



Introduction

The Queensland College of Teachers (QCT) is the statutory authority responsible for regulating the teaching profession in Queensland. The QCT registers teachers for Queensland state and non-state schools, certifies teachers at the Highly Accomplished and Lead career stages, takes disciplinary action against relevant teachers, and monitors compliance to enforce the *Education (Queensland College of Teachers) Act 2005* (QCT Act). Regulatory activities are funded from the revenue of teacher registration fees.

The QCT appreciates the opportunity to provide a submission about *Automatic Mutual Recognition of Occupational Registrations: Exposure Draft Legislation*. This submission responds to the intention of the Australian Government to include the teaching profession within the Automatic Mutual Recognition (AMR) Scheme, as it is intended the scheme will apply to all existing mutual recognition arrangements. The AMR Scheme proposes to allow a person who is registered in one jurisdiction to be considered registered to perform the same activities in another jurisdiction, without the need for further application processes or additional registration fees.

Executive Summary

In summary, the position endorsed by the Board of the Queensland College of Teachers is for the teaching profession to be excluded from the AMR Scheme in the proposed amendments to the *Mutual Recognition Act 1992 (Cth)* (MR Act) or, failing that, for a provision to be included in the legislation that allows for the 'suitability' of persons taking up work in another state under the scheme to be considered by the receiving state .

The proposed model presents a range of issues for the teaching profession as follows:

- increased risk to child safety by weakening the current regulatory standard threshold in Queensland and greater complexity for regulatory compliance
- impact on quality teaching by promoting a transient approach to education and the work of teachers
- lack of economic benefit gained through the inclusion of the teaching profession in the scheme and increased costs for current teachers on the register
- increased administrative burden and risk to employing authorities and schools in determining teacher identity and registration status
- need for a workable model in the proposal to preserve current standards and allow for adequate timelines for implementation of terminology changes and multiple business streams to accommodate AMR, Interim Deemed Recognition (IDR) and a separate pathway for New Zealand teachers who are currently eligible for registration under the Trans-Tasman MR Act.

The QCT is self-funded, predominantly by teacher registration fees. The loss of revenue from applications under MR, together with potentially increased and/or more complex

responsibilities in relation to complaints and disciplinary action against teachers from other jurisdictions, would have a likely consequence of needing to increase fees for teachers registered in Queensland. That is, the majority of teachers would be affected, to benefit a handful. This would be counter to the stated purpose of AMR.

Submission

This submission is structured in three sections according to three potential levels of implementation of the scheme in relation to the teaching profession.

1) Exclusion of teachers from the AMR Scheme by provisions in the *Mutual Recognition Act 1992 (Cth)* (MR Act)

The QCT's strongly preferred position is that teachers should be within a category of occupation prescribed under the MR Act to be excluded from the AMR scheme, so the exclusion applies universally and consistently, and from the commencement of the amendments for certainty across all jurisdictions. Our reasons for this are indicated below.

Risk to child safety

Section 233 of the QCT Act requires that 'in performing its functions under the Act, the welfare and best interests of children are to be the primary considerations of the College' and therefore, it is necessary to highlight that the implementation of the scheme as proposed could undermine the capacity of the QCT to effectively regulate the teaching profession and contribute to child safety in Queensland.

The QCT maintains a robust legislative framework that has been developed over decades, to help ensure persons employed as teachers in Queensland schools are suitable to teach. It is largely through its powers to consider the suitability of applicants for registration that the QCT is able to fulfil a major purpose of the QCT Act, which is to promote public confidence in the teaching profession.

Child safety is our paramount consideration in respect to the efficacy of the proposed model. The proposed model is internally inconsistent and ambiguous and in the current format would be exceptionally difficult to manage should an incident occur involving harm to a child. This would create scope for opportunism on the part of an ill-intentioned teacher and greater uncertainty for schools and communities. The proposed model does not allow for robust checking and ongoing monitoring of every teacher as 'fit and proper' to be entrusted with a teaching role. The potential consequence of harm to a child and resulting implications in respect to duty of care are unacceptable to the QCT. It would be unpalatable to any Minister, Federal or State, any employer responsible for engaging the teacher under AMR, and the public.

The proposed model does not build on, and is contrary to, the recommendations concerning child safety in the findings of the *Royal Commission into Institutional Responses to Child Sexual Abuse* (2017) and the National Review of Teacher Registration (*One Teaching Profession: Teacher Registration in Australia* (2018)).

