

REVIEW OF EDUCATION REGULATION

STEERING COMMITTEE REPORT

December 2020

Delivering for learners, driving quality in education through
contemporary regulation





Dear Minister

In early 2020 you set the Terms of Reference, for the *Review of Education Regulation, Delivering for learners through contemporary regulation*, to modernise the regulatory framework for education through the following outcomes:

- the provision of independent cross-sectoral advice as it relates to the entities' existing functions (education regulation)
- the strengthening of the governance framework for delivery of the entities' existing functions
- the sustainable funding of education regulation
- the adoption of better practice regulation with a focus on education outcomes.

The Teachers Registration Board Tasmania (TRB), the Office of Tasmanian Assessment, Standards and Certification (TASC), the Registrar Education (The Registrar), and the Non-Government Schools Registration Board (NGSRB) regulate and drive quality in the Tasmanian education system. The four regulators impact:

- the quality of teaching that our learners experience
- how students' learning is assessed and recognised
- the quality and safety of learning environments
- the extent to which students are participating and engaged in learning pathways.

Following delays as a result of COVID-19, in July 2020 you established a cross-sectoral Steering Committee to conduct the Review and provide you with advice on reform options and their implementation.

It was timely to assess whether, collectively, the existing arrangements for these regulators best support their policy intent – why they were established in the first place.

It was clear to the Committee from the outset that in the past 20 years there have been changes in the governance of comparable regulators interstate as well as governance reforms of regulators outside the education sector and that these needed to be considered in our context.

The Committee was also aware that there has, in more recent years, been significant change in the education landscape, both nationally and here in Tasmania, not least the COVID-19 pandemic. Central to the Committee's thinking was the need for the system and State to be able to respond to these challenges and reforms, effectively and with agility.



In framing its recommendations, the Committee acknowledges that education is the single most powerful driver for improving economic and social outcomes in Tasmania, including health outcomes, life expectancy, happiness and productivity. While there are many other factors influencing outcomes for our learners, ensuring we have a modern regulatory framework will be a critical enabler.

The Steering Committee has made 24 recommendations in relation to the four elements set out in the Terms of Reference.

I particularly want to acknowledge the participation of the regulators in this process. Their willingness to engage and provide meaningful feedback on the Discussion Paper has greatly strengthened the recommendations of the Committee.

On behalf of the Committee, I commend to you, the *Review of Education Regulation – Steering Committee Report (December 2020)*.

Mr Tony Luttrell
Chair
Review of Education Regulation Steering Committee



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Executive Summary

The *Review of Education Regulation – Steering Committee Report (December 2020)* (the Report) responds to the Review of Education Regulation Terms of Reference and is provided to the Minister for Education and Training for his consideration.

It was prepared by the Steering Committee, comprising the following members:

- Mr Tony Luttrell (Chair)
- Dr Gerard Gaskin – Executive Director Catholic Education Tasmania
- Mr Tony Crehan – Executive Director Independent Schools Tasmania
- Mr Tim Bullard – Secretary, Department of Education
- Mr James Craigie – Deputy Secretary Department of Treasury and Finance
- Ms Sue Kennedy – Director Intergovernmental Relations, Department of Premier and Cabinet.

The Report steps out how the Steering Committee approached the Review.

It explores the purpose of regulation, and its impact on regulated entities, such as teachers, learners, parents and families. The Committee agreed what the State ought to seek as an outcome of the Review, and how the regulators could drive this through its recommendations which were framed to deliver a great focus on learner outcomes and a more agile approach.

A Discussion Paper was developed to support the public consultation process that commenced on 25 August 2020 closing on 4 October 2020. A total of 20 submissions were received, including from regulators, regulated entities and teachers.

Building on the Discussion Paper, the Report further examines the existing regulatory framework. It steps out what best practice modern regulatory governance is, considers what is in place in other jurisdictions, and what we heard through consultation. Each section contains an analysis of how the Committee reached its final position.

The Report contains 24 recommendations that will assist each of the regulators to deliver, not only on their responsibilities to the education sectors and regulated entities, but also longer term outcomes for the community and economy.

In summary, the Committee's recommendations to modernise the regulatory framework for education include:

- That each regulator be subject to a performance framework that provides clarity on what the regulator is expected to achieve and accountability for the associated outcomes.
- That the existing governance of boards for the TRB and NGSRB and single person regulator model for the Registrar, Education be retained, and that the TASC single person regulator be replaced with a board.
- That the three boards be skills based, to help ensure independent advice is provided, with school education sectors voice to be provided through a newly established advisory council to the Minister.
- The independent development of a new funding methodology to determine the sustainable future funding for each of the regulators, and that Regulators be requested to examine the scope for minor additional revenue to be raised having regard to the sustainable funding principles – noting that teacher registration fees are currently at an appropriate level.

A review be undertaken between three and five years to assess the effectiveness of the changes and ensure that the regulatory framework remains contemporary.



About the Review

The TRB, TASC, the Registrar, and the NGSRB all provide critical regulatory oversight and support services to education in Tasmania. They provide this support for all education sectors, including government schools, independent schools, Catholic schools and some components of the vocational education and training (VET) sector.

As part of the 2019–20 State Budget, the Tasmanian Government committed to a review of the regulatory framework supporting these regulators. The Government began improving Tasmania's education regulation in 2016, by implementing the new *Education Act 2016* (Tas) (the Education Act). This included the establishment of the Registrar, Education supported by the Office of the Education Registrar (OER), which has been well received by all education sectors.

In establishing the Review to modernise the regulatory framework for education, the Minister for Education set Terms of Reference and established a cross-sector Steering Committee to provide advice to him on how to strengthen the governance framework for the delivery of education regulation in Tasmania and the sustainable funding of this framework.

The Steering Committee has representatives from each of the government, independent and Catholic school sectors, the Department of Treasury and Finance and the Department of Premier and Cabinet.

The role of the Steering Committee is to provide strategic direction for the Review, develop options and provide a recommendation to the Minister on a preferred model and phased implementation plan. Following delays created by COVID-19 the Steering Committee began meeting in July 2020.

Several areas were identified as being outside the scope of this Review including:

- the functions of the regulators (what they do)
- the Tasmanian Home Education Advisory Council (THEAC)
- the Education and Care unit within DoE
- the Education Performance and Review Unit within DoE
- curriculum development in DoE
- subordinate legislation for education regulation.



What is the Current Model for Education Regulation?

What is a regulator?

Regulation is used to protect and benefit people, businesses and the environment, and to support economic growth. Regulation is one of the primary ways in which a government can achieve its policy objectives. It is distinct from direct government provision of services, because it relies on using incentives (such as registration) to drive behaviour change in individuals and organisations outside of government's direct oversight.

Regulation is primarily used to address or prevent market or sector failures. The characteristics of some industries or sectors mean that, left to their own devices, they risk failing to produce behaviour or results in accordance with policy objectives or public interest (for example, child safety).

A regulator can be an individual, or group of individuals, established by an Act of Parliament, which operates at arm's length from government and which has one or more of the following functions:

- inspection and referral
- advice to a third party
- licensing
- accreditation
- enforcement.

There are four education regulators within the scope of this Review.

Teachers Registration Board

The Teachers Registration Board (TRB) is an independent statutory authority and incorporated body established under the [Teachers Registration Act 2000](#) (Tas) (the TRB Act). The TRB is responsible to the Minister for Education and Training. Its purpose is to regulate the teaching profession in Tasmania for schools and TasTAFE, and to promote, maintain and apply the *Australian Professional Standards for Teachers*. The TRB ensures all students are taught by appropriately qualified and competent teachers of good character who meet community expectations for their fitness to teach. The board must consider the welfare and best interests of students to be of paramount importance.

Office of Tasmanian Assessment, Standards and Certification

The Office of Tasmanian Assessment, Standards and Certification (TASC) is an independent statutory office responsible to the Minister for Education and Training. TASC is responsible for the development of appropriate standards, the accreditation of courses, and the assessment and certification of student achievement in senior secondary schooling across all educational sectors in Tasmania. It is established under the [Office of Tasmanian Assessment, Standards and Certification Act 2003](#) (Tas) (the TASC Act) and legally constituted by the Executive Officer.

The Registrar, Education

The Registrar, Education was established under the [Education Act 2016](#) (Tas) (the Education Act). It is responsible to the Minister for Education and Training and is responsible for various functions under the Act, including:

- registration and monitoring of home education in Tasmania, including administrative support for the Tasmanian Home Education Advisory Council (THEAC)



- administering the non-government schools' registration process and the operational aspects of the regulatory process
- reporting to and advising the Non-government Schools Registration Board (NGSRB) on decisions about the registration of a school
- managing the compulsory conciliation process for non-attendance at school, for the government, Catholic and independent school sectors.

The Registrar, Education provides executive support to the NGSRB.

Non-government Schools Registration Board

The NGSRB is an independent statutory body whose composition, functions and powers are defined under sections 229, 230 and 231 of the *Education Act 2016*. The Board's primary function is to make decisions on applications for the re-registration of existing non-government schools and the registration of systems of non government schools in Tasmania, with specific Registration Standards to be met set out under the Education Regulations 2017. The Board also makes recommendations to the Minister regarding applications for new non government schools.

The Board is supported by the Registrar, Education and their Office. The Registrar manages the day to day operations and the operational aspects of the regulatory process. Reviews for the re-registration of existing non-government schools are undertaken by Registration Officers with educational qualifications. The Registrar then provides advice to the Board in relation to the compliance of schools against the Registration Standards.

Support from the Department of Education

DoE does not have a statutory role in the provision of education regulation (as it relates to the scope of this Review). It does provide a significant support function to each of the regulators including the provision of:

- all staff to enable the regulators to perform their functions;
- funding and budget management from the DoE appropriation, except where costs are recovered through fees, eg TRB registration; and
- corporate services, eg human resources, information technology, finance, office accommodation, etc.



How the Committee Approached the Review

The Committee commenced by exploring and establishing their understanding of the outcomes specified in the Terms of Reference framing them as four interconnected elements of a modern regulatory framework.



To reach a set of final recommendations the Steering Committee:

- considered what our regulators provide to the Tasmanian community and education sectors
- considered objectives of this review in relation to the regulators' functions
- conducted a review of the best practice principles of regulatory governance
- conducted a review of the existing regulatory framework assessing each regulator against the best practice principles
- validated the research and assessment with the regulators
- prepared the [Review of Education Regulation Discussion Paper](#)
- conducted a public consultation process inviting submissions from key education stakeholders
- analysed the feedback
- prepared a *What We Heard* report for the Minister
- prepared a final report including recommendations to the Minister
- considered a phased implementation.

The next part of this report steps through the Steering Committee's analysis including its recommendations.



What is Best Practice?

The Steering Committee has drawn on several best practice resources to guide its recommendations including but not limited to:

- Australian National Audit Office (ANAO) 2014, Public Sector Governance: Strengthening Performance through Good Governance, Better Practice Guide Series, Australian National Audit Office, Barton, ACT, June.
- ANAO 2014, Administering Regulation: Achieving the Right Balance, Better Practice Guide Series, Australian National Audit Office, Barton, ACT, June.
- Australian Government 2014, Regulator Performance Framework, Department of Prime Minister and Cabinet, Canberra, ACT, October.
- Department of Treasury and Finance Vic 2017, Statement of Expectations for Regulators, Department of Treasury and Finance, Melbourne, Victoria, May.
- McLellan, JG 2011, All Above Board - Great Governance for the Government Sector, 2nd edition, Australian Institute of Company Directors, Sydney, NSW, p.2, cited in Better Practice Guide: Public Sector Governance, p.7.
- OECD 2014, The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris,
- Uhrig, J 2003, Review of the Corporate Governance of Statutory Authorities and Office Holders, Commonwealth of Australia, Canberra, ACT, June.

For this report the Steering Committee has framed its understanding of the research against three elements.



Key components of these three elements are discussed in the next section and later through an assessment of how the current governance arrangements for each regulator perform in relation to good practice including recommendations for improvement.



We need to understand what success looks like for the regulators

In order to achieve success, it is important to understand what success looks like in terms of regulatory bodies. The following should be considered:

- An effective regulator must have clear objectives, with clear and linked functions and the mechanisms to coordinate with other relevant bodies to achieve the desired regulatory outcomes.
- All parties within the governance framework need to have a clear understanding of their roles and responsibilities including their personal accountability.
- Those in control of a regulator need to be clear about what the regulator is to achieve and communicate that effectively to the regulator and the staff that support it. This involves the establishment of a clear sense of purpose and the development of clear expectations of performance.
- To reduce overlap and regulatory burden all regulators should be explicitly empowered to cooperate with other bodies (non-government and other levels of government) where this will assist in meeting their common objectives.

We need to organise the regulators for success – it's imperative to get the framework and organisational structure right

Depending on the functions of the regulator, they can be established and structured in a variety of ways, from a unit within a department to a stand-alone regulator. For example, where the regulatory function is relatively straight forward and procedural such as the issue of a recreational fishing licence or a drivers licence there is a low risk of conflicts of interest, this function may comfortably be undertaken by the Secretary of a department (or delegate), on behalf of a Minister. On the other hand, if the Integrity Commission function of investigating public sector misconduct complaints was undertaken by a department there would be a high risk of conflicts of interest and hence the governance structure needs to be independent from the Executive arm of Government.

Department or stand-alone regulator?

Figure 1 illustrates the spectrum of institutional arrangements, for the delivery of regulation ranging from delivery within a department through to delivery by a stand-alone regulator independent of the Executive with its own clearly defined funding and staffing arrangements and accountable to the Legislature. An example of the latter is the Tasmanian Integrity Commission. The further along the spectrum from a department the lower the degree of ministerial influence over regulation. Greater independence of the regulator is more appropriate where conflicts of interest are more likely to occur if regulatory responsibility remained within a department. For example, issuing of a recreational fishing licence vs issue of a gaming licence.

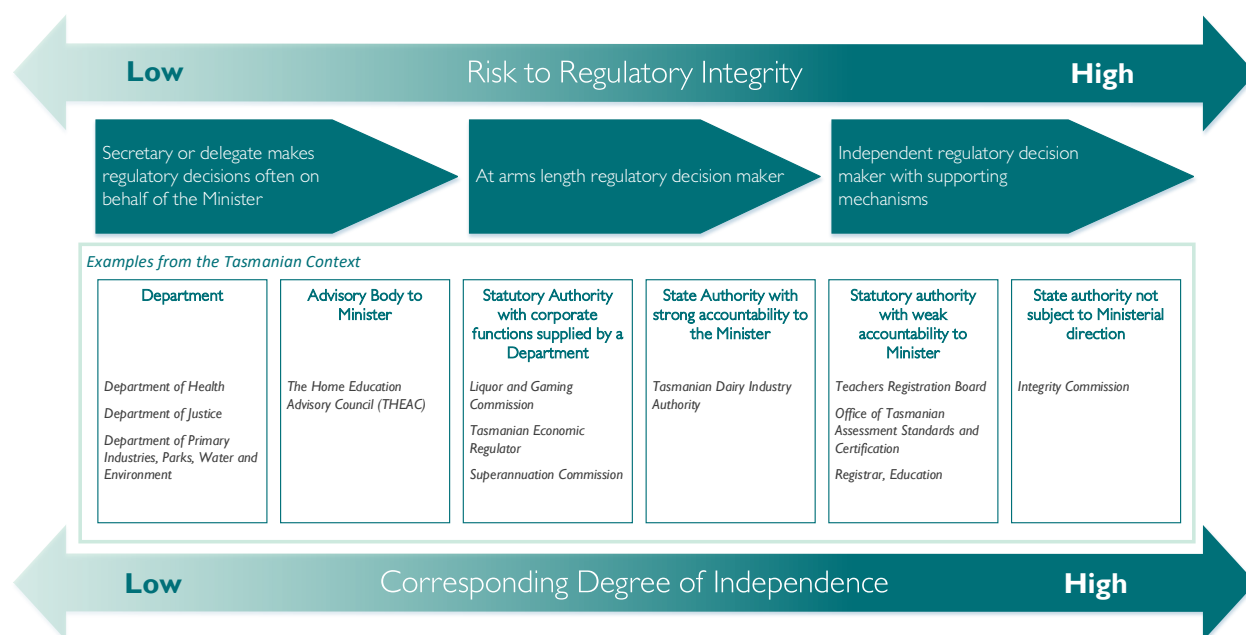


Figure 1: Regulatory integrity, independence and the institutional form

Regulatory integrity

- Regulatory integrity helps achieve decision making which is objective, impartial, and consistent and avoids the risks of conflict, bias or improper influence.
- Establishing the regulator with a degree of independence (both from those it regulates and where appropriate from government) can provide more confidence and trust that regulatory decisions are made with integrity.
- Independent regulatory decision making is likely to be appropriate where there is a need to maintain public confidence in the objectivity and impartiality of decisions.
- The autonomy of regulators (eg. organisational, decision making) situated within a department should be safeguarded by provisions in their empowering legislation.
- There should be no ministerial or departmental direction power on individual regulatory decisions.

