



Western Australia

# **Western Australian College of Teaching Act 2004**

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As at 01 Mar 2012

Version 01-h0-02

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# Western Australian College of Teaching Act 2004

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**Defined Terms**



Western Australia

## **Western Australian College of Teaching Act 2004**

**An Act to —**

- **establish the Western Australian College of Teaching;**
- **provide for membership of that College;**
- **recognise, promote and regulate the teaching profession in Western Australia;**
- **consequentially amend certain Acts<sup>2</sup>,  
and for related purposes.**

## Part 1 — Preliminary

### 1. Short title

This Act may be cited as the *Western Australian College of Teaching Act 2004*<sup>1</sup>.

### 2. Commencement

This Act comes into operation on a day fixed by proclamation<sup>1</sup>.

### 3. Terms used

(1) In this Act, unless the contrary intention appears —

**application** means an application for —

- (a) membership of the College;
- (b) the renewal of membership of the College; or
- (c) the variation of information specified on a limited authority to teach under section 36(2)(b);

**associate member of the College** means a person referred to in section 38;

**Board** means the Board established under section 7;

**College** means the Western Australian College of Teaching established under section 5;

**committee** means a committee established by the College under section 13;

**criminal record check** means information provided by the Australian Federal Police, the Police Force of a State or Territory, or another body or agency prescribed by the regulations, regarding the criminal convictions of a person for offences under the law of the Commonwealth or a State or Territory;

**Director** means the Director of the College appointed under section 19;

**disciplinary action** means an action referred to in section 64;

***inquiry*** means an inquiry under Part 7;

***limited authority to teach*** means an authority referred to in section 36;

***member of the Board*** means a member of the Board appointed or elected under section 9;

***member of the College*** means a person who —

- (a) is registered as a teacher;
- (b) is provisionally registered as a teacher;
- (c) holds a limited authority to teach; or
- (d) is an associate member of the College;

***provisional registration*** means provisional registration as a teacher under section 32;

***register*** means the register referred to in section 47;

***registered teacher*** means a person who is registered or provisionally registered;

***registration*** means registration as a teacher under section 34;

***rules*** means rules made under section 85 or regulations made under section 86(1)(b);

***teaching*** means undertaking duties in a school that include —

- (a) the delivery of an educational programme designed to implement the outline of curriculum and assessment in schools established under the *School Curriculum and Standards Authority 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;

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***unprofessional conduct*** means conduct referred to in section 63.

- (2) A word or expression used in this Act has the same meaning as it has in the *School Education Act 1999* unless —
- (a) this Act gives it another meaning; or
  - (b) the contrary intention appears in some other way.

*[Section 3 amended by No. 18 of 2007 s. 4; No. 37 of 2011 s. 59.]*

**4. Crown bound**

- (1) This Act binds the Crown in right of the State.
- (2) Nothing in this Act renders the Crown liable to be prosecuted for an offence under this Act.
- (3) Subsection (2) does not affect any liability of any officer, employee or agent of the Crown to be prosecuted for an offence.

## **Part 2 — Western Australian College of Teaching**

### **Division 1 — Establishment of College**

#### **5. College established**

- (1) The Western Australian College of Teaching is established.
- (2) The College —
  - (a) is a body corporate;
  - (b) has perpetual succession and a common seal; and
  - (c) may sue and be sued in its corporate name.

#### **6. College not an agent of the Crown**

The College does not represent, and is not an agent of, the Crown.

### **Division 2 — Board of management**

#### **7. Board of management**

- (1) The College is to have a board of management.
- (2) The Board is to have 19 members comprising —
  - (a) 9 people appointed to the Board in writing by the Minister under section 9; and
  - (b) 10 people elected to the Board under section 9.

#### **8. Functions of Board**

- (1) The Board is the governing body of the College.
- (2) The Board, in the name of the College, is to perform the functions, determine the policies and control the affairs of the College.

**9. Membership of Board**

- (1) The Minister is to appoint 9 members to the Board of whom —
- (a) one is to be nominated by the chief executive officer of the Department referred to in section 228 of the *School Education Act 1999*;
  - (b) one is to be nominated by the Catholic Education Commission of Western Australia;
  - (c) one is to be nominated by the Association of Independent Schools of Western Australia;
  - (d) 2 are to be nominated jointly by —
    - (i) the chief executive officer of the Curtin University of Technology;
    - (ii) the chief executive officer of the Edith Cowan University;
    - (iii) the Vice-Chancellor of Murdoch University;
    - (iv) the Vice-Chancellor of The University of Notre Dame Australia; and
    - (v) the Vice-Chancellor of The University of Western Australia;
  - (e) one is to be nominated by the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers;
  - (f) one is to be nominated by the State School Teachers' Union of WA (Inc.);
  - (g) one is to be nominated by the Western Australian Council of State School Organisations (Inc.); and
  - (h) one is to be nominated by the Parents and Friends' Federation of Western Australia (Inc.).
- (2) There is to be elected 10 members to the Board of whom —
- (a) 7 are to be —
    - (i) registered teachers, each of whom teaches at a government school; and

- (ii) elected by registered teachers, each of whom teaches at a government school;
- (b) 2 are to be —
  - (i) registered teachers, each of whom teaches at a school that is part of a school system the governing body of which is the Catholic Education Commission of Western Australia; and
  - (ii) elected by registered teachers, each of whom teaches at a school that is part of that school system;
- and
- (c) one is to be —
  - (i) a registered teacher who teaches at a school other than a school referred to in paragraph (a) or (b); and
  - (ii) elected by registered teachers, each of whom teaches at a school other than a school referred to in paragraph (a) or (b).
- (3) If, within 30 days of a request to do so, a person or persons, or a body referred to in subsection (1) fails to nominate a person for appointment in accordance with that request the Minister may make an appointment for the purpose of that provision as the Minister thinks fit.
- (4) A person may not vote more than once at any election.
- (5) The election of members under subsection (2) is to be conducted in accordance with the rules.
- (5a) Without limiting subsection (5), the rules may confer functions on the Electoral Commissioner appointed under the *Electoral Act 1907*.

- (6) The expenses incurred by the Electoral Commissioner in relation to an election under subsection (2) are to be met by the College.
- (7) Each member of the Board is to be a natural person.
- (8) The Director is not to be a member of the Board.

*[Section 9 amended by No. 18 of 2007 s. 5; No. 8 of 2009 s. 135.]*

**10. Constitution and proceedings**

Schedule 1 has effect with respect to the constitution and proceedings of the Board.

**11. Remuneration and allowances**

- (1) A member of the Board or of a committee is to be paid out of the funds of the College such remuneration and allowances as are determined by the Minister on the recommendation of the Public Sector Commissioner.
- (2) The College may pay out of the funds of the College such amount as is reasonable to meet the costs of providing a teacher to teach in place of a member of the Board or of a committee who is a teacher while that member is attending a meeting of the Board or of the committee during school hours.
- (3) Either —
  - (a) remuneration; or
  - (b) payment under subsection (2),

may be paid in respect of a meeting attended by a member of the Board, or a committee, but not both.

*[Section 11 amended by No. 39 of 2010 s. 89.]*

**12. Meetings and minutes of meetings**

- (1) Subject to this section, every meeting of the Board is to be open to members of the College.



- (2) Despite subsection (1) —
- (a) the Board may of its own initiative order that in any particular case a meeting, or part of a meeting, of the Board is to be closed to members of the College (other than Board members); and
  - (b) where a meeting of the Board concerns disciplinary action or an inquiry, the person to whom the disciplinary action or inquiry relates may request that the meeting, or part of the meeting, be closed.
- (3) The Board is to consider a request under subsection (2)(b) and may order that the meeting, or part of the meeting, be closed if it is of the opinion that such an order is in the best interests of the parties involved or is in the public interest.
- (4) The minutes of a meeting of the Board are to be open for inspection at its principal place of business by members of the College during normal office hours without fee, other than minutes relating to —
- (a) a disciplinary action or an inquiry;
  - (b) a matter determined to be confidential under subsection (6); or
  - (c) a meeting, or part of a meeting, that the Board ordered be closed under subsection (2)(a) or (3).
- (5) A member of the College may, on payment of the fee prescribed by the regulations, if any, obtain a copy of any minutes of the Board available for inspection under subsection (4).
- (6) The Board may determine that a matter is confidential if it considers that its disclosure is likely to infringe the reasonable privacy of any person.

