister for Education, the Hon. Grace Portolesi MP, supported the Teachers Registration Board. In her response to the Committee she advised that some of the recommendations proposed by the Review Committee had already been addressed prior to the release of the Report. There were no matters raised by the Committee which would indicate that the purpose of the Board was not essential or that it could be met through other means. Further, the efficiency and independence of the Board were not matters of concern to the Committee. There was no suggestion that the functions of the Board or its Committees could be merged or carried out in any alternate way. A copy of the Statutory Authorities Review Committee 54th Report is provided for your information.

Provision of Information to the Public

S.28 of the Act provides for a Register of Teachers. The Registrar has legislative responsibilities in relation to the maintenance of the Register including the publication of certain information on a Public Register accessible on the website.

The Board recognises that there is a strong public interest in the provision of information in relation to the outcome of disciplinary matters, especially in circumstances where proper cause for disciplinary action has been established. The Board publishes summaries of disciplinary proceedings from Inquiries in the Annual Report, the newsletter sent to all teachers and on the TRB website. This is seen as the best way of making precedent cases available in the public domain without revealing information which would identify student victims and student witnesses. Given the sensitivity of the information, privacy considerations and tendency for release of information to identify children and students, the Board has so far adopted a cautious and discretionary approach to the release of information, particularly concerning disciplinary and incapacity hearings. The Board acknowledges the need for its processes to be open and transparent and to be publicly accountable and believes that the outcomes of disciplinary proceedings play an important educative role for teachers in the establishment of professional standards.

However the Board is mindful that under s.7 of the Act it is charged in the exercise of its functions with making decisions which are in the welfare and best interests of children/students and the protection of their privacy and welfare is the Board's primary consideration. Making summaries of cases that contain important principles on setting standards of conduct for the teaching profession seems a reasonable compromise between the Board's obligations under s.7 to protect the welfare and best interests of children and the need for these matters to be in the public arena.

The Board is required to provide Parliament each year with an annual report complying with reporting requirements determined by Government, demonstrating how it has exercised its authority for that year. It is an independent body limited by the terms of the Act and to go beyond the scope of the Act would be to operate without power or authority (*ultra vires*). The Board is mindful of the limitations of a statutory authority in all the tasks undertaken.

Efficiency – Key Measures

Since the proclamation of the Act the Board has continued to work towards achieving key measures which directly relate to the overall welfare and best interests of children. Key areas have included:

- undertaken 36,763 national police history checks on proclamation of the new Act and since that time an additional 87,838 (July 2014) on renewal or application of registration. Criminal record checks are assessed against a set of Guidelines developed by the Board and published on the website. A national criminal history record check is one measure used in the screening process.
- implemented the requirement for Overseas Criminal History Checks for those applying for registration if they have resided in any other country other than Australia for more than 12 continuous months during the past 10 years when over 18 years of age. From 2014 this also relates to those applying for a special authority to teach.
- implemented from 2014, the requirement for Overseas Criminal History Checks for applicants applying for renewal of registration who have resided in any country other than Australia for more than 12 continuous months during the term of their current teacher registration.
- developed and implemented in collaboration with Families SA a system and process for the enhanced screening check for applicants for teacher registration, renewal of registration and special authority to teach using child protection data to assess the fitness and propriety of teachers.
- implemented the consequential amendments to the *Teachers Registration and Standards Act 2004* arising from the introduction of the *Education and Early Childhood Services (Registration and Standards) Act 2011* (EECSRS Act) which requires persons in long day care services who are employed as the Early Childhood Teacher under the National Law to be registered or authorised by the Board to practise as a teacher.
- implemented mandatory notification training requirements (relating to child abuse and neglect requirements under Part 4 Division 1 of the *Children's Protection Act 1993* for notification of suspected child abuse or neglect) on application for registration, renewal of registration and the grant of special authority to teach.

- developed and reviewed protocols and procedures for reporting to the Teachers Registration Board by employers (s.27, s.37, s.39). This includes providing a description of the circumstances leading to a resignation or dismissal and other information with the South Australia Police (SAPOL) and the Office of Director of Public Prosecutions (DPP) in relation to s.50 and s.51; including an Interim Administrative Arrangement (2014) with the Department of Education and Child Development (DECD), Catholic Education South Australia (CESA) and the Association of Independent Schools of South Australia Incorporated (AISSA) to share information from the Department of Public Prosecutions on the progress of court proceedings which involve offences against children and/or the provision of information on those prosecutions in response to Recommendation 38 of the DeBelle Royal Commission 2012-2013 Report of the Independent Education Inquiry.
- reviewed resource requirements to ensure the Board has the capacity to meet legislative requirements and proposed a three year budget strategy which has involved increases in registration and associated fees paid by teachers. A proposal for an increase in registration and associated fees is currently before Parliament.
- implemented the agreed elements of the *nationally consistent approach to teacher registration* endorsed by the Ministers for Education in October 2011 including initial period of registration, fixed period of registration, alternative authorisation to teach, discipline and de-registration, suitability, qualifications, English language proficiency and mutual recognition.
- implemented new requirements on renewal of registration relating to professional learning and professional practice.
- implemented the Accreditation of Initial Teacher Education Programs in Australia (Standards and Procedures) which is the nationally consistent approach to accreditation in partnership with the teacher education providers to ensure professional standards are consistently met on entry to the profession.
- implemented the Australian Professional Standards for Teachers which is the nationally consistent approach to articulate what teachers are expected to know and be able to do across career stages of graduate and proficient.
- established strong partnerships with the providers of teacher education in South Australia to ensure academic and other requirements are met.

- participated as a member of a number of cross sector and across government committees at a state, national and international level relating to the safety of children and young people, professional standards for teachers and quality of the teaching.
- participated on a national level in collaboration with other teacher regulatory authorities (ATRA) to ensure effective exchange of information and to promote uniformity and consistency in the regulation of the teaching profession through the development of agreed procedures.

The Board works closely with other government and non-government organisations in relation to its legislative responsibilities regarding to the welfare and best interests of children. For example, all schools have a legal obligation to provide a duty of care for students within the school community and comply with appropriate legislation.

In addition, in 2008 the Office of the Guardian for Children and Young People developed the Information Sharing: Guidelines for Promoting the Safety and Wellbeing (ISG) to assist and support government and certain non-government organisations to exchange and share information about the risks to children and young people. The responsibility for implementing the Information Sharing Guidelines was moved to the Office of the South Australian Ombudsman on April 1 2013. The Teachers Registration Board of South Australia Information Sharing Guidelines (ISG) were approved by the Principal Advisor, Office of the Guardian for Children and Young People in 2011 and are published on the TRB website.

The Act provides for the ability to share information with other teacher regulatory authorities to ensure appropriate screening and monitoring of applicants seeking registration from other States, Territories and New Zealand under the Mutual Recognition Legislation (Commonwealth). Templates have been developed to ensure information is consistent and meets requirements.

In summary, the Board is of the view that the TRB performs an essential function in protecting the public interest in there being a teaching profession that is both competent and has the requisite fitness and propriety to have the care of students. To abolish the TRB would be a negative outcome in terms of the professionalism of teachers, the protection of children and public confidence.