Membership of the governing body

- To avoid conflicts of interest where there is a need for formal representation of specific stakeholders in strategic decision making, stakeholder engagement mechanisms such as an advisory or consultative council should be considered as an alternative to making those stakeholders members of the regulator's governing body.
- Senior officers (Executive representatives) are accountable to the Minister and their presence on the governing body of an independent regulator can create a perceived role conflict.
- Policies, procedures, selection criteria and terms of appointment of the governing body should be documented and transparent.
- Members of the governing body should be limited in their number of terms of appointment to a board.
- Termination provisions for independent regulators should be clearly and publicly defined.



Independent regulator supported by department staff

An independent regulator supported by departmental staff can support more independence of the regulator without creating a separate statutory body. Local examples outside of education include the Tasmanian Economic Regulator, a single person regulator supported by a branch within the Department of Treasury and Finance. There are risks with such arrangements including:

- risks to actual and perceived independence of decision making
- risks to the quality of decision making due to the quantity and quality of services provided by the department
- risks of inappropriate information exchange between staff working with the regulator and other department staff.

These risks can be managed through for example, a framework agreement between the department and the regulator that specifies, among other things:

- the overall budget
- staffing numbers, selection, performance assessment, corporate support
- information sharing policies
- application of government policies
- accountability of department staff to regulator and to department.

Regulator or board?

Where the legislation establishing a regulator provides for a narrow set of outputs to be delivered, it is likely that a single regulator will be the better governance option. If the legislation provides a wide delegation and the regulator can operate with 'entrepreneurial freedom,' a board will be the optimal mechanism for governance. Additional criteria to assist with this decision relate to complexity, risk, strategy and independence required. The greater the presence of these factors, the more likely a board structure will be appropriate.

Sustainable funding

A critical factor in organising regulators for success is that adequate funding is provided to ensure they can fulfil their legislative responsibilities. Guidance on sustainability was drawn from the funding principles OECD (2014) outlined below. This section also incorporates some elements of tax principles taken from the State Tax Review: Discussion Paper December 2010.

Supports outcomes efficiently

- Funding levels should be adequate to enable the regulator to operate efficiently, to fulfil the objectives set by government, legislative responsibilities set by Parliament (including obligations imposed by other legislation).
- Funding processes should be simple, transparent, and as efficient as possible.
- Efficient operation of user charging means that it has either a minimal or intended impact on individuals' behaviour.
- Simplicity means that the funding process:
 - » is readily understood;
 - » is easy and not costly to comply with and administer (relative to the amount of revenue raised);
 - » has minimal concessions, which are clearly articulated.



Regulatory cost recovery

- Cost recovery through fees and charges is most often adopted when government services do not directly benefit all citizens. Many programs benefit only selected groups in the community (eg users of particular services or various professions). In these circumstances, fees on those regulated allow the costs of the regulation to be incorporated into the costs of delivering the service.
- Regulators should not set the level of their cost recovery fees, or the scope of activities that incur fees, without arm's-length oversight. These fees, and the scope of activities subject to fees, should be in accordance with the policy objectives and fee guidance set by government.
- Where cost recovery is required, the regulator should not set unnecessary or inefficient administrative burdens or compliance costs on those being regulated. Costs recovered should be proportionate to the services provided by the regulator.

Funding processes should be equitable

- The source of funding for regulators should be recovered from those regulated where feasible. If not, then it should be provided by appropriation administered for government.
- Provided the objectives, scope and performance measures of a regulator are clear, budget funding is an appropriate means to fund general regulators, where it is not efficient to impose user-charges.
- Funding processes should reflect:
 - » capacity to pay, those with more capacity will pay more;
 - » who ultimately bears the cost and who benefits.

Responsibility and Accountability should be matched

Responsibility for the achievement of outcomes, such as sustainable funding for education regulation, should be matched with accountability for their achievement.

Sustainability

A sustainable funding model will:

- raise sufficient funds to meet current and future spending needs on education regulation, taking into account policy and demographic changes;
- provide revenue stability; and
- allow budgets to be balanced in the long run.



How can we ensure success is achieved and know outcomes are being delivered?

Clarity on what is expected and the right governance to deliver it

Individuals responsible for performance need to understand what outcomes they must achieve and are provided with the capacity to achieve them. In addition, power must be in existence, delegated, limited and exercised for a regulator to achieve its purpose. Power must be given to executives to develop strategy for higher level approval.

With responsibility there needs to be accountability. A robust governance framework should, through transparency and accountability mechanisms, link power and responsibility to performance and review. There should be accountability and transparency to the public; to regulated entities; and to the minister and the legislature. Key features of this accountability to the public and regulated entities include access to independent review of, and appeal processes for, decisions by the regulator.

Accountability and transparency to the minister and the legislature

The expectations for each regulator should be clearly outlined by the appropriate oversight body. These expectations should be published within the relevant regulator's annual report.

Key elements of the performance framework within the Tasmanian Government for statutory authorities such as TasTAFE, State Fire Commission and Government Business Enterprises are:

- Regulator legislation specifies objects and principles
- Minister sets policy expectations for regulator
- Regulator prepares a corporate plan including performance targets for approval by Minister
- Regulator reports to Minister against performance targets in its annual report.

An example of a legislated performance framework appears in appendix F.



Monitor performance

Governments and/or the legislator should monitor and periodically review the system of regulation to ensure it is working as intended under the legislation. In order to facilitate such reviews, the regulator should develop and publish a comprehensive and meaningful set of performance indicators.

A code of practice for regulators should include:

- the adoption of outcomes based key performance indicators to articulate government's overarching expectations of regulator performance. These are complemented by suggested output or activity-based measures to provide evidence in respect of performance.
- a process for annual externally validated self-assessment for all regulators against the Framework including, if applicable, certification from the regulator's CEO or board
- a process for targeted external review as required for a selected set of regulators, with responsible Ministers agreeing to the proposed evidence to assess performance, and the evidence metrics published as part of the review



- the option for government to commission external reviews of a small number of major regulators, with the results published.

The outcomes-based key performance indicators (KPIs) for regulators should include:

- Regulators do not unnecessarily impede the efficient operation of regulated entities. This recognises that the way regulation is implemented and enforced can have as significant an impact on productivity and economic growth, and cause as much overhead for individuals, as the content of the regulation itself.
- Communication with regulated entities is clear, targeted and effective. Better-practice regulators communicate in such a way that regulated entities clearly understand what they need to do to comply with regulation. Regulated entities are able to find out quickly which regulations apply to them, what the requirements are, and how they can comply and/or improve compliance over time.
- Actions undertaken by regulators are proportionate to the risk being managed. A risk-based approach to regulation reflects that where the risk of non-compliance is high or the consequence of non-compliance significant, there is a higher degree of monitoring. Where the risk of non-compliance is low or the consequences of non-compliance minor, regulators take lighter-touch approaches. Adopting a risk-based approach can help a regulator to minimise compliance costs for lower-risk regulated entities, as well as the regulator's own costs.
- Compliance and monitoring approaches are streamlined and coordinated.
- Regulators are open and transparent in their dealings with regulated entities.
- Regulators actively contribute to the continuous improvement of regulatory frameworks.

Provide for appeals

Best practice appeals processes to ensure accountability and transparency are:

For regulated entities:

- Information and access to appeal processes and systems are made easily available to regulated entities by regulators. Regulators establish and publish processes for arm's length internal review of significant delegated decisions (such as those made by inspectors).
- Regulated entities have the right of appeal of decisions that have a significant impact on them (preferably through a judicial process). Such right of appeal is allowable where for example a regulator exceeds its powers, there is insufficient consultation, and/or material omissions in the evidence and actions that are disproportionate to the issue being addressed.
- Regulators may rescind decisions as a result of appeal.
- Appeal mechanisms are not onerous.

For the public:

- The regulator recognises its special responsibility in ensuring that members of the public have channels of complaint and possible redress in relation both to the actions of a regulated entity and to the actions of the regulator.
- All major decisions made by the regulator are accompanied by publicly stated reasons where appropriate.
- The opportunity for independent review of significant regulatory decisions is available in the absence of strong public policy reasons to the contrary.
- The right of appeal of decisions by the regulator is extended to members of the public where their standing is recognised by the judiciary.



Consultation Process

The Committee sought stakeholder feedback to help inform its advice to the Minister for Education and Training. The initial consultation period for responses to the Discussion Paper ran for six weeks between 25 August and 4 October 2020. During that time, the Review of Education Regulation website received 758 page views and 519 unique visits.

The Discussion Paper and information regarding the Review was provided to:

- The four regulators
- The three education sectors and TasTAFE
- Four government agencies (Department of Premier and Cabinet, Department of Treasury and Finance, Department of State Growth and the Department of Communities Tasmania)
- 40 education, community and public sector organisations
- The general public through publication on the Review website and via social media.
- The media and public via press release.

In addition, face-to-face briefings were offered to all stakeholders, and provided to:

- The four regulators and their staff
- The Youth Network of Tasmania (YNOT)
- The Commissioner for Children and Young People
- The Tasmanian Principals Association
- The Smith Family
- TasTAFE
- Tasmanian Association for the Gifted
- The Home Education Advisory Council
- The Australian Education Union

Communications regarding the Review were provided internally to the leadership of the three education sectors, as well as relevant business units of DoE.

In total, 20 formal submissions were received, and three were submitted confidentially.



What We Heard

Overall, the submissions received indicated a high level of understanding of the interconnected nature of all four regulators, and how their governance model and funding source affects their ability to provide independent advice and deliver their functions.

There was general support for the adoption of the principles of a modern regulatory framework, and for each regulator to have clear objects and principles linked to their functions in the legislation.

Development of a performance framework for each regulator was generally supported by submissions except one. There was confusion by stakeholders as to the definition of 'outcomes', therefore the feedback in relation to this principle is minimal, although generally submissions supported the development and measurement of KPIs for each regulator.

Among many submissions there was strong support for the regulatory functions of each regulator to be funded by the 'Department of Treasury and Finance' (Public Account) due to the necessary provision of these functions to the benefit of all citizens. Many submissions were concerned that DoE was providing additional funding to regulators from funding for Government school students under the *Quality Schools Bilateral Agreement for Government Schools*.

There was general consensus that many of the functions of each regulator overlap, and given the small size of Tasmania, this may sometimes lead to over-regulation or duplication of processes. This may account for the number of submissions that recommended consolidation, in whole or in part, of some regulators.

The feedback received was highly valued by the Steering Committee and considered in its formulation of recommendations in this report.

A *What We Heard* report summarising the feedback received during the consultation period has been prepared for the Minister for Education and Training.



Recommendations

The next section sets out the objectives of the Steering Committee in making its recommendations, what is currently in place, what we heard from the key stakeholders, the Committee's analysis and recommendations against each of the Four Elements of a Modern Regulatory Governance Framework including:



Better practice regulation with a focus on outcomes



Modern governance for delivery of outcomes



Provision of independent advice



Sustainability of funding



What are we Seeking to Achieve?

During the past 20 years, there have been changes in the governance of comparable regulators interstate as well as governance reforms of regulators outside the education sector. Among others, the Victorian State Government, Australian Government and the Organisation for Economic Cooperation and Development (OECD) have adopted better practice regulation outside the education sector.

During this time there have also been significant changes in the education environment both locally and at the Australian Government level including:

- The *Education Act 2016* which lays the foundation for improving the educational outcomes of Tasmanians.
- The extension of the requirement under the *Education Act 2016* to remain in education or training until the completion of Year 12, a Certificate III or attaining the age of 18;
- The Years 11 and 12 Extension Schools Initiative, providing more choice to students undertaking Years 11 and 12 at their local high school.
- The Years 9 to 12 Project, enabling all students to achieve their potential through Years 9-12 and beyond in further study, training and employment.
- The Minister's Education Workforce Roundtable, taking action to deliver a quality education workforce in Tasmania.
- COVID-19 significantly affected all aspects of life, including education and how it is delivered.
- Recommendation 41 from the Premier's Economic and Social Recovery Advisory Council (PESRAC) Interim Report that the State Government should accelerate strategies to deliver improved educational opportunities that meet individual student needs as well as providing clearer pathways to jobs in identified post-COVID-19 industry priority areas, the training system and university.
- The National School Resourcing Board, established in 2017 to undertake reviews of the Australian Government's arrangements for school funding.
- The National School Reform Agreement and accompanying bilateral agreement which have changed the funding arrangements for schooling in Australia and introduced National Policy Initiatives to drive national reforms and improve student outcomes.
- The Senior Secondary Pathways Review, a part of the National School Reform Initiative, challenges the status quo of transition pathways presented to young adults at school. In years to come this will see a shift away from the dominance of a ranking score, the Australian Tertiary Admission Rank (ATAR), which privileges academic capability over the value of vocational education and training, with the emphasises shifting to other skills and attributes that that young adults require for successful adulthood.
- Establishment of the Australian Institute for Teaching and School Leadership (AITSL).
- The 2019 Alice Springs (Mparntwe) Education Declaration which sets out a national vision for education in Australia.
- The Recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse.

It is the right time to consider whether, collectively, the existing arrangements best support why these regulators were created in the first place. We also need to consider whether the policy intent is out of date or missing the mark for some of our regulators? Further information on the policy context for each of the regulators, the "why", can be found at Appendix D.

