

REVIEW OF EDUCATION REGULATION

WHAT WE HEARD

Stakeholder Consultation Report

December 2020





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Purpose

This report summarises the feedback received during the initial consultation period for the Review of Education Regulation. The Review of Education Regulation Steering Committee is providing this report to the Minister for Education and Training as part of our commitment to ensuring stakeholder feedback contributes to the advice provided with regards to the outcomes of the Review.

About the Review

The Teachers Registration Board Tasmania (TRB); the Office of Tasmanian Assessment, Standards and Certification (TASC); the Registrar, Education (the Registrar, Education); and the Non-Government Schools Registration Board (NGSRB) all provide critical regulatory oversight and support services to education in Tasmania.

These regulators provide support for all education sectors, including government schools, independent schools, Catholic schools and Vocational Education and Training.

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), with the establishment of the Registrar, Education supported by the Office of the Education Registrar (OER), which has been well received by all education sectors.

Education regulation contributes to the quality of education received by Tasmanian learners and their safety. It supports the quality of the teaching they experience, the quality of their assessment, the quality of their schools and their engagement in learning. The education of our learners is critical to their future employment and health, as well as contributing greatly in the long term to Tasmania's economy.

In establishing the Review, the Minister sought to achieve 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 Terms of Reference for this review established a cross-sector Steering Committee to provide advice to the Minister 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 chaired by Mr Tony Luttrell, 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 was to provide strategic direction for the Review, develop options and provide a recommendation to the Minister on a preferred model and phased implementation plan.



A number of 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.



Consultation Process

The formal 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, three of which were submitted confidentially.

In accordance with the Tasmanian Government Public Submissions Policy submissions will be treated as public information and will be published on the Review of Education Regulation website. No personal information other than an individual's name or the organisation making a submission will be published unless requested otherwise.



Feedback Summary

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 can affect 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 for some 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 Key Performance Indicators 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 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 structure of this paper aligns to better practice principles identified in the literature for modern regulatory frameworks. Under each section there is a general overview of the submission feedback as it relates to all regulators. If further feedback was provided in relation to that section on one regulator in particular, this is provided subsequently under the appropriate regulator heading. At the end there is an additional section for feedback that was received and noted by the Steering Committee.



Better Practice Regulation with a Focus on Outcomes

A greater focus on achieving outcomes for learners

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.

Clarity on what is expected

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 Australian Education Union.

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.



Monitor Performance

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.

Collaboration to achieve regulatory outcomes and shared objectives

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.

Accountability to the Public and to those Regulated - Appeals

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.



Modern Governance for the Delivery of Outcomes

Assessing the current governance model for each regulator

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.

Combining some or all of the regulators

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).

Ensuring Stakeholder Voice is Represented in Education Regulation

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.



Provision of Independent Advice

Independent regulators supported by department staff

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.

Direction Powers

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.

Membership of the Boards

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.



Sustainability of Funding

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.



Other Feedback

TASC

Three submissions noted the absence of curriculum development from the scope of the Review and recommended it be incorporated into the functions of TASC. Other submissions recommended that TASC expand the Tasmanian Certificate of Education (TCE) to apply to home educated students, and that functions beyond the regulator's remit (overseas qualifications and establishment of higher education providers) be removed from the legislation.

NGSRB

Two submissions recommended that the NGSRB take over the recruitment and training of registration officers to maintain standard processes. Another submission proposed that consideration be given to expanding its scope to the registration of government schools.



Further Information

Further information regarding the Review of Education Regulation can be found at the website:
<https://www.education.tas.gov.au/about-us/legislation/review-of-education-regulation/>

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