The National Review explored implications for child safety arising from barriers to information sharing among Teacher Regulatory Authorities (TRAs) and the various legislative and regulatory differences for assessing and monitoring a person's suitability to teach/fitness to teach. Following on from the review, the Australian Institute for Teaching and School Leadership (AITSL) presented a report *Strengthening Children's Safety through Teacher Registration* to Education Council. Subsequent to Education Council's consideration of that report, a best practice framework for teacher registration policy and legislation to provide for the safety and wellbeing of children has been provided to Education Council for consideration.

Any implementation of the proposed AMR model would be, at best, premature to that consideration. The model presupposes consistency of legislation and regulatory practices and policies across jurisdictions when that is not the case. The current work of TRAs toward a best practice framework strives for a higher standard of expectation for teachers and greater national consistency of requirements to ensure child safety.

Two recent examples of matters which have arisen in Queensland highlight the child safety concerns that would be exacerbated by the proposed model. In each case the teacher sought registration in Queensland under mutual recognition and held a working with children/vulnerable persons check from another jurisdiction. Information provided to the QCT detailed that each applicant had been convicted of an offence which in Queensland was the equivalent of a *serious offence*. This would normally exclude a person applying for registration in Queensland (s14 QCT Act) or require their registration to be automatically cancelled if they were a Queensland registered teacher (s56).

The current work by TRAs will respond to these inconsistencies, yet conversely, the AMR model enables the loophole.

Nature of teacher's work

According to the consultation paper, the key drivers of the AMR scheme are to promote short-term economic recovery and increase long-term productivity, as well as reduce complex, costly and excessive regulatory burden for businesses and individuals providing services across jurisdictions. However, schools are community-based institutions and not an industry or business servicing across jurisdictions, and the teaching profession cannot be equated with the various trades and other occupations mentioned in the consultation paper.

Quality teaching is not enabled by a transient workforce or a 'fly-in-fly-out' mode of delivery. Good-quality education relies on continuity of teaching, engagement with parents and the community, and an understanding of the diverse, cultural context of a school to support student achievement. The *Alice Springs (Mparntwe) Declaration (2019)* states commitment to a goal that 'the Australian education system promotes excellence and equity' and includes that all Australian Governments will work with their education communities to provide access to high-quality education, recognise individual needs, promote personalised learning and ensure that the learning is built on and includes local, regional and national cultural knowledge and experience of Aboriginal and Torres Strait Islander peoples and work in

partnership with local communities (p5). Expectations of the professional workforce should be in alignment with that goal.

Mobility of the teaching profession as an occupation is currently supported via the *Mutual Recognition Act (1992)* (the MR Act) and similar Acts in participating jurisdictions, allowing teachers to move between jurisdictions to fill job vacancies. The QCT supports the education system in Queensland in that process by ensuring that the appropriate checks and verifications occur prior to a teacher entering a classroom. The regulatory approach is not complex or excessive but commensurate with employer needs and community expectations. It can be argued that the introduction of the AMR scheme as proposed will increase complexity and add administrative burden and risk to schools and employers to undertake these checks for teachers under AMR.

There would be no significant cost savings or economic benefits for the teaching profession to be included in the proposed AMR scheme. While there may be cost savings (an application fee) for an individual teacher to move more freely between teaching roles and jurisdictions, consideration should be given to whether there is a need for a new system beyond that already available, and how that will affect the excellent standards of education we are striving for. Furthermore, to introduce the proposed changes there would be hidden costs for schools and employers, as well as for existing Queensland registered teachers, to fund this scheme.

Current operation of Mutual Recognition (MR) arrangements

To teach in a Queensland school, a person needs to be approved by the QCT. Queensland recognises the registration or accreditation of a teacher from another state or territory when they provide a notification (under s19 of the MR Act) via an online form available in the myQCT portal accessed on the QCT website. In the past two years the number of teachers registered through MR in Queensland has been approximately 1,400 per year.

The online form provides for an identity check to be completed through an online portal. As soon as the form is submitted a declaration is emailed to the notifier for them to sign and return to the QCT. The only documentation needed is evidence of their registration/accreditation, which all registered teachers will have to hand, and a fee equivalent to an application fee.