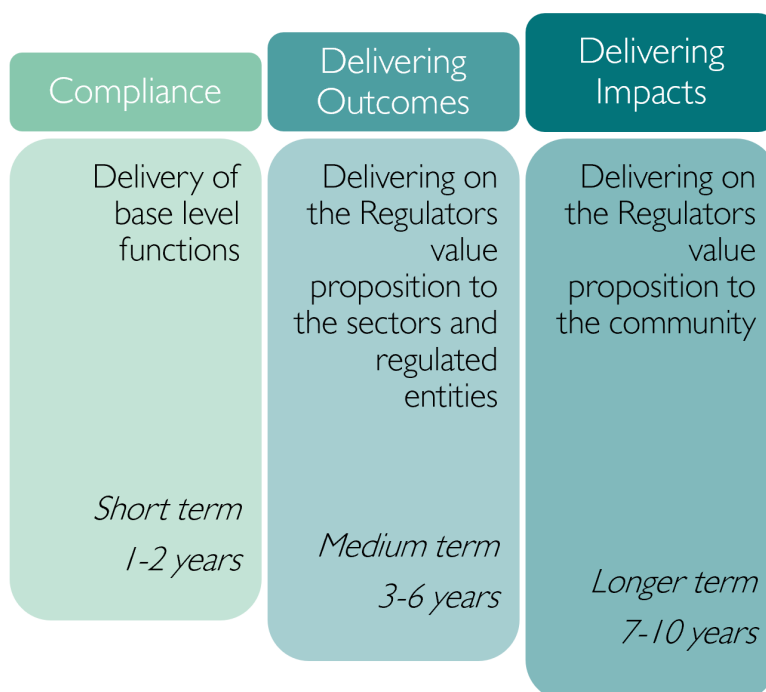


In designing regulatory approaches, governments need to strike a balance between the obligation to protect the community or public interest, while at the same time not imposing unnecessary costs on those they regulate or indirectly on the broader community. Effective regulatory administration supports the achievement of key policy objectives while minimising the burden and compliance cost for regulated entities. For example teachers are registered to help ensure teacher quality and student safety having regard to the costs to teachers and the risks of non-compliance with registration standards.

In framing its recommendations, the Steering Committee considered and agreed the objective of reform of the governance arrangements for education regulation and agreed that:

- it should deliver value to the community through the benefits from improved learner outcomes such as a skilled workforce, increased employment, economic growth and community wellbeing;
- compliance with regulatory arrangements and improvements in the quality of education outcomes for students are a means to that end;
- the Committee's role is to identify governance improvements to facilitate education regulators delivering these improved educational outcomes and economic benefits;
- that learners should be at the centre of regulation rather than regulators; and

The recommendations will assist each of the regulators deliver not only their responsibilities to the education sectors and regulated entities such as teachers, learners, parents and families, but also in the long term outcomes for the community and economy. In delivering quality education to our learners we are providing them with improved employment opportunities and health outcomes, and greater capacity to contribute to Tasmania's economy and community.





Better Practice Regulation with a Focus on Outcomes

A greater focus on achieving outcomes for learners

What is currently in place?

All four regulators have objects sections in their respective legislation setting out what they must achieve at a high level. The Education Act also specifies Principles that inform how the Registrar, Education and the NGSRB are to undertake their roles.

The legislation for the TRB and for TASC does not include Principles.

What we heard

There was general support for the adoption of the principles of a modern regulatory framework, and for each regulator to have clear, legislated objects and principles linked to their functions.

One submission recommended that the legislation for each regulator should more explicitly detail how their functions will be carried out.

TRB

Some submissions suggested that the TRB was not currently performing the functions set out in legislation such as improving the status of the teaching profession, and that the TRB should put more focus on professional learning outcomes throughout teaching careers.

In the case of developing objects and principles for the Teachers Registration Act, one submission suggested that these be future-proofed with a greater focus on learner wellbeing.

TASC

One submission suggested that TASC should be held accountable to a clear set of expectations that meet strong policy directives.

Analysis

The *Education Act 2016*, comprehensively updated for the first time in 20 years, represented a significant milestone for Tasmania and created a strong foundation for improving the educational outcomes of Tasmanians. The Act provides every child and young person in Tasmania with the opportunity to continue to learn and reach their full potential, so they can live fulfilling lives and contribute positively to our community.

Summary of Principles in the *Education Act 2016*

- » That all children should have an education that helps to maximise their educational potential and provides the foundation to enable them throughout childhood and as an adult to lead a fulfilling life and to contribute to society.
- » That parents play a critical role in the education of their child.
- » That the wider community has an important part to play - that by working together we can support our young people to best advantage.
- » That children themselves should have the opportunity to, and should be encouraged to be, actively involved in decisions affecting their participation in education.
- » The importance of the State providing universal access to education through the maintenance of a government school system, and of choice for parents through non-government schools and home education.
- » The importance of providing the foundation for lifelong learning.
- » That provision of education at a school recognises the individual needs of children with disabilities.



The Act is a contemporary and cohesive legislative framework that was shaped by the evidence of what makes a difference to improving educational outcomes as well as extensive consultation over two years. This included consideration of more than 1 000 responses from three rounds of consultation. This framework and the principles that drive it, already apply to the activity of the Registrar Education and the NGSRB.

The TRB and TASC currently sit outside this framework. As drivers of quality in education it is the view of the Committee that they should not. Inclusion of the Education Act principles in the legislation for the TASC and TRB will facilitate an approach to regulation that is centred around the learner and achievement of outcomes for learners.

In addition, the following principles should be included for all Regulators including the Registrar Education and NGSRB:

- All students are entitled to an education of a quality that is capable of enabling them to reach their potential and so maximise their achievements and contribution to the community
- In performing its functions and powers the Regulator must consider the welfare and best interests of students to be of paramount importance
- Regulators do not unnecessarily impede the efficient operation of regulated entities
- Communication with regulated entities is clear, targeted and effective
- Actions undertaken by Regulators are proportionate to the risk being managed
- Compliance and monitoring approaches by Regulators are streamlined and coordinated
- Regulators are open and transparent in their dealings with regulated entities
- Regulators actively contribute to the continuous improvement of regulatory frameworks

Recommendation I

Update the Section 4(1)(g) of the *Education Act 2016* (principles) to include education regulators.

Require a more explicit focus on learner outcomes by the TRB and TASC through the application of the *Education Act 2016* principles.

Develop regulator and function-specific principles, to guide the administration of the respective Acts by all the Regulators.

Clarity on what is expected

What is currently in place?

For the TRB, the Minister may make a direction if they consider it in the public interest. This is a very high threshold and is not an appropriate mechanism for the setting of policy or performance expectations on a regular basis.

For TASC there are no processes for the Minister to communicate what they require the regulator to achieve, with the exception of the Ministerial Direction power under s 13 of the Act which limits a direction to the performance of its functions and powers under the Act, rather than setting policy and performance expectations.

The Registrar Education and the NGSRB must comply with written Ministerial Instructions issued under the Education Act in relation to the guidelines, principles, practices and procedures to be observed.



Neither the NGSRB nor the Registrar is subject to directions from the Secretary DoE in relation to their regulatory functions.

All four regulators are required to prepare an annual report for the Minister to table in parliament. Currently the four regulators are not required to comply with a performance framework as described in the 'What is Best Practice?' section above and in Appendix F.

What we heard

The majority of submissions supported the Minister issuing annual Statements of Expectations to each regulator or developing priorities in operational plans that were approved and measured by the Minister.

One submission proposed that for the TRB and TASC, the Minister should issue an annual Statement of Expectations to inform priorities, objectives and funding.

It was noted in one submission that the requirement for a statutory officer to report to a board rather than the Secretary DoE on their performance limited the ability of that officer to also provide frank and fearless advice to the board with regard to regulatory decision making.

TRB

The TRB submission stated that a more formalised approach to setting and reporting against KPIs would be welcomed.

Two submissions argued that the TRB required more accountability with regard to funding. One suggested that TRB board members should be held accountable to the same principles of conduct as teachers. One submission recommended that the TRB provide a presentation of its annual report to major stakeholders, such as the AEU.

TASC

One submission suggested TASC requires more accountability measures. Another suggested that TASC should be held accountable to a clear set of expectations that meet strong policy directives.

Another recommended the regulator undertake longer-term goal setting to manage operational and budgetary risks, such as the need to update information technology systems and operational procedures, and report against the achievement of these goals.

Analysis

The Australian Government and Victorian Governments have a performance framework for regulators. The performance framework for a Tasmanian statutory authority generally appears within its legislation. For example, the performance management framework for TasTAFE under the *Training and Workforce Development Act 2013* provides for the Minister to set policy and performance expectations and monitor performance against these through the corporate planning process. A similar framework is also used for performance oversight of government businesses in the Tasmanian *Government Business Enterprises Act 1995*.

These performance frameworks provide an integrated way of defining what is expected of regulators, the approval of associated performance targets and regulators reporting against the achievement of the targets in their annual reports. They provide both transparency and accountability of regulators to the Minister and to Parliament.

An assessment of each regulator against the elements of a performance framework appears in the following table.



| Elements of a Performance Framework | Teachers Registration Board | Office of Tasmanian Assessment, Standards & Certification | Registrar, Education | Non-Government Schools Registration Board |
|---|-----------------------------|---|----------------------|---|
| Objects Specified in Act | ✓ | ✓ | ✓ | ✓ |
| Principles Specified in Act | ✗ | ✗ | ✓ | ✓ |
| Minister can set Policy Expectations | ✗ | ✗ | ✗ | ✗ |
| Corporate Plan and Performance Targets Approved | ✗ | ✗ | ✗ | ✗ |
| Report Against Approved Targets | ✗ | ✗ | ✗ | ✗ |

Figure 2: Assessment for each regulator against the performance framework elements

TRB

The TRB has a clear statement of purpose in its legislation – to act in the best interests of students.

It is required under its legislation to provide an annual report. It reports against operational performance indicators in its annual report but does not report on outcomes.

Its legislation does not include a performance framework such as that existing for TasTAFE. There is no provision for the Minister to be able to set broad policy expectations for it such as through a Ministerial Charter. There is no requirement for it to develop a corporate plan for ministerial approval. As a consequence there are no performance targets approved by the Minister or reported against in its annual report.

The TRB noted that since 2015 it has undertaken a program of work to identify and improve upon the entity's strategic and business processes. Activities undertaken include developing a Board Charter, Terms of Reference, and identifying areas for improvement within the administrative functions of the entity.

TASC

TASC does not have a clear statement of purpose specified in the *Office of the Tasmanian Assessment, Standards and Certification Act 2015*, although it does have a clear set of functions under the Act. It is required under its legislation to provide an annual report. It reports against operational performance indicators in its annual report but does not report on outcomes.

Its legislation does not include a performance framework such as that existing for TasTAFE and the State Fire Commission. There is no provision for the Minister to be able to set broad policy expectations for it such as through a Ministerial Charter. There is no requirement for it to develop a corporate plan for ministerial approval. As a consequence, there are no performance targets approved by the Minister or reported against in its annual report.

Registrar, Education

The Education Act includes objects and principles that help guide the actions of the regulator.

The Registrar is required under the legislation to provide an annual report to the Secretary DoE. It reports against operational and outcome performance indicators in its annual report which is included in that for DoE.

There is no performance framework for the Registrar, Education in its Act.



NGSRB

The Education Act includes objects and principles that help guide the actions of the Board.

The NGSRB is required under s 233 of the Education Act to provide an annual report to the Secretary DoE. It reports against operational performance indicators in its report, which is included in that for DoE. There is no performance framework for the NGSRB in its Act.

DOE resources will be required to implement and monitor the performance framework. The Committee formed the view that the benefits of such a framework outweighed the costs.

As noted in the 'Modern Governance for the Delivery of Outcomes' section below, the Education Regulation Advisory Council could provide advice to the Minister on elements of the performance framework.

- the inclusion of principles in the legislation for TASC and TRB along the lines of those in the Education Act would facilitate the achievement of this objective.

Monitor Performance

What is currently in place?

Outcomes based performance indicators are not currently required for any of the four regulators.

What we heard

There was confusion by some stakeholders as to the definition of 'outcomes'. The feedback in relation to this principle is therefore minimal, although generally submissions supported the development and measurement of KPIs.

For all regulators it was recommended in a small number of submissions that outcome based KPIs should focus on the areas of communication and stakeholder feedback, as well as a greater risk-management approach.

TRB

A small number of submissions expressed dissatisfaction in the teaching community with the current TRB performance outcomes, stating that there was an over-emphasis on regulation disproportionate to risk. These submissions also felt that the TRB needed to better communicate the progression of its key work, beyond teacher registration.

TASC

Similarly to the TRB, one submission identified that the course quality assurance process of TASC was too thorough proportionate to the risk level. Another submission recommended TASC improve its administration systems to better manage sessional employment processes and payments.

Another submission observed that there are too many courses for such a small entity to efficiently monitor and have real oversight.

Analysis

As discussed above in the 'What is Best Practice?' section, governments and/or the legislator should monitor and review periodically that the system of regulation is working as intended under the legislation. In order to facilitate such reviews, the regulator should develop and publish a comprehensive and meaningful set of performance indicators. Best practice principles for regulators, along with outcomes-based KPIs were also detailed in the 'What is Best Practice?' section of this paper.



Recommendation 2

Adopt a performance framework for all Regulators that provides for:

- the setting of relevant objects and principles;
- the Minister must set policy expectations for each Regulator which are to be reviewed at least annually
- the Regulator to prepare a corporate plan including outcome-based performance targets for approval by Minister;
- the Regulator to report against these performance targets in its annual report; and
- the Minister to be able to commission an external review of a Regulator if required.

Collaboration to achieve regulatory outcomes and shared objectives

What is currently in place?

Currently there is no explicit legislated authority for the regulators to coordinate with other relevant bodies to achieve desired regulator outcomes or shared objectives.

There aren't any mechanisms requiring the TRB or TASC to coordinate with other relevant bodies to achieve desired regulatory outcomes. The NGSRB has the authority to do anything necessary or convenient to perform its functions, however there are no explicit mechanisms to coordinate with other relevant bodies to achieve desired regulatory outcomes, beyond the Registrar which has legislative functions to support the NGSRB.

The Education Act gives the Registrar the power to cooperate with the Non-Government Schools Registration Board and the Tasmanian Home Education Advisory Council. There is also implicit power to cooperate with all sectors schools for conciliation conferences and with the NGSRB and THEAC. However, the legislation contains no explicit authority to cooperate more broadly.

What we heard

Many submissions acknowledged the overlapping functions of the regulators. One submission noted that there are overlaps in the investigations of the TRB and NGSRB which can lead to unnecessary double-handling. Two submissions note the desire of the THEAC to collaborate with TASC in order to allow home-educated students to achieve the Tasmanian Certificate of Education.

Analysis

The regulators are part of the wider Tasmanian education system. The system is required to respond to state and national policy directions. A good example is the joint initiative Years 9-12 Project, which aims to enable all Tasmanian students to achieve their potential while at school and beyond in further study, training and employment.

It is imperative that regulators have both the authority and an expectation to co-ordinate with relevant bodies in order to achieve desired regulatory outcomes. Coordination will remove barriers to achieving outcomes, reduce potential double-up and prevent siloing of regulators. This is especially important in Tasmania, as a small jurisdiction where regulated entities have relatively low numbers of staff and resources to achieve outcomes.

In the case of TRB these might include other Teacher Registration Authorities, the Australian Institute for Teaching and School Leadership (AITSL), the three education sectors and other Tasmanian education regulators whereas the relevant bodies might be different for TASC, the Registrar and NGSRB.



While explicit legislative authority is not essential to enable regulators to collaborate, the Committee believed including such a provision would be beneficial.

Recommendation 3

Provide a mechanism that requires Regulator coordination and collaboration with relevant bodies to achieve regulatory outcomes and shared objectives.

Accountability to the Public and to those Regulated - Appeals

What is currently in place?

Arm's-Length Reviews

Those affected by specific decisions of each regulator may appeal to the Magistrates Court (Administrative Appeals Division). This does not extend to all decisions made by the regulators, for example, this right of appeal doesn't extend to marking or awarding certification for TASC.