**13. Committees**

- (1) The College —
- (a) may from time to time establish committees; and

- (b) is to establish a committee to hold an inquiry when so required under Part 7 Division 3.
- (2) The College is to —
  - (a) determine the functions, membership, and constitution of a committee; and
  - (b) appoint any members of the Board or any other persons as it thinks fit to be members of a committee.
- (3) Each member of a committee is to be a natural person.
- (4) The College may remove a person from membership of a committee and may reconstitute or discharge a committee.
- (5) The College may give directions to a committee, other than a committee established to hold an inquiry, with respect to the performance of its functions and the committee is to comply with any such direction.
- (6) A committee must cause accurate minutes of each of its meetings to be recorded and preserved.
- (7) Subject to this Act, a committee may determine its own procedures.
- (8) A person with special knowledge or experience may be invited to act in an advisory capacity to a committee if the committee is of the opinion that the person will assist the committee in the performance of its functions and the College has approved the invitation.
- (9) Every committee is to submit an annual report to the College as soon as is practicable after 31 March in each year in respect of the functions performed by the committee during the year that ended on that day.
- (10) Schedule 1 Division 2 applies in respect of a committee as if —
  - (a) a reference in that Division to the Board were a reference to the committee;

- (b) a reference in that Division to a member were a reference to a member of the committee; and
- (c) in clause 18(1) the words “at least 8 members are present” were substituted for “the number of members present is equal to at least one half of the members”.

### **Division 3 — Relationship of College with the Minister**

#### **14. College to give regard to advice of Minister**

- (1) The College must give due regard to any advice given by the Minister in relation to the exercise of its powers and the performance of its functions.
- (2) The text of any written advice given under subsection (1) is to be included in the annual report of the College under section 29.

#### **15. Minister to have access to information**

- (1) The Minister is entitled —
  - (a) to have information in the possession of the College; and
  - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —
  - (a) request the College to furnish information to the Minister;
  - (b) request the College to give the Minister access to information; and
  - (c) for the purposes of paragraph (b) make use of the staff of the College to obtain the information and furnish it to the Minister.
- (3) The College is to comply with a request under subsection (2) and make its facilities and staff available to the Minister for the purposes of subsection (2)(c).

- (4) The Minister is not entitled to have information under this section in a form that —
- (a) discloses the identity of a person involved in a particular application, complaint, proceeding or inquiry; or
  - (b) might enable the identity of any such person to be ascertained,

unless that person has consented to the disclosure.

- (5) In this section —
- document** includes any tape, disc or other device or medium on which information is recorded or stored;
- information** means information specified, or of a description specified, by the Minister that relates to the functions of the College.

#### **Division 4 — Functions and powers**

#### **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.

## **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.

**18. Delegation by College**

- (1) The College may delegate to the Director any power or duty of the College other than —
  - (a) this power of delegation; or
  - (b) the conduct of an inquiry.
- (2) The delegation must be in writing executed by the College.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section, is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the College to perform a function through a member of its staff or an agent.

**Division 5 — Director and other staff**

**19. Director**

- (1) There is to be a director of the College.
- (2) The College may —
  - (a) appoint, and remove, a person as Director; and
  - (b) fix and alter the terms and conditions of service of the Director.
- (3) The College may appoint a person to act in the place of the Director while —
  - (a) the Director is unable to act by reason of sickness, absence or other cause; or

(b) there is a vacancy in the office of Director,  
and, while so acting, the person is taken to be the Director.

- (4) An act or omission of a person acting in the place of the Director under an appointment under subsection (3) is not to be questioned on the ground that the occasion for his or her acting had not arisen or had ceased.

**20. Role of the Director**

Subject to the control of the College, the Director is responsible for, and has all the powers needed to administer, the day to day operations of the College.

**21. Staff etc.**

- (1) The College may engage persons under contracts for services to provide such professional, technical or other assistance as it considers necessary for the performance of its functions.
- (2) The College may engage persons under contracts of service or other arrangements with respect to —
- (a) conducting research or courses;
  - (b) producing and publishing information; or
  - (c) providing any professional, technical or other assistance,

that the College considers necessary to enable it to perform its functions.

**22. Use of government staff and facilities**

- (1) The College may by arrangement with the relevant employer make use, either full-time or part-time, of the services of any officer or employee —
- (a) in the Public Service;
  - (b) in a State agency or instrumentality; or
  - (c) otherwise in the service of the Crown in right of the State.

- (2) The Board may by arrangement with —
- (a) a department of the Public Service; or
  - (b) a State agency or instrumentality,
- make use of any facilities of the department, agency or instrumentality.
- (3) An arrangement under subsection (1) or (2) is to be made on such terms as are agreed to by the parties.

### **Division 6 — General**

#### **23. Protection from liability**

- (1) An action in tort does not lie against a person for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.
- (2) The College is also relieved of any liability it might otherwise have had for another person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

#### **24. Duty not to make improper use of information**

A member or former member of the Board or a committee must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as such to gain, directly or indirectly, an advantage for himself or herself or for any other person.

Penalty: \$10 000.



**25. Common seal and execution of documents by College**

- (1) A document is duly executed by the College if —
  - (a) the common seal of the College is affixed in accordance with subsections (2) and (3); or
  - (b) it is signed on behalf of the College by a member, or members, of the Board authorised by the College to do so.
- (2) The common seal of the College is not to be affixed to a document except as authorised by the College.
- (3) The common seal of the College is to be affixed to a document in the presence of any 2 members of the Board and each of them is to sign the document to attest that the common seal was so affixed.
- (4) The common seal of the College is —
  - (a) to be in a form determined by the College;
  - (b) to be kept in such custody as the College directs; and
  - (c) not to be used except as authorised by the College.
- (5) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.
- (6) When a document is produced bearing a seal purporting to be the common seal of the College, it is to be presumed that the seal is the common seal of the College until the contrary is shown.
- (7) All courts and persons acting judicially are to take notice of the common seal of the College.

### **Part 3 — Financial provisions**

#### **26. Funds of the College**

- (1) The funds of the College consist of —
  - (a) fees received by the College; and
  - (b) other money or property lawfully received by, made available to or payable to the College in the performance of its functions.
- (2) The funds of the College may be applied —
  - (a) for the purposes of the administration and enforcement of this Act, including the remuneration of, and allowances payable to, members of the Board and committees and the Director and other members of staff;
  - (b) for the furtherance of education and research in relation to teaching and the education of teachers; and
  - (c) for any other purpose which would enable the College to perform its functions or to facilitate the carrying out of the objects of this Act.

#### **27. Accounts**

- (1) The College is to cause to be kept proper accounts and records of the transactions and affairs of the College and is to prepare financial statements in accordance with Australian Accounting Standards.
- (2) The financial statements are to be prepared on an accrual basis unless the College determines otherwise.

#### **28. Audit**

The accounts and financial statements of the College are to be audited at least once a year, at the expense of the College, by a registered company auditor (as defined in paragraph (a) of the definition of that term in the *Corporations Act 2001* of the

Commonwealth) appointed by the College with the prior approval of the Minister.

**29. Annual report and other reports**

- (1) The College, not later than 31 July in each year, is to make and submit to the Minister an annual report of its activities for the preceding year ending on 31 March together with a copy of its financial statements for that year and the auditor's report on those statements.
- (2) The identity of a person who has made a complaint under the Act or an affected person, within the meaning of section 60, must not be disclosed in an annual report.
- (3) The annual report of the College is to include details of —
  - (a) the success with which the College has performed its functions set out in section 16;
  - (b) the number, nature, and outcome, of —
    - (i) investigations and inquiries undertaken by, or at the direction of, the College; and
    - (ii) matters that have been brought before the District Court by the College;
  - (c) the number and nature of matters referred to in paragraph (b) that are outstanding;
  - (d) any trends or special problems that have emerged;
  - (e) forecasts of the workload of the College in the year after the year to which the report relates; and
  - (f) any proposals for improving the operation of the College.
- (4) The Minister is to cause a copy of the College's annual report and financial statements and of the auditor's report submitted under subsection (1) to be laid before each House of Parliament within 14 sitting days of that House after receipt of the report by the Minister.

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- (5) The College is to ensure that after subsection (4) has been complied with copies of the reports and statements referred to in that subsection are available on request for inspection at its premises.

## **Part 4 — Membership of the College**

### **Division 1 — Persons who may teach in schools**

#### **30. Persons who may teach in schools**

A person must not teach in a school unless the person —

- (a) is a registered teacher; or
- (b) holds a limited authority to teach and is teaching in accordance with that authority.

