

Teacher Registration in the ACT

ISSUES PAPER No 4 - Professional Conduct

Introduction

This paper is one of a series that has been prepared to inform and encourage consultation and discussion on the need for and the possible elements of a teacher registration system for teachers in all education systems in the ACT.

The key document in the consultation process is *Teacher Registration in the ACT: Community Consultation Paper*, released on 14 May 2007. That paper sets out the background to the ACT Government's decision to investigate the issue of teacher registration, describes the purposes of a teacher registration system, canvasses the possible role and function of such a system in the ACT and sets out a process for consultation with stakeholders.

This paper addresses the specific issue of **professional conduct** for teachers. Its purpose is to provide information and to encourage discussion around the issue of whether an ACT teacher registration body should have any role in setting and managing standards for professional conduct and what that role might entail. It does not necessarily represent the views of the ACT Department of Education and Training (DET) or of any other stakeholder involved in the consultation process. The Teacher Registration Project Reference Group has approved the circulation of this paper on that basis.

Background

Clear and ultimately enforceable codes of professional conduct are important for teachers,

particularly given their relationships with and responsibilities for students and their standing in the community. A key issue in considering the role of an independent teacher registration body for the ACT is whether it should have any role in establishing and enforcing professional ethics and conduct.

The Present Situation

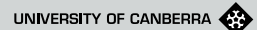
All teachers seeking employment in the ACT government system are required to undergo a **criminal history record check** - to ascertain whether there is anything in a person's background that may prevent him/her from being considered as fit and proper to become a teacher. This checking is administered by the Department of Education and Training.

The **professional conduct** expected of ACT government teachers are set out in detail in the *Teacher's Code of Professional Practice* (the Code), all teachers participate in workshops to ensure they understand the requisites of the Code. The Code is based on the values, principles and ethical obligations that are set out in sections 7 and 9 of the *Public Sector Management Act 1994*, which centre around core public sector standards such as service to the public; responsiveness to government and the public; accountability; fairness, integrity, efficiency and effectiveness and which apply to all ACT public servants. The Teachers' Code interprets and applies these principles and obligations to the particular ethical responsibilities of teachers.

The Teachers' Code covers the broader ethical obligations of teachers as public servants and how these principles translate to the teaching profession



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including being apolitical, being accountable for the effective and proper use of resources, respecting the rights of colleagues and clients, avoiding conflicts of interest; obeying the law and reasonable direction, acting with fairness, integrity and probity, protecting sensitive information, avoiding harassment and bullying and respecting difference and diversity.

The Code also covers specific ethical obligations of the teaching profession, including: protecting students from harm, maintaining and developing professional knowledge and skills, developing and implementing effective pedagogies, promoting learning and the value of education and accepting responsibility for high quality teaching.

All ACT public servants, including ACT government teachers, are obliged to comply with the Code of Ethics as set out in section 9 of the Public Sector Management Act. Agency certified agreements include procedures for dealing with breaches of the Code of Ethics, a breach of the Teachers Code of Professional Practice that was also a breach of the Code of Ethics could result in a fine, a transfer, a demotion or a dismissal.

The Catholic system undertakes its own character checks to ensure that its potential teachers are fit and proper persons to be employed in its system. It also has its own codes of ethics and conduct for teachers. There is a specific Child Protection Code of Professional Standards for Catholic School and System Staffs that sets out specific responsibilities for teachers and other staff employed within the Catholic system.

The broader ethical and behavioural responsibilities of teachers in the Catholic system are set out in the document *Teaching in Catholic Schools – A Statement of Principles* which is issued to all new teaching employees.

Individual Independent schools have their own systems in place to manage the professional conduct of their teachers. All Independent schools conduct police record checks. Most schools also use the NSW Commission for Children and Young People's Child Check, a background check system specifically covering people who work with children.

Individual independent schools invariably have a written code of conduct for their teachers. These include the core types of professional and personal behaviours normally expected of teachers in any school system, and they also usually require the teacher to understand and support the particular ethos of the school. A serious breach of the code may lead to action to terminate the teacher's employment.