Those decisions which are appealable to the Magistrates Court can be varied or rescinded by the Magistrates Court, however there is no general ability for the regulators to rescind decisions themselves as a result of an appeal.

The ability for decisions to be reviewed through an internal process varies across the regulators. For the TRB, there are established and published processes for reviews, however this is not legislated. For the Registrar, Education the Education Act provides for an internal review process to be undertaken where a Compulsory Schooling Order has been recommended by the Registrar, Education, however there are no other internal review processes beyond this.

Reasons for Decisions

For decisions appealable to the Magistrates Court each regulator is required to take such steps as are reasonable in the circumstances to give any interested person notice in writing of the decision, advise of the right to have the decision reviewed and the right of the person to make a written request for a statement of reasons for that decision. Beyond those decisions, the requirement for reasons to accompany decisions varies across each regulator with only certain decisions specifically requiring reasons:

- The TRB is required, on making a decision as a result of an inquiry, to give notice in writing of the decision to the person, their employer, other corresponding registration authorities and the complainant (if relevant). It is further required to give the affected person or their employer notice of the reasons for the decision.
- The TASC Act provides for reasons to accompany a review of the senior secondary accreditation framework if the Office considers this appropriate, and an assessment recommendation regarding the establishment of new universities.
- The Registrar, Education is required to provide reasons when it sets requirements as a result of a compulsory conciliation conference.
- All decisions made by the NGSRB must be accompanied by reasons for the decision.

No regulator has a requirement for major decisions to be accompanied by publicly stated reasons.

Accessible Appeals Processes



The ability for those aggrieved by decisions to appeal the decision varies across the regulators. For the TRB there is a complaint mechanism which enables a person to lodge a complaint about a Registered or Limited Authority to Teach teacher, however no appeals mechanisms are available for a member of the public beyond this. For TASC and the NGSRB, decisions appealable to the Magistrates Court covers 'anyone aggrieved' by a decision. This may cover members of the public, however this is only limited to those decisions appealable to the Magistrates Court and leaves other regulatory decisions with no such accountability to the public.

What we heard

One submission referred to the appeals process in relation to home education, conciliation and the registration of non-government schools and recommended that the regulator develop an internal review mechanism for decisions that was fast and efficient, potentially avoiding a complaint having to go to the Magistrates Court.

Analysis

Best practice appeals processes to ensure accountability and transparency were detailed above under the 'What is Best Practice?' section of this paper. In addition to considering these as they relate to what is currently in place, the Steering Committee also noted the work being undertaken by the Department of Justice in forming a Tasmanian Civil and Administrative Tribunal (TasCAT). The Department of Justice is currently undertaking a series of reforms which, among other things, aim to improve delivery of dispute resolution services and access to justice for the Tasmanian community by creation of a 'one-stop shop' for dispute resolution of administrative decisions; streamlining administrative structures of tribunals where appropriate; and progressing the use of alternative (appropriate) dispute resolution services across tribunal processes.

The purpose of TasCAT, as listed in the establishing legislation, includes:

- To promote the best principles of public administration
- To be accessible
- To ensure applications, referrals and appeals are processed and resolved as quickly as possible
- To keep costs to a minimum
- To use straightforward language and procedures
- To act with as little formality and technicality as possible
- To be flexible and adjust its procedures to best fit particular cases or jurisdictions.

The Magistrates Court (Administrative Appeals Division) has been flagged for potential inclusion in the TasCAT model which will potentially the four education. Given the work is ongoing, the impact on current appeals to the Magistrates Court (Administrative Appeals Division) is unclear at this stage.

Recommendation 4

Strengthen the visibility of the appeals process for each Regulator by requiring them to publish it on their respective websites.

Recommendation 5

If an appropriate appeals mechanism is not established through the forthcoming Tasmanian Civil and Administrative Tribunal (TasCAT) model, establish an independent internal review panel to hear appeals of regulator decisions before they go to the Magistrates Court (Administrative Appeals Division).

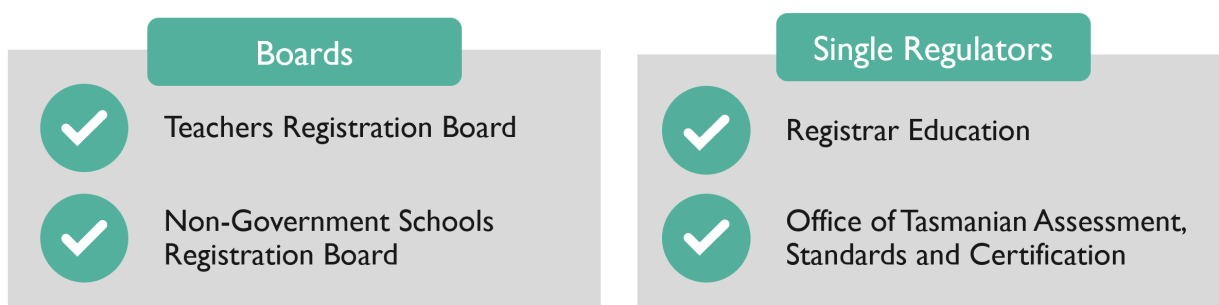


Modern Governance for the Delivery of Outcomes

Assessing the current governance model for each regulator

What is currently in place?

The current regulatory functions vary across each regulator with their governance reflecting this. Teachers' registration and non-government school registration are both governed by boards, while the Education Registrar and TASC are established as single regulators.



The functions of the Registrar Education are relatively straightforward and narrow, albeit across three discrete areas. TASC, however, has a complex range of outputs. Failure by TASC to deliver on its functions is likely to have a high adverse impact on students' results. With issues having occurred in the last three years, the probability of occurrence is high in the absence of ameliorating action.

The NGSRB has a narrow set of outputs related to registering non-government schools. The TRB has some straightforward outputs and some complex outputs (like disciplinary hearings).

The TRB, TASC and the NGSRB have a high impact on a large number of people in the community, with the Registrar Education having a high impact on a more limited number of stakeholders. The Registrar Education also holds the unique function of arranging for the appointment of an independent mediator. A board is not necessary to do this.

What we heard

There was general support that all regulators, excepting the Registrar, Education should be governed by a board structure. This sentiment was also carried through in those submissions which suggested fully or partially combining regulators.

TRB

There was consistent feedback in support of retaining the board structure for the TRB, with only one submission recommending a single regulator. Another stated that that the TRB function should not be handled by a single regulator.

TASC

Many submissions were concerned about the level of independence associated with having a single regulator for TASC. Two submissions stated that a single regulator was not capable of delivering the functions required of TASC.



Five of the submissions were in favour of changing the TASC Executive Officer to a board structure, whereas several others included this outcome in the amalgamation of all regulators under a single board structure.

Registrar, Education

Many of the submissions supported the current arrangement for the Registrar, Education in relation to home education and compulsory conciliation, as well as the additional role of providing an administrative function for the NGSRB. One submission recommended the Registrar, Education be replaced by a board, but others supported the current model and suggested it be used more widely for education regulation.

NGSRB

There was general feedback in favour of the current model for this regulator.

Analysis

The Committee considered whether the current legislative arrangements provide a strong external governance framework for education regulation. It also considered internal governance of the regulators, particularly in respect of how staffing and organisational arrangements could better support the outcomes sought from the Review and the regulation policy objectives.

A range of criteria were used to assess whether the existing models for external governance were appropriate. For the full analysis against each criterion, please see Appendix B. This analysis and what we heard supports the retention of the existing board models for the TRB and NGSRB and regulator model for the Registrar Education.

The analysis in Appendix B indicates that TASC should be constituted as a skills based board given the complex set of outputs it delivers in a dynamic environment as well as the strong need for strategic guidance and oversight and judgement required.

The Committee noted that TASC's 'predecessor' the Tasmanian Qualifications Authority (TQA) was a blended board, replaced by TASC in 2015. The nine person blended board required some skills, with an emphasis on experience in the education sectors. In appointing the board the Minister was also required to consider geographic representation, representatives of both employees and employers; and representatives from both government schools and non-government schools.

At that time, it was noted that the TQA's responsibilities had changed over time and its functions had reduced as the education and training environment evolved nationally including changes to regulation of the VET and higher education sector regulation. Its focus became senior secondary education across government and non-government school sectors in Tasmania. TASC continues this role.

In the last five years the education and training environment has continued to evolve, not least as a result of the COVID-19 pandemic. The specific context in which TASC is operating has become more complex and dynamic. For example:

- There is increased demand for TASC services as a result of the extension of the requirement under the *Education Act 2016* to remain in education or training until the completion of Year 12, a Certificate III or attaining the age of 18.
- The Years 9-12 Project and associated senior secondary curriculum reforms intersect substantially with TASC's functions.
- COVID-19 has significantly affected all aspects of life, including education and how it is delivered.



- Senior Secondary Pathways Review, a part of the National School Reform Initiative, challenges the status quo of transition pathways presented to young adults at school. In years to come this will see a shift away from the dominance of a ranking score, the Australian Tertiary Admission Rank (ATAR), which privileges academic capability over the value of vocational education and training, with the emphasises shifting to other skills and attributes that that young adults require for successful adulthood. The general characteristics of students need will be given greater weight in the final years at school.
- National Cabinet's focus on managing the pandemic and on the economy and jobs. The Premier's Economic and Social Advisory Recovery Council has recommended improving pathways from education to jobs. TASC has a critical role in this process.

Best practice principles for the governance of regulators recommend a board where the subject matter is complex, significant risk is present and the environment in which it operates is dynamic. All of these factors are present for TASC.

The consequences of regulatory decisions made by TASC are great. Failure to deliver on its core functions could have a significant and adverse impact on both learners and teachers, and have an adverse impact on confidence in the community.

The Committee felt strongly that there was a need for a diversity of wisdom and experience required for informed decision making because of the level of judgement required and that it is not feasible to continue to ask a single person to assume such responsibility even supported by an advisory council.

Furthermore, looking to the future, if curriculum services was ever aligned with TASC as it is in all other states, the set out outputs provided would be much broader and more complex.

The Committee concluded that the TRB, NGSRB and Registrar currently have appropriate governance models. Given the environment outlined above, the Committee concluded that TASC would be better suited to governance by a board at this time.

Recommendation 6

Maintain the existing governance models of a board supported by Registrar functions, for the TRB and NGSRB and a single regulator for the Registrar Education.

Recommendation 7

Update the governance model for TASC by:

- Establishing a skills based board and removing the Framework Advisory Committee.
- Creating Registrar functions and powers that will be allocated to a state service employee/officer to support the Board in the discharge of its functions or powers, which are able to be delegated.

Combining some or all of the regulators

What is currently in place?

Across the last 20 years, each regulator was established separately through its own legislation to provide for a set of distinct regulatory functions with governance to support their delivery. They have differing committee and governance structures, some of which are a legacy of older models, developed in isolation.

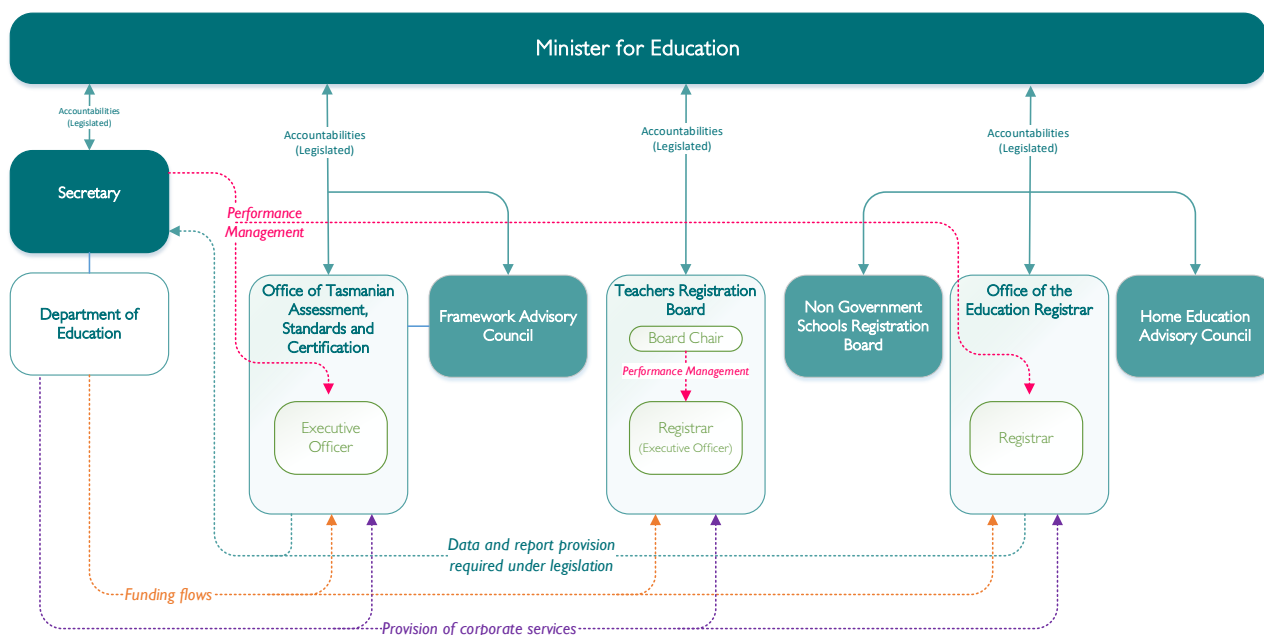


Figure 3: Current funding, governance and accountability and decision-making arrangements

Besides the NGSRB, which is supported by the Registrar, each regulator has its own administrative supports and function largely as separate entities (besides support from DoE as discussed below).

There is a commonality across the regulators' different regulatory functions.

| Legislated Functions | Teachers Registration Board | Registrar, Education & Non-government Schools Registration Board | Office of Tasmanian Assessment, Standards & Certification |
|-----------------------------------|------------------------------------|--|---|
| | Teacher quality and student safety | Institution quality | Course and assessment quality |
| Review and Investigation | ✓ | ✓ | ✓ |
| Compliance | ✓ | ✓ | ✓ |
| Data Collection and Dissemination | ✓ | ✓ | ✓ |
| Registration | ✓ | ✓ | ✓ |
| Quality Promotion | ✓ | ✓ | ✓ |
| Advising the Minister | ✓ | ✓ | ✓ |
| Course Accreditation | | | ✓ |

Figure 4: Legislated functions of the education regulators



What we heard

Many of the submissions identified the overlap in functions of the regulators and recommended that some of these functions be combined or for there to be improved collaboration between regulators. For example, there are similarities between the registration and investigative functions of the TRB and the NGSRB; TASC certification of courses is an input into decisions by the NGSRB to register non-government schools and the Registrar, Education to approve home education programs.

A small number of submissions provided arguments for the consolidation of the regulators in part or in whole. Foremost, the merging of the registration bodies TRB and the NGSRB into something akin to an Education Standards Registration Board (ESRB), with the intent to subsume TASC at a future date. The reason for this phased approach was because TASC's work is directly linked to what is actually taught and assessed in classrooms. It engages with schools, the teaching profession, tertiary education providers and government policy in ways, and at a point in time, where there are significant challenges. Other submissions supported in-part consolidation of the administrative functions of all regulators, given the similar functions and stakeholder base.

Other common themes were the co-location of all regulators and legislated Service Level Agreements (SLA) with DoE.

Those submissions in favour of full regulatory consolidation cite the NSW Education Standards Authority (NESA) as a best-practice example, and one submission recommended the title for the single entity to be the Tasmanian Certification, Teacher and School Registration Authority (TCTSRA).