Penalty:

- (a) for a first offence, \$5 000;
- (b) for a second or subsequent offence, \$10 000.

#### **31. Persons who may be employed, engaged or given permission to teach in schools**

A person must not employ, engage or give permission to a person to teach in a school unless the person who is employed, engaged or given permission —

- (a) is a registered teacher; or
- (b) holds a limited authority to teach and is employed, engaged or given permission to teach in accordance with that authority.

Penalty:

- (a) for a first offence, \$5 000;
- (b) for a second or subsequent offence, \$10 000.

### **Division 2 — Registered teachers**

#### **32. Provisional registration as a teacher**

- (1) If satisfied that an applicant has —
  - (a) met the requirements regarding provisional registration as a teacher referred to in section 33; and

- (b) paid the provisional registration fee, if any, prescribed by the regulations,

then the College is to register the applicant provisionally as a teacher.

- (2) The provisional registration of a person as a teacher —
  - (a) may be issued for a period of up to 3 years after the day on which it commences, as is approved by the College and specified in writing given to the person; and
  - (b) may be renewed.

**33. Requirements for provisional registration as a teacher**

The requirements for provisional registration are that the applicant —

- (a) holds a qualification in teaching approved by the College for provisional registration;
- (b) has not been convicted of an offence the nature of which renders the person unfit to be a teacher;
- (c) unless the College determines otherwise in a particular case, is proficient in the English language both written and oral; and
- (d) meets any other requirements prescribed by the regulations for the purposes of this section.

**34. Registration as a teacher**

- (1) If satisfied that an applicant has —
  - (a) met the requirements regarding registration as a teacher referred to in section 35; and
  - (b) paid the registration fee, if any, prescribed by the regulations,

then the College is to register the applicant as a teacher.

- (2) The registration of a person as a teacher —
- (a) expires 5 years after the day on which it commences, unless otherwise approved by the College in a particular case and specified in writing given to the person; and
  - (b) may be renewed.

**35. Requirements for registration as a teacher**

The requirements for registration are that the applicant —

- (a) holds a qualification in teaching approved by the College for registration;
  - (b) has not been convicted of an offence the nature of which renders the person unfit to be a teacher;
  - (c) has successfully completed a prescribed police criminal record check;
  - (d) has achieved the standards of professional practice approved by the College;
  - (e) unless the College determines otherwise in a particular case, is proficient in the English language both written and oral;
  - (f) within the 5 years preceding the application —
    - (i) has been teaching, whether or not on a full-time basis, for at least one year; or
    - (ii) has complied with any requirements as to professional involvement prescribed by the regulations;
- and
- (g) meets any other requirements prescribed by the regulations for the purposes of this section.

**Division 3 — Limited authority to teach**

**36. Limited authority to teach**

- (1) If satisfied that an applicant has —
- (a) met the requirements regarding a limited authority to teach referred to in section 37; and
  - (b) paid the fee, if any, prescribed by the regulations in respect of a limited authority to teach,

then the College is to issue the applicant with a limited authority to teach.

- (2) A limited authority to teach —
- (a) may be issued for a period of up to 2 years after the day on which it commences, as is approved by the College and specified in the authority;
  - (b) is to specify —
    - (i) the school, or schools, at which the holder of the authority is authorised to teach; and
    - (ii) any limitations on the subject areas or teaching duties that apply to the holder of the authority;
- and
- (c) may be renewed.

**37. Requirements for limited authority to teach**

- (1) The requirements for a limited authority to teach are that the applicant —
- (a) has specialist knowledge, training, skills or qualifications;
  - (b) unless the College determines otherwise in a particular case, is proficient in the English language both written and oral;



- (c) has been offered a teaching position, or positions, at a school or schools —
    - (i) for which position, or positions, a suitable registered teacher is, or teachers are, not available; and
    - (ii) subject to the applicant being the holder of a limited authority to teach;
  - (d) has not been convicted of an offence the nature of which renders the person unfit to be the holder of a limited authority to teach; and
  - (e) meets any other requirements prescribed by the regulations for the purposes of this section.
- (2) On the application of the holder of a limited authority to teach the College may vary the information specified on a limited authority to teach under section 36(2)(b).

#### **Division 4 — Associate membership of the College**

#### **38. Associate membership of the College**

- (1) If satisfied that an applicant —
- (a) has met the requirements regarding associate membership of the College referred to in section 39; and
  - (b) has paid the fee, if any, prescribed by the regulations in respect of associate membership of the College,
- then the College is to accept the applicant as an associate member of the College.
- (2) Associate membership of the College —
- (a) expires one year after the day on which it commences; and
  - (b) may be renewed.

**39. Requirements for associate membership of the College**

The requirements for associate membership of the College are that the applicant —

- (a) holds a qualification in teaching approved by the College or has made a contribution to education or teaching recognised by the College;
- (b) has not been convicted of an offence the nature of which renders the person unfit to be a member of the College; and
- (c) meets any other requirements prescribed by the regulations for the purposes of this section.

**Division 5 — Applications**

**40. Applications**

- (1) A person may apply to the College for —
  - (a) membership of the College of any of the following categories —
    - (i) registration as a teacher;
    - (ii) provisional registration as a teacher;
    - (iii) limited authority to teach; or
    - (iv) associate membership of the College;
  - (b) the renewal of membership of the College; or
  - (c) the variation of information specified on a limited authority to teach under section 36(2)(b).
- (2) An application is to be —
  - (a) in writing;
  - (b) accompanied by evidence that the person meets the relevant requirements of this Act;
  - (c) accompanied by the written consent of the applicant for the College to undertake a criminal record check in respect of the applicant; and

- (d) accompanied by the relevant application fee, or fees, if any, prescribed by the regulations.
- (3) An application fee referred to in subsection (2)(d) is not refundable.

**41. Renewal of membership of the College**

- (1) An application for the renewal of membership of the College is to be made to the College before the expiry of the person's membership.
- (2) The College is to give written notice of the expiry of the person's membership to the person, personally or by post to the person's last known address, at least 28 days before the membership expires and if the College fails to give that notice within that time, the person's membership does not expire until 28 days from the time when the College does give notice of the expiry to the person.
- (3) The membership of a person is to be renewed if the College is satisfied that an applicant —
  - (a) continues to meet the requirements for membership set out in section 33, 35, 37 or 39, as is relevant;
  - (b) is complying with any current condition of membership; and
  - (c) in the case of the renewal of registration or provisional registration, has undertaken such further professional education or development requirements as are prescribed by the regulations.

**42. Information in support of applications**

- (1) An applicant is to provide the College —
  - (a) with such further information as the College requests in relation to the application and, if requested by the College to do so, is to verify information by statutory declaration; and

- (b) at the request of the College, with the applicant's written consent to seek from another person or body, specified by the College, information about the applicant relevant to the application.
- (2) Where it has good cause for doing so, the College may, in writing, request an applicant to attend before the College for the purpose of satisfying the College as to any matter relevant to an application.
- (3) The College may refuse an application if the applicant does not comply with a request made under this section.
- (4) In this section —  
*applicant* in relation to an application for a limited authority to teach, or for the variation of the information specified on a limited authority to teach under section 36(2)(b), includes a person who has made an offer of the teaching position at a school specified on the application.

**43. Imposition and removal of conditions**

- (1) The College may grant an application subject to a condition, or conditions, relating to the practice of teaching by that person.
- (2) A condition may not be imposed in respect of an application for associate membership of the College.

**44. Entitlement of applicant to make submissions**

Before refusing an application or granting an application subject to a condition the College is to —

- (a) give the applicant written notice of the proposed action; and
- (b) give the applicant an opportunity to show cause why the application should not be refused or the condition should not be imposed.

**45. Notification of outcome of application**

- (1) The College is to notify the applicant in writing of the outcome of an application not later than 30 days after deciding on the outcome of the application.
- (2) If an application for membership, or renewal of membership, is granted the notice is to contain —
  - (a) the category of membership granted;
  - (b) the period for which membership is granted;
  - (c) the person's membership number;
  - (d) any conditions imposed on the membership; and
  - (e) if conditions have been imposed, the reasons for the imposition of the conditions and a statement that the applicant has a right to a review under section 81.
- (3) If an application is refused the notice is to contain —
  - (a) the reasons why it has not been granted; and
  - (b) a statement that the applicant has a right to a review under section 81.

**Division 6 — Annual fees**

**46. Annual fees**

- (1) Each member of the College is to pay to the College the annual fee, if any, prescribed.
- (2) If a person does not pay any annual fee due, after reasonable steps have been taken to remind the person to do so, the College may cancel the person's membership of the College.
- (3) Notice of cancellation of membership under this section is to be given in accordance with section 59.

