

Education (Queensland College of Teachers) Amendment Bill 2019

Explanatory Notes

Short title

The short title of the Bill is the Education (Queensland College of Teachers) Amendment Bill 2019.

Policy objectives and the reasons for them

The policy objectives of the Bill are to:

- create a certification process in Queensland, consistent with a national framework, that recognises high performing teachers and encourages them to continue their role as a classroom teacher;
- enable the Queensland College of Teachers (the College) to perform the role of certifying authority for the certification of highly accomplished teachers and lead teachers; and
- provide for an effective, transparent certification process, with decisions subject to appropriate review.

Ensuring high teaching standards is a priority for the Queensland Government. Retaining quality teachers in the classroom is essential to ensuring an effective education system. It is therefore important to develop a framework to identify high performing teachers and give them the appropriate career opportunities without leaving the classroom.

To ensure high teaching standards, the need for common professional teaching standards across Australia has been recognised by the Commonwealth, state and territory governments. The Australian Institute for Teaching and School Leadership (AITSL), a public company wholly owned by the Commonwealth Government, established in 2009 by the then Ministerial Council for Education, Early Childhood Development and Youth Affairs, provides national leadership for the Commonwealth, state and territory governments by promoting excellence in the profession of teaching and school leadership.

In December 2010, Commonwealth, state and territory Education Ministers endorsed the Australian Professional Standards for Teachers (APST) developed by AITSL, which provides for a framework for the teaching profession. The framework is organised into four career stages; commencing at graduate; progressing to proficient for experienced teachers; then highly accomplished teacher (HAT); and finally at the highest career stage of lead teacher (LT).

The APST have been recognised in the *Education (Queensland College of Teachers) Act 2005* (QCT Act) since 2012. The College is a statutory body established under the QCT Act. Its functions relating to the registration and permission to teach for teachers in Queensland are set out in chapter 10 of the QCT Act.

A person is not able to teach in Queensland schools (both State and non-state) without being registered as a teacher by the College. In making registration decisions, the College assesses

beginning teachers against the APST graduate requirements. Full registration (for teachers with at least one-year experience) is assessed against the proficient requirements.

However, the QCT Act does not provide for the College to certify high performing teachers at the aspirational and voluntary stages of HAT and LT career stages. These stages are not required for, nor have any bearing on, an individual's teacher registration, though could have a bearing on a teacher's employment conditions and career path, dependent upon how the certification is treated in the context of industrial relations and employment.

In 2012, AITSL published the *'Guide to the Certification of Highly Accomplished and Lead Teachers in Australia'* (the Guide) after endorsement by Australian Education Ministers through the then Standing Council on School Education and Early Childhood (now called the Education Council). The Guide contains a framework for certification of HAT and LT. The Guide states that certification has three primary purposes:

- to recognise and promote quality teaching;
- to provide an opportunity for teachers to reflect on their practice; and
- to provide a reliable indication of quality teaching that can be used to identify, recognise and/or reward HAT and LT certified teachers.

As part of the framework, a certifying authority in a state or territory is responsible for administering the national certification process in that jurisdiction.

In accordance with a Government commitment to develop and implement HAT and LT career stages by 2019, the Department of Education (DoE) worked in consultation with stakeholders and the College, to design and deliver a pilot of the HAT and LT certification process, which concluded at the end of 2018.

The College performed the role of temporary certifying authority for the pilot within its current legislative authority under section 232. However, this legislative authority is not sufficient for the College to undertake the certifying authority role on an ongoing basis.

In order to transition the College to the role of a certifying authority, amendments are required to the QCT Act to give the College the function of a certifying authority for HAT and LT, as well as providing for the associated application and decision making processes, payment of fees, and review processes.

Achievement of policy objectives

The objectives are achieved by amendment to the QCT Act and *Education (Queensland College of Teachers) Regulation 2016* (the Regulation) to:

- establish a new function for the College to perform the role of a certifying authority for HAT and LT in accordance with the APST, including being able to engage and deliver training to other entities;
- enable fully registered teachers who are employed in prescribed schools to be able to apply to the College for certification and renewal of certification at HAT and LT career stages;
- enable the College to engage prescribed third parties to assist in the delivery of its certification functions;
- allow the College to maintain a record of certified teachers;
- provide for an internal review process for the College's certification decisions, with a further option of an external review by the Queensland Civil and Administrative

- Tribunal (QCAT); and
- prescribe the fees to be paid to the College for undertaking the certification process.

The provisions in the Bill provide for a high-level framework that will allow flexibility in the way the certification process is administered by the College and ensure the College is able to adapt to changes in the national certification processes, without further legislative change.

The College will undertake certification with reference to the Guide and the APST, which are available on the AITSL website. Additionally, the Bill enables a regulation to be made to prescribe particular processes should it be deemed necessary during implementation or in the future.