Analysis

The Steering Committee noted the relatively small size of the regulators and the associated challenges for them operating as stand-alone entities. The option to combine all regulators, including statutory and administrative functions was considered in the context of the NSW Education Standards Authority (NESA) where there have been two inquiries into the Authority's performance since its establishment.

The Committee noted that, while it seems simple to combine the entities, it is a significant legislative change and extensive change management exercise. The Committee considered efficiencies could be achieved in the first instance, through co-locating and bringing the administration of regulators together under a single senior officer, the Director of Education Regulation. This would also allow time to see how the amalgamated model is operating, and how the NESA model performs over a longer period of time.

The need for the Director Education Regulation role arises from:

- The desirability of more collaboration and coordination across each of the regulators in line with Recommendation 2 above;
- The commonality of legislated functions across the regulators as shown in the above table, the delivery of which may be improved by shared processes supporting registration and the management of internal appeal processes;
- The outputs of some regulators are inputs into the decisions of another regulator. For example, decisions in relation to the registration of non-government schools need information as to whether their teachers are registered and their course are accredited; and
- More internal support for each executive officer as well as performance management of executive officers under the State Service Act being undertaken by the Director.



The Committee envisaged that the Director would be responsible for statutory functions of the current executive officers (including the Registrar Education) and that these would then be delegated to the individual senior officers as required.

It was the view of the Steering Committee that this would represent a more efficient operating model, while maintaining the independence of the regulators.

The Committee agreed that it would be desirable to review how the new structure is working in three to five years' time.

Recommendation 8

Retain each regulator as a separate entity responsible for regulatory decision making and combine the responsibility for administrative outcomes and delivery of functions under a single Director of Education Regulation, which will take on the functions and powers of the Registrar Education, the TRB Registrar, and the TASC Registrar.

Recommendation 9

Ensure the Registrars have the power to delegate their functions or powers.

Note: The Director Education Regulation will take on the functions and powers of the three Registrars and will be able to delegate them.

Recommendation 10

Explore opportunities to co-locate the Regulators.

Recommendation 11

Evaluate the governance model recommended by the Committee for effectiveness in three to five years, including a review of the operation of TasCAT as per Recommendation 5.



What does this look like?

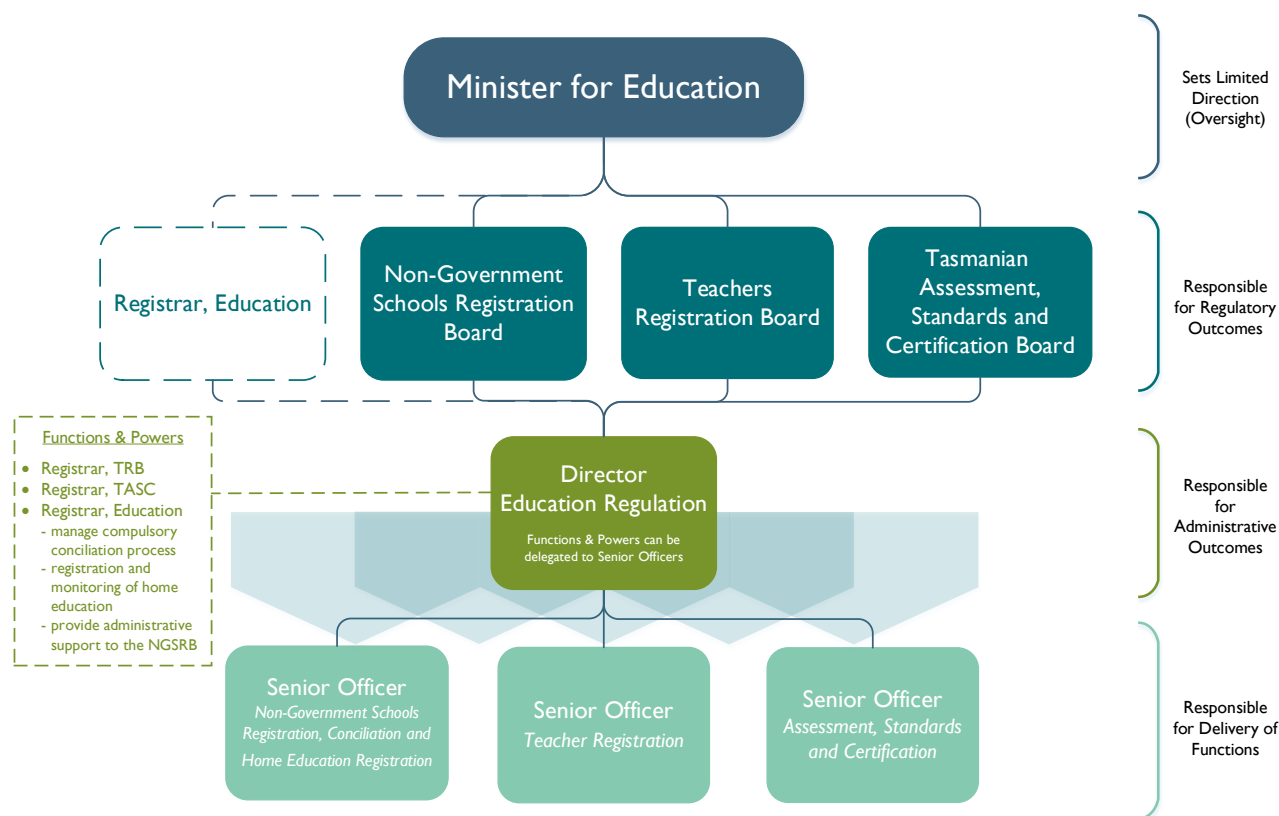


Figure 5: Recommendations 8, and 9 in practice

Ensuring Stakeholder Voice in Education Regulation

What is currently in place?

The current model of regulation provides for stakeholder voice to be represented to various degrees.

The TRB has direct stakeholder representation from key bodies on its board. This includes members nominated by DoE, non-Catholic registered schools (Independent Schools), Catholic schools, Australian Education Union, Tasmanian Independent School Teachers' Association, Independent Education Union Victoria Tasmania, the University of Tasmania, a parent group and TasTAFE.

The NGSRB has a skills and experience requirement but with nominations submitted by stakeholder groups. The Board's 2019 annual report refers to these members as 'representing' these groups.

The TASC Executive Officer is supported by the Framework Advisory Council which has limited scope, and the Registrar Education is supported by THEAC.

However, with the introduction of skills based boards this would change.



What we heard

One submission recommended that there be a mechanism for incorporating the voice of children and young people into the regulation of their education, and suggested a cross-sector advisory or reference group from which to seek their input.

In its submission, the Office of TASC supported a model where the Executive Officer collaborates with an advisory committee, similar to the recently developed Ministerial Advisory Committee (the MAC). This committee would be representative of each education sector and provide 'a good conduit and source of advice to the Minister'.

Other submissions suggested the establishment of expert advisory committees on particular regulatory functions, and one proposed that the advisory model used between the Registrar, Education and THEAC be used for the other regulators. This submission recommended that consideration of input from these advisory committees be formalised in legislation.

Overall, there were mixed responses to the use of advisory or expert committees with equal submissions for and against.

Analysis

There is a need for stakeholder voice to be represented in the model of regulation. The Committee noted that this works effectively with the Tasmanian Home Education Advisory Council in relation to home education.

As discussed in the 'Membership of the Boards' section of this paper below, to avoid conflicts of interest, or perceived conflicts of interest, where there is a need for formal representation of specific stakeholders in strategic decision making, stakeholder engagement mechanisms such as an advisory council should be considered, instead of making those stakeholders members of the regulator's governing body.

The Committee proposes the Minister establish an Education Regulation Advisory Council under s 249 of the Education Act.

The Council would consist of the three sector heads to advise the Minister on education regulation strategy and performance of the regulators in the proposed regulator performance framework, regulator board membership and other matters relating to education regulation requested by the Minister or of its own volition. The group's role is advisory, the Minister remains the decision maker and the regulators continue to be responsible for education regulation. More detail on the terms of reference of this group is in Appendix E.

It is important that the regulators have the ability to form committees to provide policy and operational advice on an as-needs basis. Currently, TASC and the TRB both have the power to establish committees to assist in the performance of their functions. The *Office of Tasmanian Assessments, Standards and Certification Act* goes further to provide for the establishment of a committee and its procedures.

The ability to establish committees of this nature would provide similar benefit to the Ministerial Advisory Committee which was established to advise the Minister on the impacts of COVID-19 on educational operations and is understood to be operating effectively. Each regulator would be able to request specific advice and vary the membership depending on their specific requirements.

The Committee agreed with the importance of inclusion of student voice and suggests that this be the remit of each board to identify relevant to their functions. It noted that consultation with students where appropriate is one of the principles in the Education Act. The inclusion of relevant principles from this Act for TASC and TRB will support this initiative.

There is no change proposed to Tasmanian Home Education Advisory Council.



Recommendation 12

The Minister should establish the Education Regulation Advisory Council with membership to comprise the heads of the three education sectors.

Recommendation 13

Provide for each regulator to be able to form committees to provide policy and operational advice on an as-needs basis.

What does this look like?

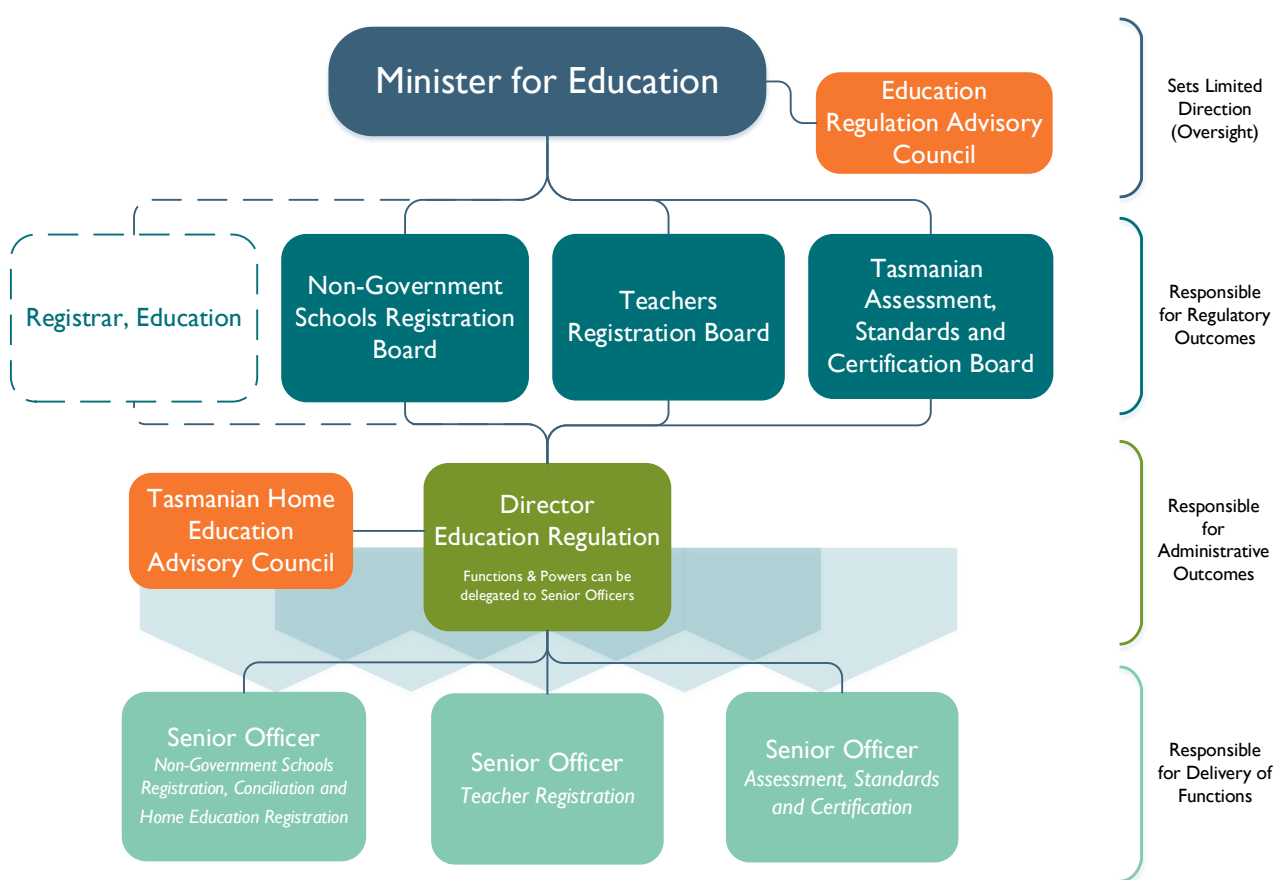


Figure 6: Recommendations 8, 9, and 12 in practice



Provision of Independent Advice

Independent regulators supported by department staff

What is currently in place?

All four regulators are established as independent entities supported by departmental staff, provided by DoE. The Department does not have a statutory role in the provision of education regulation however it does provide significant support to each of the regulators including the provision of:

- staff to enable the regulators to perform their functions;
- funding and budget management from the DoE appropriation, except where costs are recovered through fees, eg TRB registration; and
- corporate services, eg human resources, information technology, accommodation services.

What we heard

A number of submissions support the development of Service Level Agreements between the regulators and DoE with regard to corporate services. One submission stipulates that these agreements should be clarified in legislation.

One submission believes that administration for all regulators should be completely separate from DoE to remove conflicts of interest.

Analysis

The existing arrangements are common in Tasmania and other jurisdictions and can provide more independence of the regulator without the potentially significant cost of establishing and maintaining four separate bodies with the expertise and budget to manage their own corporate services. There are however risks with such arrangements including:

- risk to actual and perceived independence of decision making
- risk to the quality of decision making due to the quantity and quality of services provided by DoE
- risk of inappropriate information exchange between staff working with the regulator and other department staff.

In assessing whether to retain this model the Committee considered:

- the regulators' functions
- the extent to which their decision making needs to be objective, impartial, consistent, and free from conflict bias or improper influence
- the size of the entities, which links to scalability and the base level cost of functions.

All the regulators are small, totalling 46 Full Time Equivalent (FTE) staff between them. It is not an efficient use of resources to scale up the regulators so they have the expertise and time to manage their own policies, systems or financial management, without significant cost to both Government, regulated entities and their stakeholders (eg teachers and parents). Each regulator currently adopts by choice DoE policies such as those relating to human resources, workplace health and safety, financial management and Treasurer's Instructions.



The Committee agreed that this should continue given that regulator staff are State Servants and bound by these policies and that the regulators should be explicitly subject to the Treasurer's Instructions consistent with the situation for other statutory authorities that receive funding from the Public Account.

Recommendation 14

DoE should continue to provide staffing and corporate support to the Regulators.

Recommendation 15

The Regulators should be subject to the Treasurer's Instructions.

Direction Powers

What is currently in place?

The Minister may give the TRB a written direction on the performance of its functions and powers if satisfied that it is in the public interest to do so, and the board is required to comply with such a direction. This is considered to be a high threshold and unlikely to be suitable for the setting of policy or performance expectations as is required. There is also no requirement for public disclosure of such a direction.

The Minister is able to provide the Registrar, Education with instructions relating to guidelines, principles, practices and procedures and has the power to give the NGSRB any other function that the Minister determines in writing. Further, the NGSRB is required to advise and make recommendations to the Minister in respect of the registration of newly established schools.

The Secretary DoE has no power to direct the TRB or the NGSRB. Likewise, the Secretary DoE has no direction power over the Executive Officer of TASC or the Registrar, Education in respect of their statutory functions. There is however a tension with the State Service Act framework requiring the Secretary DoE to be responsible for managing the performance of both roles. This could create an inherent tension and potential conflict of interest.