### **Division 7 — Register**

#### **47. Register of teachers to be kept**

- (1) The College is required to keep an accurate and up to date register containing a list of all registered and provisionally registered teachers and all persons who hold a limited authority to teach and in respect of each person is to record —
  - (a) the person's name;
  - (b) the category of membership of the College that the person holds;
  - (c) the person's membership number;
  - (d) the date of the commencement of the person's registration, provisional registration or limited authority to teach; and
  - (e) any other information prescribed by the regulations.
- (2) The register may be wholly or partly compiled, recorded or stored in written form or on microfilm, or by electronic or other means or in any other form the Director considers appropriate.

#### **48. Inspection of register**

- (1) The register is to be kept in the office of the Director.
- (2) The register is to be available for inspection by members of the public during normal office hours.
- (3) A person may, on application to the Director, and on payment of the fee prescribed by the regulations, obtain a certified copy of the register or a particular entry in the register.

## **Part 5 — Certain information to be given to College**

### **Division 1 — College to be notified about certain matters**

#### **49. DPP or Commissioner of Police to notify College about committal, conviction etc. of teachers**

- (1) The Director of Public Prosecutions, or where the matter is conducted by a police prosecutor, the Commissioner of Police, is, where practicable, to give written notice to the College if he or she becomes aware that any of the following situations exist or believes, on reasonable grounds, that any of the following situations exist —
- (a) a teacher is charged with, or committed for trial or sentence before any court for, an offence described in Schedule 2;
  - (b) a teacher is convicted or found guilty of an indictable offence in this State;
  - (c) in the case of a charge referred to in paragraph (a), the prosecution of the charge is discontinued or does not result in a committal for trial or sentence, or there is an acquittal or mistrial;
  - (d) in the case of a committal referred to in paragraph (a), there is an acquittal or mistrial or the prosecution of the charge is discontinued.
- (2) In subsection (1) —
- teacher*** means a person who the Director of Public Prosecutions, or the Commissioner of Police, as is relevant, believes, on reasonable grounds —
- (a) is a teacher at a school; or
  - (b) is, or was at any time, a member of the College.
- (3) A notice under subsection (1) is to be sent as soon as practicable after the person giving it becomes aware, or forms the belief, that the relevant situation exists.

- (4) As soon as is practicable after receiving a notice under subsection (1) about a person the College is to —
- (a) consider the notice and any other information it considers relevant and decide whether or not —
    - (i) the membership of the person should be cancelled under section 55; or
    - (ii) it is necessary to hold an inquiry,
  - and
  - (b) if the person is teaching at a school, advise the person who has employed, engaged or given permission to the person to do so of the information contained in the notice.

*[Section 49 amended by No. 2 of 2008 s. 72(2) and (3).]*

**50. Employer to notify College about suspension or dismissal of teacher from school**

- (1) If an employer of a registered teacher, or a person who holds a limited authority to teach, has suspended or dismissed that person from teaching at a school because, in the opinion of the employer, the person has —
- (a) been seriously incompetent as a teacher; or
  - (b) engaged in serious misconduct,

the employer must give written notice to the College within 14 days after taking the action to dismiss or suspend the teacher setting out the action taken and the reason, or reasons, for the action.

Penalty: \$5 000.

- (2) As soon as is possible after receiving a notice under this section, the College is to consider the notice and any other information it considers relevant and decide if it is necessary to hold an inquiry.



- (3) In subsection (1) —

*employer*, in relation to a registered teacher, or a person who holds a limited authority to teach, means a person who has employed, engaged or given permission to the person to teach in the school.

**51. Member to notify College about certain legal actions**

- (1) A member of the College must give written notice to the College within 14 days after —
- (a) being ordered to pay damages or compensation as a result of civil proceedings arising out of the practice of teaching or arising from events which occurred while the person was —
    - (i) employed, engaged or given permission to teach in a school; and
    - (ii) in a school;
  - or
  - (b) being convicted of an offence the statutory penalty for which is, or includes, imprisonment,

setting out details of the order or conviction.

Penalty: \$5 000.

- (2) As soon as is possible after receiving a notice under this section, the College is to consider the notice and any other information it considers relevant and decide whether or not —
- (a) the membership of the person should be cancelled under section 55; or
  - (b) it is necessary to hold an inquiry.

**52. Member to notify College about loss of qualifications**

- (1) A member of the College must give written notice to the College within 14 days after a qualification that enabled the person to gain membership is withdrawn or cancelled by the body that conferred the qualification.

Penalty: \$5 000.

- (2) As soon as is possible after receiving a notice under this section the College is to consider the notice and any other information it considers relevant and decide whether or not —
- (a) the membership of the person should be cancelled under section 56(1)(b); or
  - (b) it is necessary to hold an inquiry.

### **Division 2 — Criminal record checks**

#### **53. College may request consent to undertake a criminal record check**

- (1) The College may request, by notice in writing given to a member, that the member provide written consent for the College to undertake a criminal record check in respect of the member.
- (2) Notice to a member under subsection (1) is to state that the consent is to be given to the College within 14 days of the notice being given, or such later time as is specified in the notice.
- (3) If consent for the College to undertake a criminal record check is not given to the College by a member within the time stated in a notice given to the member under subsection (1) then the College is to give a further notice in the form prescribed in the regulations to the member informing him or her that the person's membership of the College may be cancelled under section 57 unless the consent is given to the College within 7 days, or such later time as is stated in that notice.

#### **54. Criminal record check**

- (1) The College may undertake a criminal record check on a person who has given written consent for the College to do so.
- (2) As soon as is possible after receiving a criminal record check the College is to consider the criminal record check and any

other information it considers relevant and decide whether or not —

- (a) the membership of the person should be cancelled under section 55; or
- (b) it is necessary to hold an inquiry.

## Part 6 — Cancellation of membership in certain instances

### 55. Membership to be cancelled where sexual offence involving a child has occurred

- (1) The College is to cancel the membership of a person as soon as possible after the College becomes aware that the person has been convicted or found guilty of a sexual offence involving a child.
- (2) The membership of the person is to remain cancelled during an appeal from the conviction or finding.
- (3) If a conviction or finding is quashed or overturned on appeal, subsection (1) ceases to apply in respect of the conviction or finding.
- (4) This section applies whether the person is convicted or found guilty of the offence in this State or elsewhere.
- (5) Notice of cancellation of membership under this section is to be given in accordance with section 59.
- (6) In this section —

**child** means a person who has not attained the age of 18 years;

**sexual offence** means any of the following —

- (a) an offence the necessary elements of which are —
  - (i) a sexual assault of a child; or
  - (ii) a person involving the child in a sexual activity with that person or another person in which the child is used, directly or indirectly, as a sexual object by the first-mentioned person or the other person, and where there is unequal power in the relationship between the child and the first-mentioned person;
- (b) an offence described in Schedule 2;

- (c) an offence prescribed in the regulations for the purposes of this paragraph;
- (d) an offence of attempting to commit an offence referred to in paragraph (a), (b) or (c).

**56. Membership may be cancelled where certain registration requirements not complied with**

- (1) The College may cancel the membership of a person —
  - (a) in respect of a person registered as a teacher under section 34, if the College is satisfied that the person has not —
    - (i) been teaching within the preceding 5 years, whether or not on a full-time basis, for at least one year; or
    - (ii) complied with any requirements as to professional involvement prescribed by the regulations for the purposes of section 35(f)(ii) within that time;
  - or
  - (b) if a qualification of the person that enabled the person to gain membership has been withdrawn or cancelled by the body that conferred the qualification; or
  - (c) if a qualification of the person that enabled the person to gain membership has been found to be forged or fraudulently obtained.
- (2) If the College proposes to cancel a person's membership under subsection (1), the College is to give the person written notice of the proposal and the reasons for the proposal.
- (3) A notice given under subsection (2) is to state that within 28 days after the notice is given, the person to whom it is given may make written representations to the College concerning the proposal and the College is not to cancel the membership of the person without considering any representations received within that period.

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- (4) Notice of cancellation of membership under this section is to be given in accordance with section 59.

**57. Membership to be cancelled where consent to undertake criminal record check not given to College as requested**

- (1) The College may cancel the membership of a person if the person does not give to the College the person's written consent for the College to undertake a criminal record check in accordance with a notice under section 53(3).
- (2) Notice of cancellation of membership under this section is to be given in accordance with section 59.