A System of Professional Conduct

Professional Ethics and Professional Standards

A threshold issue that needs to be canvassed in the discussion is the relationship between professional standards and professional ethics. A provisional differentiation could be made along the following lines:

- professional standards describe the skills and abilities a teacher needs to be effective. Dealing with teachers who cannot meet professional standards is primarily a performance management issue; and
- professional ethics describe the behavior expected from teachers in dealing with students and parents, in managing their employer's resources and interests and in interacting with the community. Dealing with teachers who breach a code of professional ethics is primarily a misconduct issue.

In practice, of course, the two areas may overlap. How a teacher deals with a particular classroom situation could involve both professional standards and professional ethics. As indicated in *Issues Paper No 2, Professional Standards*, the professional standards of the New South Wales registration body include elements that relate to ethics, for example, a professionally competent teacher must "demonstrate ethical behavior by respecting the privacy of students and the confidentiality of student information".

The ACT Department of Education and Training's Teacher's Code of Professional Practice, while it is oriented toward ethics, also contains elements that are arguably a matter of professional standards and would need to be managed as such. Failure in "maintaining and developing professional knowledge and skills", for example, might be more effectively handled as a performance management issue rather than a misconduct issue.

Another issue for consideration with codes of professional conduct is the need to understand the difference between statements of ethics that are aspirational, that describe professional and behavioral best practice, and those that describe the core standards of behavior that must be met and that can be enforced through legal sanctions. For example, the requirement for teachers, under Principle 1.4 of the ACT Government Teachers Code, to act with probity by...."seeking student and staff views about decisions that affect them" reflects sound workplace practice, but is unlikely to be enforceable under the formal ACTPS code of conduct in section 9 of the *Public Sector Management Act*.

Codes of Professional Ethics

As noted in Issues Paper No 2, *Professional Standards*, all registration bodies in other jurisdictions are responsible in one way or another for the establishment and maintenance of professional standards for teachers. In some cases, the body is also given explicit legislative responsibility for professional ethics.

- The Victorian body is required to “*develop, maintain and promote a code of conduct for the teaching profession*”.
- The Tasmanian and Northern Territory bodies have virtually the same responsibilities in legislation: “*to develop and maintain a code of professional ethics for the teaching profession*”.
- The Western Australian body “*must...establish and promote professional values relating to teaching in schools*” and
- The Queensland body is enabled by its Act to “... develop codes of practice to provide guidance to approved teachers about appropriate professional conduct or practice.”

What do these Codes look like? Most jurisdictional bodies are operating under new or recent legislation and the development of statements and codes of ethics and conduct is a work in progress in many states.

- The Tasmanian Registration Board has a succinct Code of Professional Ethics for the Teaching Profession in Tasmania that commits teachers to the principles of Dignity; Respect; Integrity; Empathy and Justice.
- Victoria has a similar short statement of ethics based around the qualities of Integrity Respect and Responsibility.
- Queensland will be developing a Code of Practice, and is currently using the Ethical Standards for Queensland Teachers (used by the former Board of Teacher Registration) – these are based around Responsibility to Students; Responsibility to Student’s Parents; Commitment to Colleagues and the Teaching Profession and Responsibility to Teacher Employers and to the Community and Society.
- The Northern Territory’s draft Ethics Statement emphasises duty of care to students, respecting the rights of parents and students and behaving in ways that promote the profession.

These sets of professional ethics have one thing in common. They are short statements setting out broad ethical aspirations rather than codes of conduct that prescribe in detail the particular behavioral obligations of teachers. The Victorian

registration body is developing a more detailed code of conduct that will specifically address the issue of expected behavior from teachers in various professional situations but even this, at a planned four pages, is likely to be relatively broad.

Ethics and Misconduct

All teacher registration bodies in the Australian jurisdictions have the explicit or implicit power in legislation, after due process, to deregister a teacher for misconduct. In:

- Victoria, for example, a teacher who has “whether by act or omission, engaged in serious misconduct” may be deregistered;
- SA, legislation refers to a teacher who “has been guilty of unprofessional conduct”;
- WA, deregistration may occur if a teacher has been “engaged in serious misconduct, the nature of which renders the person unfit to be a teacher”; and
- Queensland’s legislation cites the power for its body to “cancel the teacher’s registration or permission to teach”.