The Bill provides that the College may engage other third party entities, prescribed in a regulation, to assist it in undertaking its certification functions, including assessment processes. It is intended that these be limited to employing authorities, or entities that represent employing authorities, to enable them to provide assistance in the assessment of their employees.

The Bill does not change the current confidentiality, disclosure and information sharing provisions in the QCT Act. Applicants and certified teachers will be able to provide consent for their relevant information to be shared with entities such as AITSL and employing authorities. The College will be responsible for ensuring privacy and disclosure requirements are met.

HAT and LT are voluntary career stages, and teachers' current registration and working conditions are not impacted by the Bill. Additionally, employing authorities are not required to participate in the prescribed certification process. Whether an employing authority recognises HAT and LT certification and how it affects matters such as remuneration and working conditions, will be a decision for each employing authority, and is not impacted by the Bill.

The Bill does not prevent other certifying authorities operating in Queensland. To ensure that teachers apply to the appropriate certifying authority for their sector, the Bill allows a regulation to prescribe who can apply for certification through the College, limiting it to State school teachers and teachers working in schools represented by the Queensland Catholic Education Commission (QCEC).

Additionally, the Bill provides that a regulation can prescribe different application fees for teachers employed by different employing authorities. This ensures there is flexibility with prescribed fees. Different sectors, such as employing authorities represented by the QCEC, may choose to provide different levels of assistance to the College than other sectors, such as the State sector, in the assessment process. The ability for a regulation to prescribe different fees for the sectors will enable the fees to be reflective of the level of assistance provided by particular employing authorities in the assessment process.

Alternative ways of achieving policy objectives

As the College is a statutory body it cannot exceed its prescribed functions under the QCT Act, and legislative amendment is required to provide the requisite legislative authority to perform the ongoing role of certifying authority.

An alternate approach to HAT and LT certification would be for an entity, other than the College, to become the certifying authority. For example, Independent Schools Queensland

(ISQ) is currently a certifying authority for its member independent schools in Queensland. An internal unit established administratively within the DoE could potentially perform the role of certifying authority in Queensland, without legislative amendment.

This option was considered, however the College is a more appropriate and viable body to act as the certifying authority as it is an existing independent external statutory body with an in-depth knowledge of the APST. It currently has the function of registering Queensland teachers across the State and non-state sectors against the first two career levels of the APST. The College has demonstrated an ability to perform the role of certifying authority through the pilot, establishing processes and procedures, and recruiting and allocating staff to support this function. It is therefore well placed to perform the role of an independent certifying authority across both the State and non-state sectors, should they wish to participate.

Establishing the existing teacher registration body through legislation as the certifying authority is consistent with the approach adopted in New South Wales and the Australian Capital Territory.

Estimated cost for implementation

The costs to the College for the implementation and ongoing conduct of HAT and LT certification will vary over time, as certification is voluntary and demand-driven. These costs will be met from fees charged to applicants, supplemented if necessary, to ensure that there is no impact on teacher registration fees.

Consistency with fundamental legislative principles

Under section 4(2) of the *Legislative Standards Act 1992*, legislation must have sufficient regard to the rights and liberties of individuals and the institution of Parliament. The Bill is generally consistent with fundamental legislative principles.

The new functions of the College, in performing the role of a certifying authority, are sufficiently defined with certification decisions subject to both internal and external review processes. No new offences are created. Teachers' existing rights and working conditions, including their current registration, are not impacted. The new HAT and LT career stages are voluntary, and offer a new career progression option for teachers should they wish to take advantage of it.

The prescription of fees in a regulation is appropriate to subordinate legislation.

Consultation

Consultation has been undertaken with stakeholders including the College, QCAT, QCEC, ISQ, and the Queensland Teachers' Union and Independent Education Union as relevant unions.

There is general support for the Bill.

Consistency with legislation of other jurisdictions

At the time of introduction of the Bill, a number of other Australian jurisdictions (but not all) have established one or more certifying authorities for HAT and LT certification in accordance with the APST. Similar to the proposed approach in Queensland, NSW and the ACT provide in legislation for their teacher registration authority to also have the function to

certify teachers as HAT and LT in accordance with the APST (see the *NSW Teacher Accreditation Act 2004* and the *ACT Teacher Quality Institute Act 2010*). NSW and ACT both prescribe a high-level framework, with the role of assessors and associated processes not prescribed. The ACT has the closest model to the Queensland's proposed approach, with similar application, decision and review processes. In the Northern Territory, their teacher registration authority is the certifying authority, but the certification process is not legislated.

South Australia does not provide for a certifying authority and certification process in legislation, but rather each sector has established an administrative scheme for assessment, with a common certifying authority, which is established as a Ministerial Committee. In Western Australia, only the independent school sector utilises national certification, with the 'Association of Independent Schools WA' as the certifying authority, which is not prescribed in legislation.