**58. Effect of cancellation of membership of College**

If a person's membership of the College is cancelled under this Act —

- (a) the person ceases to be a member of the College; and
- (b) if the person was a registered teacher or the holder of a limited authority to teach, the person's name is to be removed from the register.

**59. Notification to be given of cancellation of membership**

- (1) The College is to give written notice of the cancellation of a person's membership under section 46(2), 55, 56 or 57 to —
- (a) the person whose membership is cancelled; and
- (b) each employer of the person,

not later than 7 days after making that decision.

- (2) Notice under subsection (1) is to contain a statement that the applicant has a right to a review under section 81.

- (3) In subsection (1) —

*employer*, in relation to a person whose membership is cancelled, means a person who, immediately before or at the time of the cancellation, employed, engaged or gave permission to the person to teach in a school.

## Part 7 — Disciplinary proceedings

### Division 1 — Preliminary

**60. Term used: affected person**

In this Part —

*affected person* means a person whose conduct is the subject of disciplinary proceedings.

**61. Inappropriate and trivial complaints**

The College is not under a duty to deal with a complaint made to the College about a member of the College if of the opinion that the complaint —

- (a) is in respect of a matter that could more appropriately be dealt with by another person or authority;
- (b) is in respect of a matter that is not within the power of the College to deal with; or
- (c) is vexatious, trivial, unreasonable or without substance.

### Division 2 — Disciplinary action

**62. Disciplinary action may be ordered for unprofessional conduct**

- (1) The College may order that disciplinary action be taken against a member of the College if it has been found at an inquiry into the conduct of that member that the member has engaged in unprofessional conduct.
- (2) The only disciplinary action that may be ordered to be taken against an associate member of the College is the cancellation of the person's membership of the College.
- (3) A person who is no longer a member of the College may be investigated or otherwise dealt with under this Part in respect of conduct that allegedly occurred at the time the person was a

member of the College as if the person were still a member of the College.

**63. Unprofessional conduct**

- (1) The following conduct is unprofessional conduct —
- (a) that a person has been convicted of an offence the nature of which renders the person unfit to be a teacher;
  - (b) that a person has engaged in serious misconduct the nature of which renders the person unfit to be a teacher;
  - (c) that a person has been seriously incompetent as a teacher;
  - (d) that a person has contravened this Act; or
  - (e) that a person has contravened a condition of the person's membership relating to the way he or she practises teaching.
- (2) For the purposes of subsection (1) —
- seriously incompetent as a teacher* includes such conduct as is prescribed in the regulations;
- serious misconduct the nature of which renders the person unfit to be a teacher* includes such conduct as is prescribed in the regulations.

**64. Disciplinary actions**

The following are disciplinary actions —

- (a) the imposition of a condition on the person's membership of the College relating to the way he or she practises teaching;
- (b) the suspension of the person's membership of the College for a period not exceeding 2 years;
- (c) the imposition of a penalty to be paid by the person, not exceeding \$5 000;
- (d) the cancellation of the person's membership of the College.



### **Division 3 — Inquiries**

#### **65. College or committee to conduct inquiry**

- (1) The College is to decide when it is necessary to hold an inquiry.
- (2) The College may hold an inquiry itself or establish a committee to do so.
- (3) A committee established by the College to hold an inquiry has such powers of the College under this Division as are necessary to hold the inquiry.
- (4) A committee established to hold an inquiry is to consist of at least 3 people and is to include —
  - (a) a registered teacher; and
  - (b) a member of the Board.

#### **66. Notice to be given to affected person and attendance of affected person**

- (1) The College must give notice to an affected person before an inquiry commences.
- (2) Notice is to —
  - (a) specify the grounds for the inquiry;
  - (b) specify the time and place it intends to conduct any hearing as part of an inquiry;
  - (c) specify, where the inquiry is to be held by a committee, the names of the members of the committee;
  - (d) specify the disciplinary actions that may be taken as a result of the inquiry; and
  - (e) contain, or be accompanied by —
    - (i) such information regarding; or
    - (ii) copies of such provisions of, this Part of the Act as is prescribed by the regulations.

- (3) Notice is to be given to the affected person at least 21 days before the inquiry commences, either personally or in any other way prescribed by the regulations that ensures that it is received by the affected person and results in a written record of the affected person having received the notice.
- (4) An inquiry may proceed in the absence of the affected person if the College is satisfied on reasonable grounds that the affected person was given notice under this section.

**67. Inquiry open to public**

- (1) An inquiry is to be open to the public unless the College orders that due to the special circumstances of a particular matter, all or part of the inquiry should be closed to the public.
- (2) The affected person, or a person required to appear before the inquiry as a witness, may request that all or part of the inquiry be closed to the public.
- (3) The College may order that any, or all, of the following must not be published —
  - (a) the name of the affected person, any person who made a complaint relevant to the inquiry or any person who gives evidence at the inquiry;
  - (b) any evidence given at the inquiry;
  - (c) the contents of any document produced at the inquiry.
- (4) A person must not publish, or permit the publication of, any information that the College has ordered under subsection (3) not be published.

Penalty: \$5 000.

**68. Procedure and evidence**

In any proceedings of an inquiry, the College —

- (a) must proceed with as little formality and technicality and as speedily as the requirements of this Act and proper hearing of the matter permit;

- (b) is not bound by the rules of evidence and may inform itself on any matter as it thinks fit; and
- (c) may, subject to this Act and the rules of procedural fairness, determine its own procedures.

**69. Rights of affected person as to evidence and witnesses**

- (1) In conducting an inquiry, the College is to give the affected person an opportunity to —
  - (a) call and give evidence;
  - (b) examine and cross examine witnesses; and
  - (c) make submissions.
- (2) Subsection (1) does not apply if —
  - (a) the College has adopted any findings, decision, judgment or reasons for judgment under section 70; and
  - (b) the affected person has been given the opportunities referred to in subsection (1) by a court, tribunal or other body referred to in that section.

**70. Evidence and findings in other proceedings**

For the purposes of an inquiry the College may, as it considers proper —

- (a) receive in evidence any transcript of evidence taken in proceedings; or
- (b) adopt any findings, decision, judgment or reasons for judgment,

of a court, tribunal or other body constituted under the law of Western Australia or any other place and draw such conclusions of fact from those as it considers proper.

**71. Representation at inquiry**

- (1) A party to an inquiry may —
  - (a) appear before the inquiry in person; or

- (b) be represented by another person.
- (2) A person who is not an Australian legal practitioner (within the meaning of that term in the *Legal Profession Act 2008* section 3) is authorised —
  - (a) to represent a party before an inquiry; and
  - (b) to provide advice and other services for the purpose of acting for a party in connection with an inquiry.

*[Section 71 amended by No. 21 of 2008 s. 712.]*

**72. Powers of inquiry**

- (1) For the purposes of conducting an inquiry the College may —
  - (a) by written notice given to a person require the attendance of the person as a witness at a time and place specified in the notice to give evidence;
  - (b) by written notice given to a person require the person to produce any document or other thing that is in the possession or under the control of the person and is relevant to the matter before the College;
  - (c) examine witnesses on oath or affirmation; or
  - (d) inspect a document or other thing produced before it.
- (2) The College may —
  - (a) require a person who appears before the inquiry to take an oath or make an affirmation; and
  - (b) authorise a member of the Board to administer an oath or affirmation to the person.
- (3) The College may —
  - (a) inspect a document or other thing produced and retain it for such reasonable period as it thinks fit; and
  - (b) make copies of, photograph and take extracts from, the document or any of its contents.

**73. Notification of findings**

- (1) As soon as is practicable after the conclusion of an inquiry held by a committee, the committee is to report its findings to the College.
- (2) The College must have regard to any findings of a committee reported to the College in making a decision as to disciplinary action that may be taken as a result of the inquiry.
- (3) As soon as is practicable after —
  - (a) the conclusion of an inquiry; or
  - (b) where the inquiry has been held by a committee, receiving the report of the findings of the committee,the College is to give written notice of the findings of the inquiry and any disciplinary action ordered by the College to be taken against the affected person to —
  - (c) the affected person; and
  - (d) each employer of the affected person.
- (4) Notice to the affected person under subsection (3) is to contain a statement that the affected person has a right to a review under section 81.
- (5) In subsection (3)(d) —

*employer*, in relation to an affected person, means a person who employs, engages or gives permission to the person to teach in a school.

**74. Record of inquiry**

- (1) The College is to ensure that a record is kept of an inquiry.
- (2) The affected person is entitled to a copy of the record of the inquiry if he or she so requests and on payment of the cost of making a copy of the record.