The provisions in the legislation across jurisdictions that give teacher registration bodies their powers in relation to discipline are complex and vary in detail from state to state. In most jurisdictions, however, a teacher may be disciplined for misconduct by the teacher registration body, and cautioned, fined, suspended or deregistered, in two basic ways.

Firstly, the registration body normally has the power to conduct an independent inquiry or investigation into the conduct of a member following a complaint. The grounds for a complaint vary from jurisdiction to jurisdiction but usually include misconduct.

Secondly, the registration body normally has the power, in one form or another, to discipline members who have been found guilty of offences under other legislation. The Western Australian teacher registration legislation states, “that a person has been convicted of an offence the nature of which renders the person unfit to be a teacher”. In some cases and in some jurisdictions a member convicted of such an offence would still have the benefit of an independent inquiry by the registration body before any action was taken by it. Some offences, however, result in instant deregistration. In the Northern Territory, for example:

The Board, on becoming aware that a teacher has been found guilty of a sexual offence, must note in the register that the teacher’s registration is

cancelled and must notify the teacher, the employer (if known) and other registration authorities in Australia and New Zealand accordingly.

The New South Wales teacher accreditation body is the exception in that it has few powers to independently investigate or review accreditation on the basis of misconduct. In the case of NSW Government teachers, for example, any teacher convicted of an offence under the disciplinary provisions of the *Teaching Services Act 1980* that carries a penalty of dismissal is automatically deregistered.

The powers that the teacher registration bodies have in most jurisdictions in relation to misconduct means, in effect, that there is a dual system of discipline and that it is possible for a teacher to have their employment terminated by the employer yet still remain registered to teach in the jurisdiction. This appears to be deliberate in most jurisdictions, and is intended to provide a safeguard for members of the profession, taking into account the fact that a teacher who may not be competent to teach in, say, a difficult state education system may still be competent to teach in other sectors. Of course a teacher who was clearly convicted of serious misconduct in one sector is unlikely to be allowed to continue to be registered to teach in other sectors in the jurisdiction.

Professional Codes and Misconduct

The differences between aspirational and enforceable codes of conduct were briefly discussed earlier in this paper. The short statements of professional ethics that some jurisdictions have produced are clearly aspirational, and would not provide a realistic basis for action to de register a teacher on the basis of misconduct.

Those registration bodies that have or are in the process of implementing codes of ethics or conduct seem to see their role as providing broad ethical guidance and sound practice advice to teachers, rather than laying down enforceable codes that provide the basis for disciplinary action.

- In Tasmania, for example, the basis for investigating any complaint about the conduct of a teacher would normally be whether it breached their employers – the State, Catholic or Independent education authorities - codes of conduct; and

- In Victoria the basis for investigation in a similar situation would normally be case law and the employers code of conduct. It is understood that the code of conduct under development by the Victorian registration body, referred to earlier, is intended to be advisory only and would not be used a basis for deregistration on the grounds of misconduct.

Criminal History Check

Legislation in all jurisdictions except NSW gives the teacher registration body the power to seek a criminal a criminal history record check to ascertain whether there is anything in their background that might not make them a fit and proper person to teach. In Queensland, for example: *The college must ask the commissioner of police for a written report about the criminal history of an applicant for registration or permission to teach.*

It is understood that in most jurisdictions teacher employers rely on the registration body to undertake criminal background checks, even though they may have parallel powers in legislation.

Issues

The main issues for consideration of a professional conduct role for an ACT teacher registration body include:

- whether the body should have powers to conduct its own discipline and review processes in relation to teacher misconduct, or whether it should simply leave that role to teacher employers who would, of course, be subject to employment law and to processes set out in certified agreements. Separate powers would involve resources but arguably provide professional safeguards;
- whether the body should have the power to issue its own codes of conduct or ethics. An issue here is that while the body can set broad aspirational and good practice goals in relation to conduct, it may be difficult to develop a uniform code for disciplinary purposes that meets the particular ethical needs of all sectors.