Usually it only takes one to four days for the QCT to verify the information provided by the person and check that they are not subject to a conduct investigation or disciplinary proceedings or subject to conditions on their registration including as a result of criminal, disciplinary or civil proceedings or other special conditions on their registration.

Deemed registration is immediate once the QCT has received verification of the information provided by the person from their home TRA. This means most applicants under MR are advised by email, either on the same day, or within one business day of verification being received, that they have deemed registration and are to be able to commence work as a teacher in Queensland immediately while their substantive registration is being processed. In most cases substantive registration in Queensland is granted within 30 days (76% in 2020).

The information sharing between TRAs is already adequate and appropriate for the necessary verification.

2) Opportunity to declare exemption from AMR in the jurisdiction

If teaching was not completely excluded from the AMR Scheme, to make the AMR model work effectively and preserve aspects of rigour, particularly around child safety, the QCT would seek an exemption of the teaching profession by the Queensland Minister. The currently operational MR system could be disrupted unless all state and territory Ministers agreed to declare an exemption for the teaching profession consistently and at the same time. The level of certainty provided in Option 1 would ameliorate this risk, and it is therefore the preferred option.

If the Queensland Minister was not willing to grant a full five-year exemption for teachers, then there should at least be a temporary (6-month) exemption. This would facilitate liaison between jurisdictions for determinations under the proposed section 42L of the amending MR Act.

In the absence of that exemption, in conjunction with other action mentioned below to be taken during the exemption period, there would in the QCT's view, be a significant risk to child safety.

A temporary exemption would enable action by the Minister to:

- make a determination requiring notification to the QCT before teaching could commence in Queensland.
- require a *vulnerable person character test*.

The QCT also considers that notifications should include certain details that are not currently listed in the proposed legislation, as any notification requirements are limited to the section 19 matters. Those additional details include place of residence and place of work (although we note the ability under the proposed section 42SA to obtain that information) and date of commencement of work.

Notification of the commencement date of work is considered to be crucial to the QCT's ability to effectively exercise its regulatory function. To not have that requirement would raise jurisdictional issues and seriously impact on the QCT's ability to take necessary disciplinary enforcement action if required. The present scheme does not have this dilemma as notification under section 19 of the MR Act and deemed registration is required.

3) A workable model to preserve current standards (as a minimum)

Issues related to notification requirements

Should AMR for teacher registration purposes be pursued, it would be imperative that legislation enables the QCT to receive notification, similar to the type of notification that is already available under section 19 of the MR Act, and that a 'fit or proper person' test be able to be conducted for the purposes of determining whether a person may carry on the activities of an approved teacher in Queensland.

The notification provides for the QCT as the regulator for the teaching profession in Queensland to verify the identity of the person and their registration/accreditation with the

relevant TRA. Queensland has a public register available on the QCT's website – however, not all TRAs have a public register.

The ability to conduct a 'fit or proper person' test would need to be either provided for in the MR Act amendments (assuming teachers are not exempted by the amendments) or able to be put in place by Ministerial declaration. Therefore, notification to the QCT and the ability to conduct a 'fit or proper person' test will ensure for employers of teachers and the safety of children that appropriate reliable checks are undertaken, and relevant information obtained from the relevant TRA and the Queensland Police Service (QPS).

Notification also establishes the teacher's identity for ongoing monitoring of a teacher's criminal history which is an automated daily checking process, conducted via the QPS, for all registered teachers in Queensland. This ensures that if there are any charges or convictions against a Queensland registered teacher, the QCT is informed and able to take the necessary action in respect to the teacher's registration. Employers do not have access to this information.

There are approximately 1800 schools in Queensland. The QCT is the only cross-sectorial agency able to maintain oversight of the residence and employment of a teacher. Without the regulatory authority being aware that a teacher is working in a Queensland school, the system of child protection would be seriously jeopardised.

Issues related to implementation timelines

Should AMR for teacher registration purposes be pursued to include notification, new business processes will need to be built and tested by the QCT with stakeholders. New information and business collateral would need to be developed, current information reviewed, and changes to terminology and guidelines addressed and published. This would include developing a new online notification, implementing a vulnerable person character test and developing additional notification requirements between the relevant TRAs as well as regulating compliance with both the MR Act and the QCT Act. Interim Deemed Registration (IDR) where residency is permanently changed would require modifications to the current MR notification process. These activities would be resource and time intensive to ensure that all the components of the proposed model are effective and in place.