**75. Publication of adverse findings**

- (1) If the College orders that disciplinary action be taken against a member of the College then the College is to cause to be published, in accordance with the regulations —
  - (a) the name of the person;
  - (b) the nature of the finding;
  - (c) the disciplinary action taken, if any; and
  - (d) a summary of its reasons for its finding.
- (2) The summary referred to in subsection (1)(d) is to include such details of the evidence as the College considers helpful in understanding the nature of the case, but the College may withhold such details as it considers —
  - (a) in the interests of any complainant or witness before the inquiry should be withheld; or
  - (b) would prejudice the interests of any person other than the affected person.
- (3) Despite subsection (1), the College is not required to comply with that subsection if it is of the opinion that the circumstances are of such a minor nature that publication is not warranted.

**Division 4 — Offences relating to inquiries**

**76. Failure to comply with notice under section 72**

- (1) A person must not, without lawful excuse, refuse or fail —
  - (a) to attend; or
  - (b) to produce a document or other thing,as required by a notice under section 72(1).
- (2) A person must not, without lawful excuse, refuse or fail to be sworn or make an affirmation as required under section 72(2).  
Penalty: \$5 000.

**77. Disruption of inquiry**

During an inquiry a person must not —

- (a) attempt to improperly influence the inquiry;
- (b) wilfully insult the College, a committee or a member of the College or a committee;
- (c) wilfully interrupt or obstruct the proceedings of the inquiry; or
- (d) otherwise wilfully disrupt the inquiry.

Penalty: \$5 000.

**Division 5 — Miscellaneous**

**78. Cancellation of conditions**

- (1) The College is to cancel a condition imposed under this Act if satisfied that the person is no longer affected by the matter that gave rise to the imposition of the condition.
- (2) Notice of a cancellation under subsection (1) is to be given to the person and is to specify the date from which the condition is cancelled.

**79. Suspension**

- (1) A person whose membership of the College is suspended is to be taken not to be registered, provisionally registered or hold a limited authority to teach, as is relevant, during the period of the suspension.
- (2) The College is to cancel a suspension imposed under this Act if satisfied that the person is no longer affected by the matter that gave rise to the imposition of the suspension.
- (3) Notice of a cancellation under subsection (2) is to be given to the person and is to specify the date from which the suspension is cancelled.

**80. Publication of proceedings etc.**

- (1) Without limiting the operation of section 23, no action, claim or demand lies against a person to whom this subsection applies in respect of the communication or publication in good faith of any finding, order, reasons or decision of the College.
- (2) Subsection (1) applies to —
  - (a) the College, any member of the College, the Director or any member of staff of the College;
  - (b) any committee or any member of a committee or person referred to in section 13(8);
  - (c) any board or authority outside the State charged with regulating the registration and supervision of teachers or any officer, employee or agent of the board or authority; and
  - (d) any journalist for, or the proprietor or any person concerned in the publication or operation of, any newspaper or periodical or of any electronic medium.
- (3) The College may notify a finding, order, reason or decision of the College in respect of a person to —
  - (a) any person referred to in subsection (2)(c) or (d);
  - (b) any relevant professional association or trade union of which the person is a member;
  - (c) any person who engages, employs or gives permission to the person to teach in a school; and
  - (d) any other person who, in the opinion of the College, should be made aware of the finding, reasons or decision,

and may publish notice of the finding, reason or decision in the *Gazette* or in such other manner as the College thinks fit.



## **Part 8 — Review of certain decisions**

### **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.

## **Part 9 — Miscellaneous**

### **82. False or misleading information**

A person —

- (a) in making an application under this Act; or
- (b) in complying, or purporting to comply, with any requirement made by or under this Act to provide information,

must not —

- (c) make a statement which the person knows is false or misleading in a material particular;
- (d) make a statement which is false or misleading in a material particular, with reckless disregard as to whether or not the statement is false or misleading in a material particular;
- (e) provide, or cause to be provided, information that the person knows is false or misleading in a material particular;
- (f) provide, or cause to be provided, information that is false or misleading in a material particular, with reckless disregard as to whether the information is false or misleading in a material particular; or
- (g) fail to disclose, or cause a failure to disclose, all information that the person knows is materially relevant.

Penalty:

- (a) for a first offence, \$5 000;
- (b) for a second or subsequent offence, \$10 000.

**83. Pretending to be entitled to teach in a school**

A person must not claim or pretend to be, or make use of any certificate or any words or letters or any name, title, abbreviation, description, certificate or authority that implies or tends to encourage the belief that he or she is —

- (a) qualified or entitled to teach in a school unless he or she is a registered teacher or holds a limited authority to teach;
- (b) a registered teacher unless he or she is a registered teacher; or
- (c) the holder of a limited authority to teach unless he or she is the holder of a limited authority to teach.

Penalty:

- (a) for a first offence, \$5 000;
- (b) for a second or subsequent offence, \$10 000.

**84. Legal proceedings**

- (1) Any proceedings for an offence against this Act may be taken in the name of the College by the Director or any other person authorised in that behalf by the College.
- (2) All proceedings for offences against this Act are to be heard by a court of summary jurisdiction constituted by a magistrate.
- (3) In any proceedings no proof is required of —
  - (a) the appointment or election of a member of the Board or a committee; or
  - (b) the authorisation of a person under subsection (1),but an averment in a prosecution notice that the person is so appointed, elected or authorised is to be taken to be proved in the absence of evidence to the contrary.
- (4) Subsection (1) does not limit the ability of a person to commence or conduct the prosecution of an offence if the person has authority at law to do so.

**s. 84**

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- (5) In all courts and before all persons and bodies authorised to receive evidence —
- (a) in the absence of evidence to the contrary a certificate purporting to be issued on behalf of the College and stating that a person was or was not —
    - (i) registered or provisionally registered as a teacher;
    - (ii) an associate member of the College; or
    - (iii) the holder of a limited authority to teach, and any conditions to which the person's membership was subject, or that a person was suspended from membership of the College, on any day or days or during a period mentioned in the certificate, is conclusive evidence of the matters so stated;
  - (b) in the absence of evidence to the contrary a copy of, or extract from, the register or any statement that purports to reproduce matters entered in the register that is certified by the Director as a true copy, extract or statement, is conclusive evidence of the facts appearing in that copy, extract or statement; and
  - (c) judicial notice is to be taken of the signature of the Director on a certificate purporting to be issued under this section and the fact that that person is or was the Director.
- (6) In the absence of evidence to the contrary a certificate issued under this Act to a person who —
- (a) is registered as a teacher;
  - (b) is provisionally registered as a teacher;
  - (c) has associate membership of the College; or

(d) holds a limited authority to teach,

is conclusive evidence that the person to whom the certificate is issued is so registered, holds that membership or authority, as is relevant.

*[Section 84 amended by No. 84 of 2004 s. 80.]*

## **85. Rules**

- (1) The College may, with the approval of the Governor, make rules prescribing all matters required or permitted by this Act to be prescribed by rules or necessary or convenient to be prescribed for the carrying out of this Act.
- (2) Without limiting the generality of subsection (1), rules may be made for all, or any, of the following purposes —
  - (a) regulating the meetings, practice and proceedings of, and the conduct of business by, the Board or a committee;
  - (b) making provision for and in respect of, temporary members to act in the place of members of the Board in prescribed circumstances;
  - (c) making provision about the various categories of membership of the College;
  - (d) making provision in respect of the election of members of the Board under section 9;
  - (e) the issuing, amending, renewal and surrender of —
    - (i) certificates relating to registration, provisional registration and associate membership of the College;
    - (ii) limited authorities to teach;
  - (f) maintaining the accuracy of the register;
  - (g) regulating the display and use of certificates and authorities;

**s. 86**

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- (h) regarding information to be given to members of the College;
- (i) regarding information —
  - (i) as to persons who are teaching in a school;
  - (ii) about teaching in schools,  
to be supplied to the College, at the request of the College, by any person who employs, engages or gives permission to persons to teach in a school;
- (j) procedures in relation to the making of complaints;
- (k) procedures in relation to the conduct of inquiries;
- (l) prescribing fees to be paid for the purposes of this Act, and the person liable for payment of any fee;
- (m) prescribing forms to be used for the purposes of this Act;
- (n) providing that any information supplied to the College or a committee may be required to be verified by statutory declaration.