Notes on provisions

Part 1 Preliminary

Clause 1 provides that the short title of the Act is the *Education (Queensland College of Teachers) Amendment Act 2019*.

Part 2 Amendment of Education (Queensland College of Teachers) Act 2005

Clause 2 provides that this part amends the *Education (Queensland College of Teachers) Act 2005* (QCT Act).

Clause 3 amends section 3 to provide that the objects of the QCT Act, such as upholding the standards of the teaching profession and maintaining confidence in the teaching profession, are also achieved by certifying teachers as highly accomplished or lead teachers (HAT and LT).

Clause 4 inserts a new chapter 2A (Certification of teachers) in the Act to provide for the HAT and LT certification process. The clause inserts the sections outlined below as part of this chapter.

Section 67A is inserted to provide for who may apply to the Queensland College of Teachers (College) for HAT and LT certification. Eligibility is limited to fully registered (not provisional) teachers who are Australian citizens or permanent residents and are employed by an employing authority prescribed by regulation. The use of a regulation to limit eligibility to teachers employed by particular employing authorities is to ensure that only teachers from employing authorities in Queensland who have an agreement with the College about the certification process can apply to the College. Employing authorities, or entities that represent the employing authorities, will assist the College in the assessment process, so it is important the College and relevant employing authority (or representing entity) have in place an agreement before a teacher can apply to the College. It is intended the regulation will prescribe individual employing authorities or employing authorities as a sector, such as employing authorities that are represented by the Queensland Catholic Education Commission (QCEC) or employing authorities that are members of Independent Schools Queensland, should these employing authorities or sectors choose to participate.

Section 67B provides that a certification application must be in the approved form, accompanied by the prescribed fee and comply with any other prescribed requirements, if any, in the regulation. The approved form may require particular documentation and information relevant to the application be submitted in accordance with section 48A(2) of the *Acts Interpretation Act 1954*.

Section 67C outlines the staged assessment process, which will include *assessment stage 1*, where the application and associated documentation is assessed, and *assessment stage 2* (for applicants who are successful in stage 1), which includes assessment of the teacher's practice

in the classroom. A regulation may prescribe requirements or procedures for carrying out the assessment stage 1 or assessment stage 2, if necessary.

Section 67D enables the College to make a decision on assessment stage 1. The College, after assessing the application and supporting material, must decide whether the certification application may proceed to assessment stage 2. The College may decide that an applicant may proceed to assessment stage 2 only if satisfied the applicant has demonstrated sufficiently through their application the ability, experience, knowledge and skills against the Australian Professional Standards for Teachers (APST) to proceed to the assessment stage 2.

Section 67E provides for the steps the College must take after making a decision under section 67D. The applicant must be given a notice of decision and a stage 1 report outlining the results of the assessment stage 1. Applicants who receive a notice stating they have been unsuccessful will receive an information notice. The decision is subject to internal review and potentially external review by the Queensland Civil and Administrative Tribunal (QCAT), should an unsuccessful applicant choose to seek it, in accordance with chapter 8.

Section 67F provides for an applicant who has been notified that they have been successful in assessment stage 1 to notify the College as to whether they wish to proceed to the assessment stage 2. Assessment Stage 2 by the College will not commence without a notice under this section. A notice to proceed to stage 2 must be accompanied by the prescribed fee.

Section 67G enables the College to make a certification decision after the assessment stage 2 has been completed. The College may certify a teacher as HAT or LT only if satisfied they have the abilities, experience, knowledge and skills required under the APST for certification at either the HAT or LT career level.

Section 67H provides for the steps the College must take after making a decision under section 67G. A notice of decision and a report about the outcome of the assessment stage 2 is given to the applicant. If the applicant has been unsuccessful, they will receive an information notice, and will be able to pursue a review of the decision in accordance with chapter 8.

Section 67I provides that the period of certification commences from the date stated in a notice given under section 67H and ends five years from this date.

Section 67J provides a teacher who holds current certification (either HAT or LT) can apply to the College to renew their certification, provided the teacher is fully registered (not provisionally registered) and is employed by an employing authority prescribed by the Regulation. The teacher does not need to have been initially certified by the College but could be certified by another certifying authority responsible for certifying teachers in accordance with the APST in Queensland or another Australian jurisdiction. An application for renewal of certification by the registered teacher must be made at least six months before the certification stops having effect. However, the College may consider a renewal application made no later than four months before the certification stops having effect if satisfied exceptional circumstances exist.

Section 67K provides for the requirements for renewal applications. The application must be in the approved form and be accompanied by the prescribed fee. The application must also comply with any other requirements, if any, prescribed in a regulation. The approved form may require particular documentation and information relevant to the application be

submitted in accordance with section 48A(2) of the *Acts Interpretation Act 1954*.

