

Powers of the Queensland Board of Teacher Registration to Discipline Teachers

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Abstract

Given the drive to establishing an Australian wide Register of Teachers together with new state initiatives, this article provides one example of how a state teachers' registration authority is empowered to ensure suitable persons are employed in the state's schools.

Introduction

In Australia, there is at least one current high profile case involving a number of sexual assaults by a teacher and much discussion about who may have known or suspected misconduct but did nothing to remedy the problem. It would be comforting to be able to say that this is the only known case of lack of action by employers in sexual abuse cases. It would be comforting but it would be unrealistic.

In an age of greater public and professional awareness, there is an expectation that any employee accused of criminal activity will be thoroughly investigated, charged and punished where appropriate. And, when a perpetrator is a teacher or other professional in a position of trust, there is also an expectation that the appropriate licensing body will take disciplinary action.

This article analyses the authority vested in the Board of Teacher Registration in Queensland to discipline teachers. It examines the Board's authority to assess whether a teacher is of good character and able to continue teaching after being found guilty of a criminal offence and also considers the role of the Board in cases where a teacher is found not guilty. Finally, it considers the adjustments made over the years to ensure that the Board has reacted to perceived weaknesses in the Act or in its procedures.

The Board

The Board of Teacher Registration is comprised of **sixteen appointed and elected members** who are responsible for all aspects of teacher registration in the state of Queensland. Education Queensland does have some say in the composition of the Board since the **Chair** is a nominee of the Minister, and **three members** are nominated by the chief executive (two must be practising teachers). But other nominees come from a wide spectrum of the education community. There are

two representatives of employers other than state schools. The unions are also represented by **one nominee** of the Queensland Teachers' Union, **one nominee** of the Queensland Independent Education Union (both of these must be practising teachers) and **one nominee** of the State Public Services Union, who must be a registered teacher. There are also **three elected members** of registered teachers, **two representatives** of higher education, **one representative** of community groups and **one other nominee** of the Minister if the Minister considers an additional representative desirable.

By legislation the Board is self-funding through registration fees, which are currently set at twenty-five dollars per teacher per annum, and operates at arms-length from Education Queensland. It is responsible for maintaining a register of teachers and carrying out all the functions necessary to assess qualifications, register qualified teachers, penalise inappropriate behaviour and keep that register up to date.

Legislation

Functions of the Board

Pursuant to the *Education (Teacher Registration) Act 1988*, the Board of Teacher Registration is authorised to carry out its duties in a number of areas related to teacher registration. These functions are defined in sections 5 and 6 of the Act and include such matters as: responsibility for the registration of all people entitled to be registered as teachers; the duty to confer and collaborate with employing authorities, universities, teacher organisations, teachers and the community in relation to courses acceptable for teacher registration; and, the authority to appoint such committees as it sees fit to assist it in its duties. Paramount among these is the responsibility for overseeing the entire registration process including a wide range of matters from the processing of applications to the cancellation of registration.

Good Character

Section 37 of the Act directs that the Board may only approve an application for registration once it is satisfied that an individual is of good character. This determination of good character is to be made in a very specific manner, as is seen in s37 (2):

- (2) In determining whether an applicant is of good character for registration, the board –
 - (a) must have regard to the applicant's criminal history; and
 - (b) may consider all other matters the board considers relevant even if the matter happened outside of the State.

Subsection (5) goes on to define, in general terms, the meaning of good character under the Act:

- (5) However, without limiting subsection (2), an applicant is not of good character, if applicant -

- (a) behaves in a way that does not satisfy a standard of behaviour generally expected of a teacher; or
- (b) otherwise behaves in a disgraceful or improper way that shows the applicant is unfit to be registered as a teacher.

And subsection (6) provides authority to the Board to apply these same tests to currently registered teachers:

- (6) Subsections (2) to (5) apply in relation to the board deciding whether a teacher is of good character to continue to be registered as a teacher.

Duty to Report

Sections 38 to 43 of the Act deal with the duties of the Board related to the registration of teachers and penalties applicable to those who employ people who are not registered to perform teaching functions. However it is in section 44 where subsequent references to teacher suitability are found. Under section 44 teachers must report certain actions taken against them:

- (1) A registered teacher must give written notice to the board about any of the following events within 7 days after the event happening –
 - (a) the conviction of the teacher for an indictable offence (whether on indictment or summarily);
 - (b) if the teacher was registered in another State – the cancellation or suspension (however described) of the person’s registration in the other State as a teacher ...

Section 44A requires an employing authority to report certain matters, including sexual offences, to the Board:

- (1) This section applies if the employing authority for a school gave written notice to a relevant teacher that the authority was dissatisfied with the relevant teacher after the employing authority had investigated a sexual allegation involving the teacher and within 6 months of the notice –
 - (a) the employing authority dismissed the relevant teacher from the educational staff of the school; or
 - (b) the relevant teacher resigned from the educational staff of the school.

- (2) The employing authority must give written notice of the dismissal or resignation to the board ...