**86. Regulations**

- (1) The Governor may make regulations —
  - (a) prescribing all matters that are required or permitted by this Act to be prescribed by regulation; and
  - (b) with respect to any matter on which the College may make rules.
- (2) The regulations may provide for a penalty for contravention of a provision of the regulations not exceeding a fine of \$5 000.
- (3) Where a regulation is inconsistent with a rule the regulation prevails to the extent of the inconsistency.

**87. Forms may be approved**

Forms that are convenient for the purposes of this Act may be —

- (a) prescribed by the regulations or rules; or
- (b) approved in writing by the College.

[88. *Omitted under the Reprints Act 1984 s. 7(4)(e).*]

**89. Transitional provisions**

Schedule 4 has effect.

**90. 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.

## Schedule 1 — Constitution and proceedings of Board

[s. 10]

### Division 1 — General provisions

#### 1. Terms used

In this Schedule, unless the contrary intention appears —

*appointed* means appointed under section 9(1);

*elected* means elected under section 9(2);

*inaugural election* means —

- (a) the first election held under section 9(2)(a)(ii); or
- (b) the first election held under section 9(2)(b)(ii); or
- (c) the first election held under section 9(2)(c)(ii),

and includes an election held by reason of the failure, partial failure or invalidity of any of those elections;

*member* means a member of the Board.

*[Clause 1 inserted by No. 18 of 2007 s. 6(1).]*

#### 2. Terms of office

- (1) An appointed member holds office for the period, not exceeding 3 years, specified in the instrument of his or her appointment.
- (2) A member elected at an inaugural election holds office for the period ending on the day determined by the Minister under subclause (11)(a).
- (3) A member elected to fill a vacancy in the office of —
  - (a) an elected member; or
  - (b) a member appointed under clause 3(2),occurring by effluxion of time holds office for the period ending 3 years after the occurrence of that vacancy.
- (4) A member elected to fill a vacancy in the office of an elected member occurring otherwise than by effluxion of time holds office for the remainder of the period for which his or her predecessor in office was elected.



- (5) A member appointed under clause 3(2) holds office for the remainder of the period for which his or her predecessor in office was —
- (a) elected; or
  - (b) appointed under clause 3(2),

as the case may be.

- (6) Despite subclauses (1) to (5), if the period of office of a member expires by effluxion of time without a person having been appointed or elected to fill the vacancy, the member continues in office until —
- (a) a person is appointed or elected to fill the vacancy; or
  - (b) a period of 3 months elapses after the expiry of the period of office,

whichever occurs first.

- (7) Subclauses (1) to (6) have effect subject to clause 4.

- (8) An appointed member is eligible for re-appointment.

- (9) An elected member is eligible for re-election.

- (10) A member appointed under clause 3(2) is eligible for election.

- (11) Before the inaugural elections are held the day on which the terms of the members elected at those elections are to end must be —

- (a) determined by the Minister; and
- (b) published in the *Gazette*.

- (12) The day determined under subclause (11)(a) must not be more than 3 years after the day on which it is published under subclause (11)(b).

*[Clause 2 inserted by No. 18 of 2007 s. 6(1).]*

### **3. Vacancy in the office of an elected member**

- (1) Subject to subclause (2), whenever the office of an elected member is vacant or is due to become vacant an election is to be conducted to elect a person to fill the vacancy.

- (2) Despite sections 7(2)(b) and 9(2) and subclause (1), in the case of —
- (a) a vacancy in the office of an elected member occurring during the period of one year ending on the day on which the office would have become vacant by effluxion of time; or
  - (b) a vacancy in the office of a member appointed under this subclause occurring otherwise than by effluxion of time,
- the Minister is to appoint a person to fill the vacancy.
- (3) The person appointed under subclause (2) is to be a person the Minister considers to be representative of the registered teachers mentioned in section 9(2)(a)(ii), (b)(ii) or (c)(ii) as the case may require.

*[Clause 3 amended by No. 18 of 2007 s. 6(2) and (3).]*

**4. Resignation, removal etc.**

- (1) The office of a member becomes vacant if he or she —
- (a) resigns the office by written notice addressed to the Minister;
  - (b) is an insolvent under administration, within the meaning given to that term by the *Corporations Act 2001* of the Commonwealth; or
  - (c) is removed from office by the Minister under subclause (2).
- (2) The Minister, on the recommendation of the Board, may remove a member from office for —
- (a) misconduct or incompetence;
  - (b) mental or physical incapacity, other than temporary illness, impairing the performance of his or her functions;
  - (c) in the case of an elected member, if the person ceases to be a registered teacher; or
  - (d) absence without leave, from 3 consecutive meetings of the Board of which the member has had notice.
- (3) In subclause (2)(a) —
- misconduct*** includes conduct that renders the member unfit to hold office, even though the conduct does not relate to any function of the office.

**5. Chairperson and deputy chairperson**

- (1) The Board is to elect a chairperson and a deputy chairperson from among its members.
- (2) A person elected under subclause (1) is to hold that office for —
  - (a) the period ending one year after the election; or
  - (b) the unexpired period of his or her current term of office as a member,whichever is the shorter period, and is eligible for re-election.
- (3) Where the chairperson is unable to act because of sickness, absence or other cause, the deputy chairperson is to act in the chairperson's place.
- (4) The office of the chairperson or deputy chairperson becomes vacant if the person holding the office —
  - (a) resigns the office by written notice addressed to the Director; or
  - (b) ceases to be a member.

*[Clause 5 amended by No. 18 of 2007 s. 6(4) and (5).]*

**6. Leave of absence**

The Board may grant leave of absence to a member on such terms and conditions as it thinks fit.

**7. Calling of meetings**

- (1) Subject to subclause (2), meetings are to be held at the times and places that the Board determines.
- (2) A special meeting of the Board may at any time be convened by the chairperson.
- (3) The first meeting of the Board is to be convened by the member nominated under section 9(1)(a).

**8. Presiding officer**

- (1) The chairperson is to preside at all meetings of the Board at which he or she is present.

- (2) If both the chairperson and the deputy chairperson are absent from a meeting the members present are to appoint one of their number to preside.

**9. Voting**

- (1) Each question before the Board is to be decided by a majority of its members.
- (2) At any meeting of the Board each member present has a deliberative vote.
- (3) If there is an equality of votes, the chairperson has a second or casting vote.

**10. Minutes**

The Board is to cause accurate minutes to be kept of the proceedings at its meetings.

**11. Resolution without meeting**

A resolution in writing signed by each member or assented to by each member by letter or facsimile is as effectual as if it had been passed at a meeting of the Board.

**12. Telephone or video meetings**

A communication between a majority of the members by telephone, audio-visual or other electronic means is a valid meeting of the Board if —

- (a) each participating member is capable of communicating with every other participating member instantaneously at all times during the proceedings; and
- (b) all members were advised that the communication would be taking place and were given the opportunity to participate.

**13. Board to determine its own procedures**

Subject to this Act, the Board is to determine its own procedures.

**14. Interim Board members**

The Minister is to appoint persons to act as members under section 9(2) until members are elected.

**Division 2 — Disclosure of interests etc.**

**15. Disclosure of interests**

- (1) A member who has a material personal interest in a matter being considered or about to be considered by the Board must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

Penalty: \$10 000.

- (2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.

**16. Voting by interested members**

A member who has a material personal interest in a matter that is being considered by the Board —

- (a) must not vote whether at a meeting or otherwise —
- (i) on the matter; or
  - (ii) on a proposed resolution under clause 17 in respect of the matter, whether relating to that member or a different member;

and

- (b) must not be present while —
- (i) the matter; or
  - (ii) a proposed resolution of the kind referred to in paragraph (a)(ii),

is being considered at a meeting.

**17. Clause 16 may be declared inapplicable**

Clause 16 does not apply if the Board has at any time passed a resolution that —

- (a) specifies the member, the interest and the matter; and

- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

**18. Quorum where clause 16 applies**

- (1) If a member of the Board is disqualified under clause 16 in relation to a matter, a quorum is present during the consideration of the matter if at least 8 members are present who are entitled to vote on any motion that may be moved at the meeting in relation to the matter.
- (2) The Minister may deal with a matter to the extent that the Board cannot deal with it because of subclause (1).