The AMR proposal includes expectations that the proposal may prompt better information sharing between registering authorities and improve resourcing including IT systems for the exchange of information. Arrangements in current MR processes allow for adequate information sharing to support verification and the efforts to implement a shared platform between TRAs has already been explored. The work being undertaken by TRs in collaboration with AITSL regarding a best practice framework could take the necessary action without exposing child safety risks.

Legislative amendment would need to occur to adopt AMR. Time would also be needed to develop the significant changes required to business processes. These practicalities do not appear to have been contemplated in the extraordinarily tight timeframes proposed for introduction of the scheme. To allow for effective implementation, the time allowed to prepare for introduction of the scheme should be extended to at least a twelve-month period.

Issues related to regulatory enforcement

The proposed model, for AMR to be applied to teacher registration/accreditation, transfers a significant regulatory burden onto the QCT as the teacher registration authority in Queensland.

Without notification, the QCT would not be aware of teachers working in Queensland, yet these teachers would be considered subject to the regulatory requirements of teachers registered under the QCT Act. The QCT would have no means of communicating to this group of teachers as their details would not be known to the QCT and no monitoring function would apply. These factors would seriously erode the current reliable and robust nature of Queensland's teacher registration system, placing employers and students potentially at risk.

Even if the proposed model provides for AMR teachers to notify the QCT when taking up a teaching position in a Queensland school, there would be significant additional regulatory management activities that the QCT would need to pursue vigilantly. The proposed model provides that when a registered teacher engaged in the occupation in a Queensland school under AMR moves their primary place of residence, they must then notify the relevant regulatory authority (i.e. the QCT) under the IDR provisions. Failure to do so would place the employing authority (who may be totally unaware of the teacher's actions/inaction) and the teacher in direct breach of the general offence provisions of the QCT Act (refer box).

The QCT would need to develop and implement a communications program and business process to ensure as far as practicable that those teachers relying on AMR for employment as a teacher in a Queensland school immediately used the IDR provisions when they moved their primary place of residence, to ensure that they and their employer minimised the risk of being in breach of the QCT Act. As the QCT is self-funded and the proposed model is that no fees would be charged for AMR, the fees from Queensland registered teachers would be required to fund the regulation of AMR.

Further, the proposed change in terminology from 'deemed registration' to 'interim deemed registration' fails to consider the impact on regulatory agencies where the term 'deemed registration' is used generically and also covers notifications under the *Trans-Tasman Mutual Recognition Act* (1997).

Part 2 General offences

82 Only approved teachers may be employed as teachers

(1) The employing authority for a prescribed school must not employ a person as a teacher in the prescribed school unless the person is an approved teacher.

Maximum penalty—200 penalty units.

Note—

If a corporation commits an offence against this provision, each executive officer of the corporation may be taken, under section 228, to have also committed the offence.

(2) The employing authority for a prescribed school must not allow an approved teacher to teach in the prescribed school if the person's registration or permission to teach is suspended by the college or QCAT.

Maximum penalty—200 penalty units.

Note—

If a corporation commits an offence against this provision, each executive officer of the corporation may be taken, under section 228, to have also committed the offence.

83 Requirement to hold registration, or permission to teach, in schools

(1) A person who is not an approved teacher must not teach in a prescribed school.

Maximum penalty—100 penalty units.

(2) A person who is not a registered teacher must not supervise, or assess the work of, a teacher or student teacher in a prescribed school.

Maximum penalty—100 penalty units.

There does not seem to be any significant rationale to add another term to the MR model and to then require regulatory authorities to use different terminology and communications for those people notifying under MR from New Zealand compared to those notifying under MR from an Australian jurisdiction. Again, this is adding to agencies' regulatory burden and costs for no significant benefit.

Equivalence

Under the proposal, AMR permits a licensee to undertake in a second jurisdiction the 'activities that are substantially the same' as those under their home licences. There are circumstances within the teaching profession (e.g. early childhood educators or authority to teach holders) where that premise broadens the current MR Act and potentially creates ongoing registration issues in a jurisdiction.