There is nothing to specifically safeguard any of the regulators' *individual regulatory decisions* from ministerial or departmental direction.

Despite provision of staff and corporate support services by the Department to all four regulators, only the TRB has a Service Level and Cost Recovery Agreement with the Secretary DoE. This agreement includes principles and guidelines under which the parties agree to adhere and engage, reflecting the requirement for the parties to work cooperatively to ensure the TRB fulfils its functions under the Act.



What we heard

With regard to direction powers, one submission calls into question the independence of the Executive Officer of TASC being performance managed by the Secretary DoE. Another believes that this model has led TASC to become subservient to DoE policy and culture. This sentiment is echoed in two other submissions, one of which suggests that formal protocols be developed for the relationship between an individual regulator, such as the Registrar, Education and the Secretary DoE as their line manager. The other submission suggests that a separate line manager be appointed for the performance management of any single regulator.

The TRB submission queries the characterisation of the Minister's powers as limited in relation to the TRB, and how this could contribute to limiting a modern regulatory framework. This submission also expresses concern that advice provided by the TRB to the Minister must often be sent via DoE and the TRB is not routinely made aware of the outcomes.

Analysis

The Steering Committee assessed the autonomy of the regulators as it relates to their regulatory decision making, and the ability of the Minister or Department to direct them. The Minister should be able to set policy and performance expectations for the regulators. However, there should be no direction, from either the Minister or Secretary DoE, as it relates to individual regulatory decisions.

It was noted that there is a tension for the Secretary as the Head of Agency, under the State Service Act framework. This is particularly the case where the Secretary's assistance is sought to solve operational issues and at what point such assistance could potentially affect regulatory decisions. This echoed some of the concerns raised in submissions, relating to the perceived independence of decision making and the potential for inappropriate information exchange between staff working for the regulators and the other department staff, eg provision of advice to the Minister by the Department. This is likely the result of having limited transparency and clarity in relation to the provision of funding, staff and support by DoE.

The Steering Committee noted the importance of clarity regarding the respective roles of the regulators and the Secretary DoE. It agreed that a Framework Agreement as detailed below will provide more clarity in this regard and is recommended as best practice. The Committee also agreed that the use of a delegations framework such as the one in WA would be beneficial, where the regulator delegates its functions and powers to the role equivalent to the Director of Education Regulation. The latter is accountable to the regulator for the exercise of those functions and powers and accountable to the Head of Agency for everything else.



Recommendation 16

Provide for each Regulator to be:

- accountable to the Minister through its performance framework; and
- subject to Ministerial direction but not in respect of individual regulatory decisions.

Recommendation 17

Provide for each Registrar to be:

- Responsible to the respective Board for any delegated functions
- Responsible to the Head of Agency (Secretary) for all other functions.

Note that the Director Education Regulation will take on the functions and powers of the three Registrars and will be responsible to the Board and Head of Agency respectively.

Recommendation 18

The independence of the regulators should be further safeguarded through greater transparency and clarity on administrative support provided by DoE. This should be achieved through a legislated requirement for a framework agreement between Head of Agency (Secretary) and the Regulator that specifies:

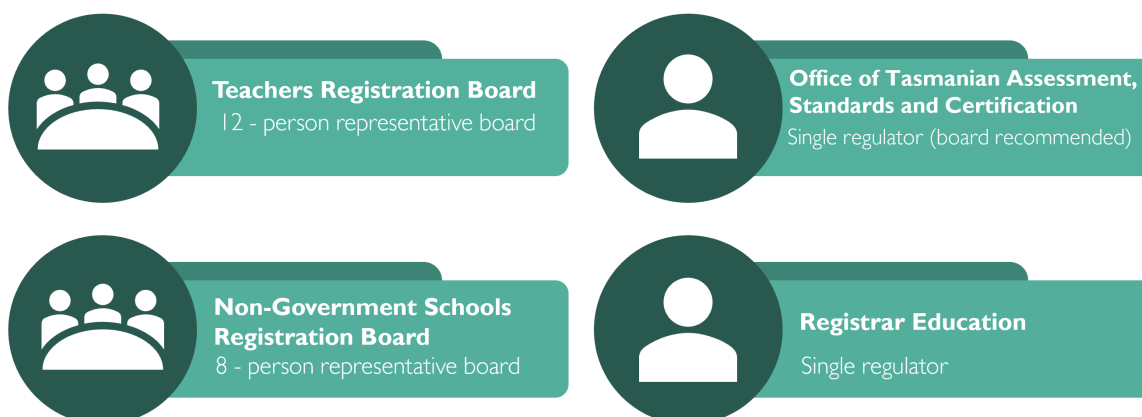
- The overall budget,
- Staffing numbers, selection, performance assessment, corporate support,
- Information sharing policies,
- Application of government policies,
- The accountability of the Registrars to the Regulator and to the Head of Agency (Secretary)
- Accountability of each Regulator to the Secretary for its budget outcomes, and
- Any cost recovery arrangements.



Membership of the Boards

What is currently in place?

Current arrangements for membership of the regulators are as follows.



TRB

The composition of the 12-person Board is 'representative' with members nominated by the relevant organisation, and subsequently appointed by the Minister. Membership includes wide representation of stakeholder groups including a DoE representative.

Termination provisions for Board Members are specified in the Teachers Registration Act. There is no requirement for public disclosure of a termination by the Minister and the Act is silent on repeat appointments and selection criteria other than the requirement for Minister to be satisfied that nominee is fit to be a board member.

TASC

The Executive Officer for TASC is a State Servant who is appointed in accordance with the *State Service Act 2000*. The State Service Act provides a framework for policies, procedures, selection criteria and term of appointment that apply to the Executive Officer.

Termination provisions and performance management issues are addressed under the State Service framework.

Registrar, Education

The Registrar is a State Servant, whose tenure and termination provisions are provided under the State Service Act.

NGSRB

Although the eight person board is skills based it also comprises persons nominated by various stakeholders including DoE. Its 2019 annual report refers to these members as 'representing' these groups.

The Education Act details termination provisions for the NGSRB and that members may be appointed for 3 years, with no limit on reappointment. There is no requirement for the public disclosure of terminations of board members.



What we heard

There was general consensus in submissions that board membership should have a higher number of skills based members, however, there was also a consistent theme that this be an overlay to, or in combination with, representative appointments (a blended model). One submission was opposed to any lessening of the current representative governance arrangements and states that 'managing any real or perceived conflicts of interest is a standard governance requirement and not inconsistent with the effective operation of a representative board.'

One submission recommended that skill requirements should be legislated. Another that a skills matrix be developed to support the Minister making new appointments.

TRB

One submission specific to the TRB suggested that within the current make up of this board, priorities of some members remain with their employment institutions rather than with the board. This submission also recommended that occasionally the Chair of this board should be a former non-government sector teacher, as this has not yet been the case. Other submissions suggest there should be a parent voice on this board, similar to the NGSRB, and another suggests teacher representatives should be elected by their peers and not appointed by the Minister.

TASC

With regard to introducing a board structure for TASC, one submission suggested it be representative with the Secretary DoE, and CEOs Catholic Education Tasmania and Independent Schools Tasmania as automatic appointments. Another submission, which recommended an advisory committee model, suggested the same three appointments above, and an independent chair.

NGSRB

Opinions were mixed in relation to whether a skills based board or blended board was more appropriate.

Analysis

Boards can be skills based (ie people on the board are selected for their particular skill set), representative based (ie people chosen because of their position) or a mix of both, also known as blended.

The use of representative or blended boards has the potential to create a conflict of interest as it can be unclear whether members are contributing to the successful delivery of the board's functions or are representing their nominating organisation.

To avoid conflicts of interest, or perceived conflicts of interest, where there is a need for formal representation of specific stakeholders in strategic decision making, stakeholder engagement mechanisms such as an advisory or consultative council should be considered.

The best practice principles discussed above recommend that:

- potential conflicts of interest be avoided by the use of skills based boards
- policies, procedures, selection criteria and terms of appointment of the governing body should be documented and transparent
- members of the governing body should be limited in their number of terms of appointment to the board and there should be termination provisions for independent regulators which should be clearly and publicly defined.



Skills based boards in education regulation are used in WA for its Teachers Registration Board and also for its Schools Curriculum and Standards Authority. Victoria has also adopted skills based boards for two of its education regulators. (See Appendix A for further information on the situation for regulators in other jurisdictions)

It is important that the regulators are able to provide input to the appointment process particularly in respect of the skills and experience needed for the regulator to deliver its functions. For example, board input is sought when making director appointments to Government businesses under the *Government Business Enterprises Act 1995*. The Committee also noted that the (skills based) director appointment framework used for the GBE appointments may be helpful for appointments process for regulator boards. The use of a board skills matrix can help in this regard. See Appendix G for an example.

Recommendation 19

Establish skills-based boards as the governing body for the TRB, TASC and NGRSB with the following requirements:

- The Boards be appointed by the Minister informed by advice from the ERAC;
- The Minister appoints members who collectively have skills in the following:
 - » general board governance skills
 - » skills relevant to the performance of the Board's functions.
- The Regulators to provide advice to the Minister on the skills and experience required when vacancies arise;
- In appointing members, the Minister has regard to ensuring that the composition of the boards are a fair and balanced reflection of the diversity of the community;
- That board positions would be filled following a public advertisement process; and
- Each Board has a minimum of 5 and maximum of 7 members, including the chair.

Recommendation 20

Provide for:

- Selection criteria, termination provisions and public notification of changes to board membership through the Regulator's annual report,
- Staggered three-year appointment terms, as well as the number of terms for board members, subject to advice from ERAC; and
- A transition, where relevant, to the new board structure as existing board member positions become vacant.



Sustainability of Funding

What is currently in place?

Education regulation in Tasmania is currently funded by a combination of user pays and Public Account appropriation to DoE.

User pays is also used in other jurisdictions, although like Tasmania the funding raised is relatively minor, except for teacher registration fees. Appendix H provides further details.

The Public Account appropriation comprises base funding (\$4.3 million) provided to DoE before the State Government entered into the National School Reform *Bilateral Agreement for Government Schools* with the Australian Government.

The budget for these entities sits within the overall DoE appropriation under a specific output. Since 2017-18 significant additional funding of \$2.45 million has been required by the education regulators. These shortfalls have been funded by DoE from the Quality Schools Bilateral Agreement for Government Schools. Appendix C provides further details of the Budget allocation for education regulation authorities since 2018-19.

TASC, OER and the NGSRB receive more than 95 per cent of their funding from the above sources, with the balance from user charges. TRB receives about one third of its funding from the above sources with the balance from teacher registration fees.

DoE also provides extensive corporate services to OER and TASC at no charge. There is a cost recovery agreement between DoE and TRB for the provision of corporate services.

What we heard

Among nearly all submissions there was strong support for the regulatory functions of each regulator to be funded by the 'Department of Treasury and Finance' (Public Account) due to the necessary provision of these functions to the benefit of all citizens. Many submissions were concerned that DoE was providing additional funding to regulators from the Bilateral Agreement. One submission noted that there should be no continued funding contribution from DoE unless matched by a pro-rata contribution from the other sectors.

TRB

Some submissions noted that disciplinary and professional conduct investigations should be funded from Treasury not teacher registration fees. In addition, two submissions recommended additional budget be provided to TRB by Treasury to fund ongoing national policy initiatives.

TASC

The submission received from TASC maintained that the regulator has been underfunded since its establishment, and that a benchmarking exercise would be required to work out adequate funding. This submission also stated that seeking cost recovery through the provision of corporate services would only result in cost shifting.

Two submissions opposed implementing a cost recovery model for provision of secondary curriculum, but one supported cost recovery from other functions of TASC, such as recognition of overseas qualifications, audits and accreditation of other education courses.

One submission suggested that if cost recovery was implemented, that it take into account the capacity to pay or contribute model used by Catholic Education Tasmania. One of these submissions also proposes a new model for exam centres where schools would pay for operational costs.



Registrar, Education

Two submissions in relation to the OER suggested that the increase in home education registrations has had a significant impact on its original budget. They went on to recommend that home education should be supported by more state and federal funding, to ensure that home-educated-students are receiving the same supports as their government-school-educated peers, such as access to allied health services. One of these submissions indicated that if cost recovery was implemented for conciliation conferences, there is a high chance that the conferences would not be utilised.

NGSRB

Several submissions in relation to the NGSRB indicated that cost recovery for this regulator would require substantial stakeholder consultation to be fair, equitable and transparent. Of the six submissions commenting on funding, there is an even split between endorsing and opposing a user-pays cost recovery model for this regulator.

Analysis

A critical factor in the organisation of regulators for success is that adequate funding is provided. The 'What is Best Practice?' section above provided several principles that should underpin a sustainable funding model.

Current arrangements are not efficient, simple or transparent. DoE has funded recent budget shortfalls for all four regulators as shown in the table in Appendix C. The Committee noted the significant growth in funding since 2017-18 of \$2.45 million required by education regulators has been funded by DoE from funding for Government school students under the Bilateral Agreement for Government Schools.

The current funding arrangements are not equitable as DoE is funding shortfalls in cross sector regulation costs, which is contrary to needs based funding. As the regulators work across both the Government and non government sectors the top up funding is being solely provided from funds targeted for the Government sector. The Committee agreed that the transparency of funding for regulators would be improved by the use of a separate output group for the \$4.3 million currently provided by DOE, to clarify that this funding is for cross sector regulation and is not controlled by DOE.

Cost recovery is minor for TASC, OER, and the NGSRB with more than 95% of funding being provided from the above sources. The TRB is the exception with approximately 70% of revenue collected through teacher registration fees. A comparison with other jurisdictions suggests that aside from the TRB there may be scope for minor increases in user fees. There are potential adverse equity and efficiency impacts from increasing user charges without proper consideration. In view of this, boards should be asked to review the scope for increasing these charges against the above funding principles and reporting back to the Minister. The Committee noted that the TRB fees currently remain appropriate.

Responsibility and accountability for the sustainable funding of regulation does not currently align. Regulators are responsible for their budgetary outcomes but DoE has provided extra funding in recent years. The development of a framework agreement as discussed in the 'Provision of Independent Advice' section above and the development of appropriate delegations will provide more clarity around this aspect.

A sustainable funding model should raise sufficient funds to meet current and future spending needs on education regulation, taking into account policy and demographic change and allow budgets to be balanced in the long run. As noted above the current arrangements are not sustainable, equitable or efficient. The Committee agreed that a sustainable funding model should be developed to identify the capital and operational funding requirements of each education regulator.



The Committee noted that its recommendation for the creation of a Director Education Regulation and adoption of three skills based boards and the co-location of regulators will have financial implications. The funding of these additional costs will need to be incorporated into a sustainable funding model during implementation.

Recommendation 21

Request Regulators to examine the scope for minor additional revenue to be raised having regard to the sustainable funding principles and report to the Minister, noting that TRB fees currently remain appropriate.

Recommendation 22

The base level of funding of \$4.3 million, currently provided from DOE's budget allocation, be moved to a separate Output Group, not under Output Group 1 – Education in the Tasmanian Budget.

Recommendation 23

Capital and recurrent outlays for education regulation in excess of the base level of funding for Education Regulation (\$4.3 million) will need to be identified and considered through the State Budget process.

Recommendation 24

DoE to commission the independent development of a methodology, with input from the boards, to determine the sustainable funding for each of the Regulators. Such a methodology would need to cover both operational and capital requirements and would be applied on an annual basis.