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## Schedule 2 — Sexual offences

[s. 49(1) and 55(6)(b)]

<i>Enactment</i>	<i>Description of offence</i>
<b>1.</b>	<b><i>The Criminal Code</i></b>
s. 186	Occupier or owner allowing certain persons to be on premises for unlawful carnal knowledge
s. 187	Facilitating sexual offences against children outside Western Australia
s. 191	Procuring person to be prostitute etc.
s. 192	Procuring person to have unlawful carnal knowledge by threats, fraud, or administering drugs
s. 202	Obscene acts in public
s. 203	Indecent acts in public
s. 204	Indecent act with intent to offend
Chapter XXXI	Sexual offences
<b>2.</b>	<b><i>Prostitution Act 2000</i></b>
s. 9	Promoting employment in prostitution industry
s. 15	Acting as a prostitute for a child
s. 16	Causing, permitting, or seeking to induce child to act as prostitute
s. 17	Obtaining payment for prostitution by a child
s. 18	Agreement for prostitution by a child
s. 20	Prostitution at place where child present
s. 21	Allowing child to be at place involving prostitution

*[Schedule 2 amended by No. 2 of 2008 s. 72(4).]*

*[Schedule 3 omitted under the Reprints Act 1984 s. 7(4)(e).]*

## **Schedule 4 — Transitional provisions**

[s. 89]

### **1. Term used: commencement day**

In this Schedule —

*commencement day* means the day fixed under section 2.

### **2. Teachers currently teaching**

- (1) Despite any other provision of this Act, if a teacher currently teaching applies in the manner approved by the College for —

- (a) registration as a teacher; or
- (b) a limited authority to teach,

the College must register the person as a teacher or issue the person with a limited authority to teach, as is relevant, unless the College is satisfied that the person has been convicted of an offence the nature of which renders the person unfit to be a teacher or has engaged in any other serious misconduct the nature of which renders the person unfit to be a teacher.

- (2) An application under this clause is to be made within —

- (a) 18 months after the commencement day; or
- (b) such further time as the College allows, if the College decides there are special circumstances to do so.

- (3) In this clause —

*teacher currently teaching* means a person who was employed or engaged to teach in a school, whether or not the person was actually teaching, immediately before the commencement day.

### **3. Teachers not currently teaching**

- (1) Despite any other provision of this Act, if a teacher not currently teaching applies in the manner approved by the College for —

- (a) registration as a teacher; or
- (b) a limited authority to teach,

the College may register the person as a teacher or issue the person with a limited authority to teach, as is relevant, unless the College is



satisfied that the person has been convicted of an offence the nature of which renders the person unfit to be a teacher or has engaged in any other serious misconduct the nature of which renders the person unfit to be a teacher.

- (2) An application under this clause is to be made within —
- (a) 24 months after the commencement of this Act; or
  - (b) such further time as the College allows, if the College decides there are special circumstances to do so.

- (3) In this clause —
- teacher not currently teaching*** means a person who was not employed or engaged to teach in a school immediately before the commencement day but was employed or engaged to teach in a school at some time before the commencement day.

**4. Notice to be given to teacher**

The College is to give written notice to each person who has applied to the College under this Schedule as to the outcome of the application.

**5. Renewal of registration gained under this Schedule (approved qualification not necessary)**

Section 35(a), as applied by section 41(3)(a), does not apply in respect of a renewal of the membership of a person registered under clause 2(1) or 3(1) of this Schedule.

**6. Review of decision of the College**

A person who is aggrieved by a decision of the College under this Schedule may apply for a review of that decision under section 81 and for that purpose section 81 applies as if the review were a review under that section.

**7. Applications under this Schedule**

- (1) For the avoidance of doubt, an application for membership of the College made under this Schedule is an application for the purposes of this Act.

**cl. 8**

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- (2) Despite subclause (1), section 40(2) does not apply in respect of an application for membership of the College made under this Schedule.

**8. Sections 30, 31 and 83 not to apply to current teachers for a period of time**

Sections 30, 31 and 83 do not apply in respect of a teacher to whom clause 2 or 3 of this Schedule applies, until —

- (a) an application made by the teacher under clause 2 or 3 has been granted, or refused, by the College under this Schedule;  
or  
(b) 18 months after the commencement day,

whichever happens first.

## Notes

- <sup>1</sup> This is a compilation of the *Western Australian College of Teaching Act 2004* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Western Australian College of Teaching Act 2004</i>	8 of 2004	10 Jun 2004	s. 1 and 2: 10 Jun 2004; Act other than s. 1 and 2: 15 Sep 2004 (see s. 2 and <i>Gazette</i> 3 Sep 2004 p. 3849)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Western Australian College of Teaching Amendment Act 2007</i>	18 of 2007	3 Jul 2007	s. 1 and 2: 3 Jul 2007 (see s. 2(a)); Act other than s. 1 and 2: 4 Jul 2007 (see s. 2(b))
<i>Criminal Law and Evidence Amendment Act 2008</i> s. 72	2 of 2008	12 Mar 2008	27 Apr 2008 (see s. 2 and <i>Gazette</i> 24 Apr 2008 p. 1559)
<i>Legal Profession Act 2008</i> s. 712	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 511)
<b>Reprint 1: The Western Australian College of Teaching Act 2004 as at 5 Dec 2008</b> (includes amendments listed above except those in the <i>Legal Profession Act 2008</i> )			
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009</i> s. 135	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
<i>Public Sector Reform Act 2010</i> s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)
<i>Curriculum Council Amendment Act 2011</i> Pt. 3 Div. 5	37 of 2011	13 Sep 2011	1 Mar 2012 (see s. 2(b) and <i>Gazette</i> 28 Feb 2012 p. 841)

- <sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

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**Provisions that have not come into operation**

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Short title	Number and year	Assent	Commencement
<i>Prostitution Amendment Act 2008</i> s. 34 <sup>3</sup>	13 of 2008	14 Apr 2008	To be proclaimed (see s. 2(b))

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<sup>2</sup> The provisions in this Act amending these Acts have been omitted under the *Reprints Act 1984* s. 7(4)(e).

<sup>3</sup> On the date as at which this compilation was prepared, the *Prostitution Amendment Act 2008* s. 34 had not come into operation. It reads as follows:

“

**34. Western Australian College of Teaching Act 2004 amended**

- (1) The amendments in this section are to the *Western Australian College of Teaching Act 2004*.
- (2) Schedule 2 is amended as follows:
  - (a) by deleting the entry relating to section 191 of *The Criminal Code*;
  - (b) by deleting “*Prostitution Act 2000*” and inserting instead —  
“ ***Sexual Services Act 2000*** ”;
  - (c) by deleting “prostitution industry” and inserting instead —  
“ sexual service business ”;
  - (d) by deleting “prostitute” in each place where it occurs and inserting instead —  
“ sex worker ”;
  - (e) by deleting the entries relating to sections 17, 18, 20 and 21 of the *Prostitution Act 2000* and inserting instead —

“

- |        |                                                                                                    |
|--------|----------------------------------------------------------------------------------------------------|
| s. 17  | Obtaining payment for commercial sexual act by a child                                             |
| s. 18  | Agreement for child to act as a sex worker                                                         |
| s. 20  | Commercial sexual act at place where child present                                                 |
| s. 21  | Allowing child to be at place involving commercial sexual act or certain sexual service businesses |
| s. 21A | Obligations of those who operate sexual service business in relation to children                   |

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**Defined Terms**

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*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined Term</b>	<b>Provision(s)</b>
affected person .....	60
applicant .....	42(4)
application .....	3(1)
appointed .....	Sch. 1 cl. 1
associate member of the College .....	3(1)
Board .....	3(1)
child .....	55(6)
College .....	3(1)
commencement day .....	Sch. 4 cl. 1
committee .....	3(1)
criminal record check .....	3(1)
Director .....	3(1)
disciplinary action .....	3(1)
document .....	15(5)
elected .....	Sch. 1 cl. 1
employer .....	50(3), 59(3), 73(5)
inaugural election .....	Sch. 1 cl. 1
information .....	15(5)
inquiry .....	3(1)
limited authority to teach .....	3(1)
member .....	Sch. 1 cl. 1
member of the Board .....	3(1)
member of the College .....	3(1)
misconduct .....	Sch. 1 cl. 4(3)
provisional registration .....	3(1)
register .....	3(1)
registered teacher .....	3(1)
registration .....	3(1)
rules .....	3(1)
serious misconduct the nature of which renders the person unfit to be a teacher .....	63(2)
seriously incompetent as a teacher .....	63(2)
sexual offence .....	55(6)
teacher .....	49(2)
teacher currently teaching .....	Sch. 4 cl. 2(3)
teacher not currently teaching .....	Sch. 4 cl. 3(3)
teaching .....	3(1)
unprofessional conduct .....	3(1)

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By Authority: JOHN A. STRIJK, Government Printer