Section 67L provides that renewal applications be assessed against the APST. There is not a prescribed two-stage process for renewal as there is with an initial certification application. The assessment process requires an assessment of the renewal application, similar to the assessment stage 1 process for an initial certification application. A regulation may also prescribe requirements or procedures for carrying out assessment of a renewal application, if necessary.

Section 67M provides for the College to make a decision to either renew or refuse to renew an applicant's certification. The College may decide to renew only if satisfied the applicant has the abilities, experience, knowledge and skills required by the APST for certification. If the teacher's application is successful, the certification will be renewed for a further five years.

Section 67N provides for the steps the College must take after making a decision under section 67M. A notice of decision is given to the applicant. If the applicant has been unsuccessful, they will receive an information notice, and will be able to pursue a review of this decision in accordance with chapter 8.

Section 67O provides that chapter 2A, part 3 is about information requests in relation to applications for certification and renewal of certification under earlier parts within this chapter.

Section 67P provides the College, before making a decision on an application under this chapter may by notice request further information if it reasonably requires the information to make the decision. The information request period must be at least 14 days and the applicant can request extensions on the period.

Section 67Q provides that if the applicant does not comply with the information request within the information request period (which includes any extension period granted under section 67P) then the applicant is taken to have withdrawn the application and the College may not proceed any further with assessing the application.

Section 67R requires the College to keep a record of teachers certified (and renewed) by the College and relevant details in relation to the certification. The College will need the consent of the certified teacher to release this information to third parties such as AITSL or employing authorities.

Clause 5 inserts a new section 230B in chapter 10 to provide the College with the function to undertake the necessary responsibilities as a certifying authority for HAT and LT. This includes making certification decisions, keeping a record of certified teachers, and coordinating training for persons involved in the assessment of applicants for certification. Additionally, the clause allows the College to engage other entities prescribed in a Regulation to assist it in carrying out these functions. These entities will be limited to employing authorities, or entities that represent employing authorities, to enable the College to utilise their resources, subject to agreements between the College and the employing authority or representative entity, to undertake various assessment processes.

Clause 6 amends section 235 to ensure the APST can be used by the College to make HAT and LT certification decisions (including renewal decisions).

Clause 7 amends section 272 to provide that Ministerial directions cannot be in relation to certification decisions. This will ensure the independence of the College in making certification decisions in accordance with their role as a certifying authority.

Clause 8 amends section 298 to clarify that a regulation may prescribe different fees for certification applications dependent on the employing authority for the school at which the teacher, the subject of the application, is employed. As with new section 67A inserted by this Bill, it is intended that the regulation be able to prescribe employing authorities as part of sectors. Different sectors, such as employing authorities represented by the QCEC, may choose to provide different levels of assistance to the College than other sectors, such as the State sector, in the assessment process. The ability for a regulation to prescribe different fees for the sectors will enable the fees to be reflective of the level of assistance provided by particular employing authorities or sectors in the assessment process.

Clause 9 provides for a transitional provision in relation to teachers certified by the College under the pilot, but prior to the commencement of provisions in this Bill. It clarifies that the College must keep the record of certification for those teachers under new section 67R inserted by this Bill. It also clarifies that a teacher may make a renewal application under the new section 67J as if the notice were a certification made under the new chapter 2A, part 1 inserted by the Bill. An additional transitional provision clarifies that if the College receives an application for HAT and LT prior to commencement of this section, but has not decided it, the application is considered to be an application under the new chapter 2A, as inserted by the Bill.

Clause 10 amends schedule 1 to add certification decisions under sections 67D, 67G and 67M as decisions for which an information notice must be given.

Clause 11 amends schedule 3 to insert new terms relevant to certification in the dictionary.

Part 3 Amendment of Education (Queensland College of Teachers) Regulation 2016

Clause 12 provides that part 3 amends the *Education (Queensland College of Teachers) Regulation 2016* (the Regulation).

Clause 13 inserts a new part 2A, which contains the sections as outlined below.

Section 12A prescribes the employing authorities to which a teacher must be employed by in order to be eligible to apply for certification under section 67A (see notes on clause 3 for further information).

Section 12B prescribes the employing authorities to which a teacher must be employed by in order to be eligible to apply for renewal of certification under section 67J (see notes on clause 3 for further information).

Section 12C prescribes the entities that the College may engage to assist with the assessing of applicants for certification and renewal of certification under section 230B (see notes on clause 5 for further information).

Clause 14 amends schedule 1 of the Regulation, to prescribe fees (see notes on clause 8 for

further information on prescription of fees for certification).

Clause 15 amends schedule 2 of the Regulation to add a definition for the QCEC.

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