Issues with the draft legislation

The QCT considers that there are a number of provisions of the proposed amending Act that require further essential consideration or explanation prior to any implementation of AMR. The following are some examples (not exhaustive):

- a) Clause 33 proposes the repeal of paragraph 19(2)(h) of the MR Act. That action will weaken the ability of the QCT and other TRAs to make enquiries when considering whether to grant registration under MR. The paragraph enables '... the making of inquiries of, and the exchange of information with, the authorities of any State regarding the person's activities in the relevant occupation or occupations or otherwise regarding matters relevant to the notice'. It has been relied on for giving and receiving information in the past and relied on for making enquiries and exchanging information with other authorities than TRAs such as teacher employing authorities.
- b) The insertion of section 42S (clause 90) provides for information exchange but appears to be limited to information exchange as it pertains *only* to automatic deemed registration and exchange *only* between registration authorities. Repeal of paragraph 19(2)(h) without providing authority to make enquires and exchange information more widely is too limiting and contrary to information-sharing recommendations made by the *Royal Commission into Institutional Responses to Child Sexual Abuse*.
- c) The amending legislation enables a *vulnerable person character test* to be required and for AMR to not commence until that test has been met. The definition refers to 'a character test **or** a fit or proper person test' (emphasis added). Having regard to the High Court decision in *Victorian Building Authority v Andriotis* [2019] HCA 22 clarity/explanation is required about the extent of the test envisaged. In the Queensland context reference to 'a fit and proper person' test, would be reference to a 'suitability to teach' assessment prescribed under the QCT Act. That assessment is broader than a working with children check. If it is the broader test, there is inconsistency between AMR and IDR unless the provisions relevant to IDR are also adjusted.

- d) Section 42G concerns duration of automatic deemed registration. There is an absence of notification requirements for either a TRA in the first jurisdiction to provide notification of registration ceasing or for a person to notify the registration authority in the second jurisdiction of changes of circumstances that would affect their automatic deemed registration. In the absence of that information, there is a significant risk to the public and employer that such persons would be working/teaching unregistered. This is a significant gap.
Note: section 33 of the MR Act only mandates notification where registration is cancelled or suspended – not where registration may have ceased for other reasons such as for non-payment of an annual fee or by request of the person.
- e) Sections 42D, 42G and 42LA: The proposed sub-section 42D(3) lists the exceptions to entitlement to AMR. It appears that there is inconsistency between those exceptions and the duration provisions in section 42G. Relatedly, there appears inconsistency between the notification provisions of sections 33 and 42LA.
- f) The effect of the proposed sub-section 42K(3) is that a local registration authority in the second State cannot impose conditions on a person's AMR. That would preclude the imposition of conditions imposed as a result of disciplinary proceedings in the second State (proceedings allowed for under the proposed section 42L).

Final comment

Around fifty percent of teachers who notify the QCT under section 19 of the MR Act have already taken up residence in Queensland at the time and the vast majority of the remainder intend to move to Queensland in order to commence a teaching position in a Queensland school. Based on the number of MR applications approved over the last two years (about 1400 per year) and that around three percent of Queensland teachers at any one time have an interstate address, the QCT estimates that fewer than 50 MR applicants annually would benefit from the AMR.

By comparison, deeming under AMR would take the same amount of time for the majority of applicable teachers, as they would enter via IDR. The high risk to the safety of children means it would be essential, prior to the person starting to teach, that there be notification to the TRA in the host jurisdiction. This is necessary to enable verification with the TRA in the home jurisdiction of the person's registration, and that there are no disciplinary or criminal matters that would make them ineligible for AMR, or conditions about the way they must undertake teaching duties.

In summary, in most cases, the time needed for a person to be deemed under the current MR Act would be similar to that for deeming under the proposed AMR. There is no additional contribution to the economy and no significant benefit for employers and teachers. In fact, it creates an increased regulatory burden by introducing a double level of bureaucracy for teachers as the vast majority move residence to Queensland to take up a teaching position and would then be required to notify under the interim deemed MR provisions. Failure to do so would put them in breach of the QCT Act. Additionally, the AMR scheme as proposed places additional administrative burden on employers and schools, and regulatory burden

and costs on the QCT and other TRAs to manage the process. This will need to be funded by current teachers on the Queensland register.

Individual teachers, as members of a professional occupation, make choices about how and where they wish to work, including moving between jurisdictions. Consideration should be given to whether other members of that profession should fund a scheme that allows 'automatic' ability to move between jurisdictions without application or a fee, while eroding the current high standards and regulatory safety in Queensland, and does not serve the best interests of children.