Appendices

- A. [What can we learn from other jurisdictions and local regulators?](#)
- B. [Board or Single Regulator - Assessment](#)
- C. [Funding and FTEs of regulators](#)
- D. [Policy Context of the Regulators](#)
- E. [Education Regulation Advisory Council – Terms of Reference](#)
- F. [Example of a Performance Framework](#)
- G. [Example of Skills and Expertise Matrix](#)
- H. [User pays](#)
- I. [References](#)

Appendix A: What we can learn from other jurisdictions and local regulators?

What can we learn from other jurisdictions?

Teacher Registration Regulators Across Australia

| State | Regulator | Scope | Board membership | Funding source | Performance framework |
|------------|---|---|------------------------------|--|---|
| TAS | Teachers Registration Board | Government Non-government VET in Schools TasTAFE | Representative | Department of Education and Registration fees | Legislative requirement to deliver annual report to the Minister No reporting against strategic objectives |
| VIC | Victorian Institute of Teaching | Government Non-government | Skills and Representative | Registration fees and departmental grants | Legislative requirement to prepare strategic plan and annual business plan approved by the Minister Annual Report reports performance against Statement of Expectation set by the Minister |
| SA | Teachers Registration Board SA | Government Non-government | Representative | Registration fees | Legislative requirement to deliver annual report to the Minister Annual Report against whole-of-government objectives |
| WA | Teachers Registration Board WA | Government Non-government | Skills | Registration fees and WA Treasury | Legislative requirement to deliver annual report to the CEO Annual Report against key performance indicators dictated by whole-of-government goals |
| NSW | New South Wales Education Standards Authority | Government Non-government | Skills and Representative | NSW Treasury | Minister to issue annual Statement of Expectations to determine priorities |
| NT | Teachers Registration Board NT | Government Non-government | Representative | Not found | Legislative requirement to deliver annual report to the Minister No reporting against strategic priorities |
| ACT | Teacher Quality Institute ACT | Government Non-government | Representative | Registration fees ACT Government | Annual Report – Performance analysis against Key achievements of the Strategic Direction |
| QLD | Queensland College of Teachers | Government Non-government | Representative | Registration fees | Legislative requirement to report to the Minister on efficiency, effectiveness, economy and timeliness of the college and its systems and processes, when and in the way required by the Minister |

Assessment, Standards and Certification Regulators Across Australia

| State | Regulator | Scope | Board membership | Funding source | Performance framework |
|------------|---|--|---------------------------|---|---|
| TAS | Office of Tasmanian Assessment, Standards and Certification | Government Non-government | N/A | Tasmanian Department of Education | Annual report delivered to Secretary DoE No reporting against objectives |
| VIC | Victorian Curriculum and Assessment Authority | Government Non-government VET | Skills | Accrual-based appropriations from DET | Annual report against Strategic Directions |
| SA | SACE Board of South Australia | Government Non-government | Representative and Skills | South Australian Government grants | Legislative requirement to deliver annual report to the Minister Reporting against strategic priorities, contribution to whole-of-government objectives, agency specific objectives and performance |
| WA | School Curriculum and Standards Authority | Government Non-government | Skills | Function funding: Department of Education Board funding: grant | Annual report against State Government's Outcome Based Management Framework and agency level desired outcomes |
| NSW | NSW Education Standards Authority | Government Non-government | Representative and Skills | NSW Treasury | Minister to issue annual Statement of Expectations to determine priorities Annual report against objectives of Minister's Statement of Expectations |
| NT | Northern Territory Board of Studies | Government Non-government | Representative and Skills | Department of Education NT | Annual report doesn't measure against Strategic Directions |
| ACT | ACT Board of Senior Secondary Studies | Government Non-government | Representative | Not found | Annual Report – Performance analysis against: <ol style="list-style-type: none"> 1. An informed and effective response to international, national and local initiatives 2. A high quality, high equity curriculum, assessment and certification system that caters for all students |
| QLD | Queensland Curriculum and Assessment Authority | Government Non-government Tertiary | Representative and Skills | Departmental grants | Legislative requirement to deliver annual report, further reporting at Minister's request Annual report against objectives of Strategic Plan and DoE Service Delivery Statement |

School Registration Regulators Across Australia

| State | Regulator | Scope | Board membership | Funding source | Performance framework |
|------------|--|--|---------------------------|---|--|
| TAS | Non-government Schools Registration Board Registrar, Education | Non-government Home school | Skills and Representative | TAS Department of Education | Annual report delivered to the Secretary DoE No reporting against specific objectives |
| VIC | Victorian Registration and Qualifications Authority | Government Non-government Home school VET | Skills | Department of Education and Training grants | Annual report outlines key achievements against strategic plan and Statement of Expectation set by the Minister |
| SA | Education Standards Board | Government Non-government | Representative | SA Governmental grants and Commonwealth Government | Annual report delivered to the Minister Annual report against whole-of-government objectives, and agency specific objectives and performance |
| WA | Department of Education WA | Non-government Home School | N/A | WA Government | N/A |
| NSW | NSW Education Standards Authority | Non-government Home school | Skills and Representative | NSW Treasury | Minister to issue annual Statement of Expectations to determine priorities Annual report against objectives of the Minister's Statement of Expectations |
| NT | Department of Education NT | Non-government Home school | N/A | NT Government appropriation and Commonwealth Government appropriation | N/A |
| ACT | ACT Education and Training Directorate | Non-government Home School | N/A | Controlled recurrent payments | N/A |
| QLD | Non-state Schools Accreditation Board Department of Education | Non-government Home school | Representative | QLD Department of Education | N/A |



What can we learn from regulators outside education?

Modern governance for delivery of outcomes

Separation of responsibility (and accountability) for regulatory and administrative (staffing, finance, IT, accommodation, HR, etc) outcomes occurs in various regulators responsible to the Tasmanian Treasurer including the Liquor and Gaming Commission mentioned above, the [Tasmanian Economic Regulator](#) and the [Superannuation Commission](#), each of which is supported by a branch within the Department of Treasury and Finance.

The Tasmanian Department of Justice provides administrative support to an extensive range of independent statutory offices for which its Ministers are accountable.

Provision of independent advice

The [Tasmanian Liquor and Gaming Commission](#) is a skills based board, appointed by the Governor on the recommendation of the Minister. It may include a State Service officer or employee. The Minister may give written directions to the Commission, subject to certain restrictions specified in section 127 of the [Gaming Control Act 1993](#) (Tas). Each direction and revocation of any direction is to be published in the Gazette.

The [Australian Prudential Regulation Authority](#) (APRA) is an independent statutory authority established, under the [Australian Prudential Regulation Authority Act 1998](#) (Cwth) for the purpose of prudential supervision of financial institutions and for promoting financial stability in Australia. It is a skills based board appointed by the Governor-General on the recommendation of the Minister. A person may not be appointed as an APRA member if the person is a director, officer or employee of a body regulated by APRA. It is subject to ministerial direction in respect of APRA policies and priorities, with restrictions specified in section 12 of the [Australian Prudential Regulation Authority Act 1998](#). Any such directions must be published in the Australian Government gazette.

Sustainability of funding

The Department of Justice in Tasmania provides administrative support services to several regulatory authorities for the administration of justice and regulatory and other services. Entities receiving these services include the Supreme Court, Magistrates Court, Tasmanian Electoral Commission, Resource Management and Planning Appeal Tribunal, the Tasmanian Planning Commission and Worksafe Tasmania.

The Australian Health Practitioner Regulation Agency (AHPRA) is the national organisation responsible for implementing the National Registration and Accreditation Scheme across Australia. AHPRA works in partnership with the 15 National Boards, implementing the National Registration and Accreditation Scheme. The primary role of the boards is to protect the public and set standards and policies that all registered health practitioners must meet. Primary income for AHPRA is received from registration fees, but varies each year based upon number of registrants and fee variations for National Boards.

AHPRA's primary source of income is received from transactions, mostly from registration fees followed by application fees.

Better practice regulation with a focus on outcomes.

The performance framework for Tasmanian Government businesses such as that in the [Government Business Enterprises Act 1995](#) (Tas) framework is similar to that adopted for TasTAFE.



The Australian and Victorian Governments have both established regulator performance frameworks. The Victorian framework, for example, identifies elements of good regulatory practice and proposes criteria for self-assessment and reporting by regulators of their regulatory performance. The framework also includes the issue by the Minister of a Statement of Expectations for the regulator that sets, after consultation, outcome-based and measurable improvements and targets for the regulator to report against.

The [Australian Securities and Investments Commission](#) (ASIC) regulates Australian companies, financial markets, financial services organisations and professionals who deal and advise in investments, superannuation, insurance, deposit-taking and credit. The Commission is responsible for the exercise of ASIC's functions and powers, strategic direction and priorities through meetings. The Commission is comprised of a Chair (who governs ASIC), Deputy Chairs and members. ASIC is established as a body corporate under the [Australian Securities and Investments Commission Act 2001](#) (Cwth). ASIC is required under the [Public Governance, Performance and Accountability Act 2013](#) (Cwth) to prepare a corporate plan covering purpose, environment, performance, capability, and risk oversight and management for the budget forward estimates period. ASIC's primary source of revenue is Government appropriations.

Appendix B: Board or Single Regulator - Assessment

| Single Board or Regulator Assessment Criteria | TRB | TASC | RE | NGSRB |
|--|---|--|--|--|
| Wide or narrow set of outputs to be delivered | Some outputs are straight forward and procedural. Disciplinary proceedings are more complex requiring judgement and perspective. | Complex range of outputs. Complexity would greatly increase if curriculum development later added to the model | Relatively straight forward and narrow. Conciliation function would not be appropriate for a board. | Small number of functions. |
| The potential commercial/safety/social/environmental consequences of regulatory decisions, taking account of the degree of impact of a risk event and the probability of its occurrence. | Significant consequences associated with child safety, the likelihood of which is low but the impact could be extreme. | Failure to deliver could have an adverse outcome on learners and teachers in all school education sectors. | Low risk and low impact for the broader community but high risk and high impact for a small number in the community. | Consequences of poor decisions are high risk, but low probability. Significant number of students potentially affected. |
| The need for a diversity of wisdom, experience and perceptions is required for informed decision making because of the degree of judgement required. | Moderate | High | Moderate | Moderate |
| The degree of strategic guidance and oversight of delegated regulatory decisions is required to achieve regulatory objectives. | High | High | Moderate | Moderate |
| The level of difficulty, and how important is it, to maintain regulatory consistency over time. | Important, but consistency of decision making over time could be achieved through the use of robust policies and procedures. | Important, but consistency of decision making over time could be achieved through the use of robust policies and procedures. | Important, but consistency of decision making over time could be achieved through the use of robust policies and procedures. | Important, but consistency of decision making over time could be achieved through the use of robust policies and procedures. |

| Single Board or Regulator Assessment Criteria | TRB | TASC | RE | NGSRB |
|---|-----|------|----|-------|
| Importance of decision-making independence of the regulator, based on an assessment of functions of the regulator relating to their relative: | | | | |

| | | | | | |
|---------------------------------------|------------------------|------------------|----------|----------|-----------------|
| - | complexity | Moderate | High | Moderate | Moderate |
| - | risk | High | Moderate | Low | Low |
| - | strategy | Moderate | High | Low | Low |
| - | independence required. | Moderate | Moderate | Moderate | Moderate |
| Overall Assessment – need for a board | | Moderate to High | High | Low | Low to moderate |



Appendix C: Funding and FTE of the regulators

Funding for Education Regulation Authorities since 2018–19

| | 2018–19 | 2019–20 | 2020–21 |
|--|------------------|------------------|------------------|
| | \$ | \$ | \$ |
| Office of the Education Registrar | 1,681,127 | 1,966,578 | 2,109,844 |
| Office of Tasmanian Assessments, Standards & Certification | 3,953,898 | 4,126,280 | 4,212,428 |
| Teachers Registration Board ¹ | - | 600,000 | 600,000 |
| Total Funding | 5,635,025 | 6,692,858 | 6,922,272 |
| <u>These totals include the following additional funding arrangements (including structural increases) funded from the DoE budget</u> | | | |
| Office of the Education Registrar | 164,747 | 495,000 | 629,000 |
| Office of Tasmanian Assessments, Standards & Certification | 1,205,882 | 1,038,149 | 1,058,347 |
| Teachers Registration Board | - | 600,000 | 600,000 |
| Total Additional Funding supported through Government Schools Bi-lateral Agreement | 1,370,629 | 2,133,149 | 2,287,347 |

1. TRB own source revenue from teacher registration fees in 2018–19 was \$1.274 million.



Approved Establishment¹ FTE at 1 July 2019 for each entity

| The approved establishment FTE represent the approved establishment salary budgets that are within the budget allocations provided above. | |
|---|-------|
| | FTE |
| TRB ¹ | 12.31 |
| TASC ² | 20.6 |
| OER | 13.00 |

1. TRB does not have a set Approved Establishment staffing allocation. This represents the actual staffing as at 1 July 2019. Approved Establishment FTE represents the staffing allocation supported by the budget for each entity.

2. This FTE does not include casual Sessional staff which include Markers and Exam Supervisors. The budget for these staff in 2019–20 was \$932 439. This budget allocation is within the TASC budget provided above.



Appendix D: Policy context of the regulators

Teachers Registration Board

The Teachers Registration Act does not contain objects or principles but states that in performing its functions and exercising its powers, the board must consider the welfare and best interests of students to be of paramount importance.

The policy context for the Teachers Registration Act was outlined in the second reading speech for the Teachers Registration Bill 2000:

“One of the aims is to improve the existing status of the teaching profession and to increase the professional standing of teachers and the desirability of teaching as a profession. As well as optimising the educational outcomes of students through setting minimum standards for entry to the profession, the introduction of the legislation will protect children in government and non-government schools from the possibility of sexual or other abuse.”

The policy statement in the second reading speech for the Teachers Registration Amendment Bill 2009 stated that:

- All students are taught by appropriately qualified and competent teachers of good character and meet community expectations regarding their fitness to teach; and
- The board must consider the welfare and best interests of students to be of paramount importance.

Office of Tasmanian Assessment, Standards and Certification

The objectives of the Office established in this act are to ensure that –

- (a) relevant national standards and State standards for senior secondary education, vocational education and training and higher education are monitored and met; and
- (b) links between qualifications for senior secondary education, vocational education and training, higher education and other education are developed or improved; and
- (c) throughout a person's life as wide a range of qualifications as practicable can be obtained and recognised in senior secondary education, vocational education and training, higher education and other education.

There are three key underlying principles to the creation of the TASC and they are independence of office, improved standards and openness and transparency.

Policy statement re TASC in second reading speech

‘Over time the community will see a coherent approach to curriculum provision and course development that links school with further education and the workforce to meet Tasmania’s social and economic needs and at the same time ensures independent and rigorous assessment and certification processes.

The two aspects of this Bill – a curriculum development framework, and the establishment of TASC and an accreditation framework are interrelated and interdependent. The strength in the model is that it provides a coherent approach for senior secondary education for Tasmania with the whole system owning it and taking responsibility for it while maintaining the independence of the accreditation process through TASC. The latter will have to exercise its functions within the parameters of a Senior Secondary Accreditation Framework.’



The Registrar, Education and the Non-government Schools Registration Board

The objects of the Education Act relevant to this review are:

- (a) to make available to each Tasmanian child a high-quality education that ...
- (e) to provide for the operation, governance and monitoring of non-government schools; and
- (f) to provide for the registration and monitoring of home education.

Principles relevant to the Review, that the Education Act is based on include:

- (a) the right of every child to receive an education until the child completes Year 12, the year of home education equivalent to Year 12 or an approved learning program;
- (c) that the State recognises the role and importance of a child's parents in the education of their child;
- (d) that the State recognises that a child's parents are the first and most important educators of the child;
- (e) that the State recognises –
 - (i) that parents have a responsibility to ensure that their child receives an education; and
 - (ii) that the State has a responsibility to support parents in ensuring that they meet their responsibilities under this Act;
- (f) the importance of a child having the opportunity, and being encouraged, to be actively involved in decisions affecting the child's participation in education, having regard to the age and understanding of the child;
- (g) the importance of the State, parents, teachers, schools, other educational institutions (including TasTAFE and the University of Tasmania) and the wider community working collaboratively to engender a commitment in all sectors in Tasmania to achieving the best educational outcomes for children;
- (h) the importance of the provision by the State of universal access to education through the maintenance of a government education system.

The policy context for these legislative reforms, including the establishment of the Registrar and the NGSRB was provided in the second reading speech for the Education Bill 2016, as follows:

“We in Tasmania have some long-standing social and economic challenges. For instance, we have:

- below average life expectancy,
- the highest numbers of people in Australia self-reporting their health as fair or poor,
- lower productivity than Australia as a whole, with the gap widening over the past 20 years,
- the highest levels of poverty in Australia, and
- the highest levels of disadvantage among preschool-aged children in Australia.

We know that improving educational outcomes is critical to addressing all of these challenges – to helping us to reach our true potential. For instance, we know that people with higher levels of education have better health outcomes, earn more, are more likely to be employed and to participate in the life of the community. People with higher levels of education have more life chances and choices than those with less education. And these improved chances and choices are passed on to subsequent generations. We know that parents' levels of education affect their children's educational performance as can be seen in tests such as NAPLAN, and that children of more highly educated parents are more likely to participate in higher education than the children of less educated parents.”



The Schools Registration Board has been retained. Following feedback from the Non-government sector its title has been changed to more accurately reflect its role. It is now the Non-government Schools Registration Board. Board membership continues to be representative of the non-government sector with some minor refinement. In addition to being representative, members will now also have expertise in areas such as education, law, governance and finance. This can only strengthen the performance of the board.

The changes will, for the first time, establish the Tasmanian Home Education Advisory Council (THEAC) in legislation, rather than it existing at the discretion of the Minister. The Bill establishes that the majority of the members of THEAC must have home education experience. This ensures a strong voice for home educators in the management of the system. THEAC will be involved and provide advice at every key stage of the home education process, with a registrar managing the administrative workload and approving home education plans.”



Appendix E: Education Regulation Advisory Council - Terms of Reference

Background and Context

A recommendation of the Review of Education Regulation was to establish the Education Regulation Advisory Council (ERAC) to provide the Minister for Education and Training with strategic advice from each school education sector in regard to education regulation. Tasmania's education regulators all provide critical regulatory oversight and support services to education in Tasmania and include:

- The Teachers Registration Board
- Office of Tasmanian Assessment, Standards and Certification
- The Registrar, Education
- The Non-Government Schools Registration Board

Purpose of the Council

The Minister has established this Education Regulation Advisory Council for seeking strategic advice relating to the regulators including:

- corporate and strategic planning;
- board appointments;
- performance; and
- any other matters relating to the regulation of the education.

The Council will:

- respond to requests for advice from the Minister in relation to the scope set out above;
- where appropriate, on its own initiative advise the Minister of cross sector issues of concern that have a significant influence on education regulation outcomes for learners in Tasmania and suggested policy responses; and
- provide advice on any related matters the Minister raises with the Council.

Membership

The Council will be appointed by the Minister for Education and Training.

The members comprise:

- the Secretary, Department of Education Tasmania (Chair)
- the Executive Director, Independent Schools Tasmania
- the Executive Director, Catholic Education Tasmania

The appointment term will be for the life of the council.

The Minister may terminate a Council member's appointment at any time, or seek an alternative nominee from the relevant organisation.



A member may resign their membership at any time by written notice to the Minister. The membership ends once the notice is received, or as otherwise specified in the written notice.

If a vacancy arises, a new nomination will be sought by the Minister from the relevant organisation.

Membership of the Council is voluntary and members will not be remunerated.

Administrative support

Administrative support will be provided by the Department of Education.

Meeting arrangements

The Council will meet when required, or as requested by the Minister.

The format, structure and timing of meetings will be considered at the first meeting.

At each meeting, the date and venue for the next meeting will be decided where possible.

The Chair may permit members to participate in a particular meeting or all meetings by telephone, video conference or any other means of electronic communication approved by the Chair.

The Minister or the Chair may invite a non-member to attend a meeting, or a section of the meeting, for the purpose of advising or informing it on any matter.

Management of agenda/agenda papers

A draft agenda for each meeting will be prepared by the Secretariat before a meeting where possible.

The final agenda and papers will be circulated to all Council members prior to the meeting. If additional items are proposed for discussion after the agenda is finalised, this will be resolved by the Chair.

Record of Meetings

The Secretariat will prepare a summary record of the meeting, including action items. The record will be circulated to members following the meeting. Discussions between the Minister and Council are confidential. Minutes from meetings are not on the public record.

Confidentiality

The Council is a forum in which members, while working towards a collective position, are able to discuss proposals and a variety of options and views with complete freedom. The openness and frankness of discussion in Council meetings is protected by the strict observance of confidentiality.

Review

The Council's terms of reference and expiry date will be reviewed between 3 and 5 years following the beginning of legislative amendments arising from the Review of Education Regulation.



Appendix F: Example of a Performance Framework

TasTAFE in the *Training and Workforce Development Act 2013 (Tas)* offers an example of a modern performance framework. The key elements are:

- governing legislation which specifies Objects and Principles
- the setting of policy expectations by the Minister
- preparation of a corporate plan, including performance targets for approval by the Minister
- reporting to the Minister against performance targets in an annual report.

Excerpt from the Training and Workforce Development Act 2013

Version current from 1 July 2013 to date.

33 Object of Act

- (1) The object of this Act is to establish a system of training and workforce development that supports a skilled and productive workforce and contributes to economic and social progress in Tasmania.
- (2) The system of training and workforce development consists of the following areas:
- (a) vocational education and training, including Tasmania's traineeship and apprenticeship system;
 - (b) other training, or skills, and workforce development;
 - (c) foundations skills.
- (3) The object is mainly achieved by –
- (a) providing funding for training that is responsive to the needs of employers, industry and the community; and
 - (b) providing opportunities for individuals to acquire skills and qualifications; and
 - (c) establishing TasTAFE; and
 - (d) administering Tasmania's traineeship and apprenticeship system.

73 Policy expectations

- (1) Within 3 months after the day on which this Act commences, and within the same 3 months of each succeeding year, the Minister must provide TasTAFE with the policy expectations of the Minister for TasTAFE, including –
- (a) the nature and scope of the operations to be undertaken by TasTAFE; and
 - (b) the arrangements for the costing and funding of non-commercial operations.
- (2) In determining the policy expectations to be provided, the Minister is to take into account the priorities for training and workforce development established under section 5 .
- (3) The Minister may at any time at his or her own discretion or on the application of TasTAFE –
- (a) amend the policy expectations; or
 - (b) rescind the policy expectations and substitute other policy expectations.



- (4) Before or while preparing the policy expectations or an amendment to the policy expectations, the Minister must consult with TasTAFE.
- (5) The policy expectations and any amendment to the policy expectations –
 - (a) are to be in writing signed by the Minister; and
 - (b) take effect on a day specified in the policy expectation or amendment.
- (6) The policy expectations, as amended from time to time, have effect until the next, or any substitute, policy expectations are provided by the Minister to TasTAFE.
- (7) The TasTAFE Board must ensure that the business and affairs of the Authority are conducted in a manner that is consistent with the policy expectations.

74. Corporate plan

- (1) The TasTAFE Board, by 31 May in each year, is to prepare a draft corporate plan in respect of at least a 3-year period commencing on 1 July in that year.
- (2) The draft corporate plan is to include the following:
 - (a) a statement of TasTAFE's objectives, policies and programs and how they comply with the policy expectations provided by the Minister under section 73 ;
 - (b) a statement of TasTAFE's financial plans;
 - (c) the major strategies to be used to achieve the objectives and give effect to the policies, programs and financial plans;
 - (d) the targets to be met by TasTAFE in achieving its objectives, policies, programs and financial plans and the criteria for assessing the achievement of those targets.
- (3) The TasTAFE Board is to provide a copy of the draft corporate plan to the Minister for approval.
- (4) The Minister, after consultation with the Treasurer, may –
 - (a) approve the draft corporate plan; or
 - (b) require the TasTAFE Board to amend the draft corporate plan before approving it.
- (5) On being approved by the Minister the draft corporate plan becomes the corporate plan of TasTAFE.
- (6) The TasTAFE Board may prepare an amendment of the TasTAFE corporate plan at any time.
- (7) An amendment of the TasTAFE corporate plan takes effect when the Minister, after consultation with the Treasurer, approves it.
- (8) Except where the Minister, after consulting with the Treasurer, otherwise approves, TasTAFE must act in accordance with the TasTAFE corporate plan.

83. Annual report

- (1) The TasTAFE Board is to prepare for TasTAFE an annual report for each financial year.
- (2) The annual report is to include the following:
 - (a) the TasTAFE financial statements for the financial year to which the annual report relates;
 - (b) a copy of the report of the Auditor-General received under [section 19 of the Audit Act 2008](#) in respect of those TasTAFE financial statements;



- (c) the details of any directions given by the Minister under [section 72](#) and any action taken by the TasTAFE Board in respect of those directions;
 - (d) the details of the policy expectations provided by the Minister under [section 73](#) and any action taken by TasTAFE in respect of those policy expectations;
 - (e) a summary of the TasTAFE corporate plan;
 - (f) a report on the performance of TasTAFE with reference to the targets to be met by TasTAFE in achieving its objectives, policies, programs and financial plans and the criteria for assessing the achievement of those targets, as set out in the TasTAFE corporate plan;
 - (g) a report on the operations of TasTAFE;
 - (h) any information the Minister requires relating to the TasTAFE directors, TasTAFE chief executive officer and TasTAFE employees;
 - (i) any other information the Minister requires;
 - (j) any other information the TasTAFE Board considers is appropriate or necessary to properly inform the Minister and Parliament as to the performance and progress of TasTAFE.
- (3) The TasTAFE Board is to provide the annual report to the Minister.
- (4) [Section 36 of the State Service Act 2000](#) does not apply in respect of the TasTAFE Board.



Appendix G: Example of a Skills and Expertise Matrix

| Generalist Skills for ALL Boards |
|---|
| Skill |
| Corporate Governance |
| Finance and accounting |
| Risk assessment and management |
| An understanding of the Government context including the governments objectives and risk appetite |
| Strategic Planning, including communications strategy |
| Legal skills |
| Specific Skills and Expertise for Boards Functions |
| TRB |
| Skill |
| Registered Teacher |
| Delivery of Education in the Catholic School Education Context |
| Delivery of Education in the Independent School Education Context |
| Delivery of Education in the Government School Education Context |
| School Leadership |
| Investigation |
| University Education |
| Vocational Education and Training |
| Parents of School Children |
| Early Childhood Education |
| Special Education |
| TASC |
| Skill |
| Registered Teacher |
| Senior Secondary Education |
| Vocational Education and Training |
| Data Management |
| Curriculum Delivery and Pedagogy |
| University Education |
| Parents of School Children |
| NGSRB |
| Skill |
| Delivery of Education in the Catholic School Education Context |
| Delivery of Education in the Independent School Education Context |
| Registered Teacher |
| Investigations |
| School Leadership |
| University Education |
| Vocational Education and Training |
| Parents of School Children |
| Early Childhood Education |
| Special Education |



Appendix H: User pays

| Jurisdiction/entity | Governance Legislation (Updated) | User charges (sale of goods and services, other income etc) | Total Income | User charges as a % of total income |
|---------------------|--|---|--------------|--|
| | | \$m | \$m | % |
| Tasmania | | | | |
| NGSRB | Education Act 2016 | NA | NA | NA |
| TASC | Office of Tasmanian Assessment Standards and Certification Act 2015 | 0.1 | 4.4 | 3 |
| TRB | Teachers Registration Act 2000 (2009) | 1.3 | 1.9 | 69 |
| Victoria | | | | |
| VRQA | Education and Training Reform Act 2006 | 1.4 | 13.9 | 10 |
| VCAA | Education and Training Reform Act 2006 | 4.4 | 87.1 | 5 |
| South Australia | | | | |
| TRB | Teachers Registration and Standards Act 2004 | 4.2 | 4.2 | 100 |
| ESB | Education and Early Childhood Services Act 2011 | 0.4 | 5.4 | 8 |
| SACE | SACE Board of South Australia Act (2015) | 4.1 | 26.1 | 16 |
| Western Australia | | | | |
| SCSA | School Curriculum and Standards Authority Act (2012) | 1.3 | 33.7 | 4 |



| | | | | |
|--|---|------|-------|----|
| TRBWA | Teachers Registration Board WA (2012) | 8.0 | 86.5 | 9 |
| New South Wales | | | | |
| NSW Education Standards Authority | Education Standards Authority Act 2013 | 29.5 | 177.1 | 17 |
| NT | | | | |
| NT Board of Studies | NT Board of Studies Act 2016 | NA | NA | NA |
| TRB | Teachers Registration Act 2020 | 0.5 | 1.4 | 40 |
| ACT | | | | |
| ACT Board of Studies | ACT Board of Studies Act 1997(?) | 16.4 | 751.2 | 2 |
| Teacher Quality Institute | ACT Teacher Quality Institute Act 2010 | 1.0 | 2.3 | 42 |
| Queensland | | | | |
| NSSAB | Education(Accreditation of non state schools) Act 2017 | 0 | NA | NA |
| QCAA | Queensland Curriculum and Assessment Authority Act 2014 | 2.6 | 65.4 | 4 |
| QCT | Queensland College of Teachers Act 2005 | 10.7 | 12.1 | 88 |



Appendix I: References

AITSL 2018, *One Teaching Profession: Teacher Registration in Australia*, Australian Institute for Teaching and School Leadership, Carlton South, Victoria, September.

ANAO 2014, *Public Sector Governance: Strengthening Performance through Good Governance*, Better Practice Guide Series, Australian National Audit Office, Barton, ACT, June.

ANAO 2014, *Administering Regulation: Achieving the Right Balance*, Better Practice Guide Series, Australian National Audit Office, Barton, ACT, June.

Australian Government 2014, *Regulator Performance Framework*, Department of Prime Minister and Cabinet, Canberra, ACT, October.

DTF Vic 2017, *Statement of Expectations for Regulators*, Department of Treasury and Finance, Melbourne, Victoria, May.

McLellan, JG 2011, *All Above Board - Great Governance for the Government Sector*, 2nd edition, Australian Institute of Company Directors, Sydney, NSW, p.2, cited in *Better Practice Guide: Public Sector Governance*, p.7.

OECD 2014, *The Governance of Regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris,
<<https://www.oecd-ilibrary.org/docserver/9789264209015-en.pdf?expires=1581979652&id=id&accname=guest&checksum=5518F3F82C46D17C19CE1DFFEB31F0AA>>

Uhrig, J 2003, *Review of the Corporate Governance of Statutory Authorities and Office Holders*, Commonwealth of Australia, Canberra, ACT, June.