The term ‘sexual allegation’ is defined in subsection (5) as:
an allegation that a teacher

- (a) committed an offence of a sexual nature, including, for example, carnal knowledge of a girl under sixteen years and a sexual assault mentioned in the Criminal Code, section 337; or

- (b) engaged in conduct of a sexual nature (other than an offence of a sexual nature) with a student or a child, whether in the teacher's capacity of a teacher or otherwise, and the conduct does not satisfy a standard of behaviour generally expected of a teacher.

Section 44B of the Act, directs that the Commissioner of the Police Service or the Director of Public Prosecutions must report to the board anyone believed to be a registered teacher who is charged with an indictable offence, committed for trial for an indictable offence or convicted of an indictable offence. In addition, the prosecuting authority must report if there was an acquittal, mistrial or decision not to present an indictment, in relation to an indictable offence.

Power to Conduct Inquiries

Under section 50 of the Act the Board is given authority to conduct inquiries about respondent teachers concerning certain matters whether the teacher is currently registered or not.

Section 50 provides that:

- (2) Also the board may conduct an inquiry into a matter involving a person who is a registered teacher, or was a registered teacher but is no longer registered (the 'teacher'), if the board considers there are reasonable grounds to believe –
 - (a) the teacher has been convicted of an indictable offence (whether on indictment or summarily) or an offence against this Act; or
 - (b) the teacher is incompetent in performing the work of a teacher but only if the teacher has been dismissed from employment as a teacher, or resigned in circumstances, that, in the opinion of the teacher's employer in the State, call into question the teacher's competency to be employed as a teacher; or
 - (c) if the teacher was registered in another state - the teacher's registration in the State as a teacher has been cancelled or suspended; or
 - (d) if the teacher was employed in another state that does not register teachers – the teacher's employment as a teacher in the State has been terminated because the teacher was not competent or fit to be employed as a teacher in that State; or
 - (e) the teacher has ceased to possess or does not possess the qualifications and experience (if any) on which the teacher was registered as a teacher; or
 - (f) the teacher is not, or no longer is, of good character to be registered as a teacher.
- (3) However the board may conduct an inquiry into a person who was a registered teacher only if the board is reasonably satisfied that, because of

the nature of the events the subject of the proposed inquiry, it is in the public interest for the board to inquire into the events and –

- (a) the events happened while the person was registered; and
- (b) it is not more than 1 year since the registration ended.

Although the Board is given authority under section 51 to appoint a committee to carry out inquiries it is the usual practice that the Board conducts all inquiries as a full Board. The Board's Annual Report in 1982 (p. 15) indicates that the Board reviewed its procedures related to inquiries, discussed the issue with the 'major teacher organisations' and decided to retain the practice of having the full Board conduct inquiries.

Conducting an Inquiry

Sections 53 to 69 prescribe the inquiry process and outline the rules of evidence that inquiries will follow. Specific time lines are set out for proper notice and the Act clearly states that inquiries are open to the public unless the inquiry body decides that the inquiry should be closed or the respondent teacher requests that the inquiry be closed to the public. In fact it is unusual for an inquiry to be open.

The process is clearly intended to be less formal than a trial or judicial hearing but it must be reasonably formal because of the drastic impact it can have on the respondent. Section 56 provides that:

- (1) The inquiry is to be held with as little formality and technicality, and must proceed as quickly, as is practicable to permit a fair and proper consideration of the matters before the inquiry body.
- (2) In conducting the inquiry, the inquiry body
 - (a) is not bound by the rules or practice about evidence but may inform itself about a relevant matter in any way it considers appropriate; but
 - (b) must observe the rules of natural justice.

Section 57 provides that:

- (1) In conducting the inquiry the inquiry body must give the respondent teacher an adequate opportunity to fully and fairly present the teacher's case.
- (2) The respondent teacher is entitled to be represented by –
 - (a) lawyer; or
 - (b) a person nominated by the respondent teacher as the teacher's agent.
- (3) Also a lawyer, or officer of the board, may appear at the inquiry to present evidence to, or help, the inquiry body.

Under the provisions of the legislation, the Board is given substantial authority to require individuals to appear before an inquiry to give evidence or to produce documents or matters relevant to the inquiry and to penalise individuals if they neglect to appear or produce evidence. The Board also has significant powers to penalise any person found to be in contempt of the inquiry body for such things as disrupting an inquiry or failing to follow the legitimate directions of the inquiry body.

Penalties

Following an inquiry, the Board has a wide range of sanctions available to it. These sanctions range from a fine to the cancellation of the registration of the respondent teacher. Section 70 provides:

- (1) After an inquiry about a registered teacher, if the board is satisfied on the balance of probabilities about a matter mentioned in section 50(2), the board may, as it considers just in the circumstances make one or more of the following orders –
 - (a) an order cancelling the teacher's registration;
 - (b) an order cancelling the teacher's registration and substituting provisional registration ... ;
 - (c) an order suspending the teacher's registration for a stated time;
 - (d) an order requiring the teacher to pay the board, by way of cost, an amount the board considers appropriate having regard to expenses incurred by it in conducting the inquiry;
 - (e) an order requiring the teacher to pay to the board, by way of penalty, an amount fixed by the board but not more than the equivalent of 20 penalty units;
 - (f) an order reprimanding the teacher and for the reprimand to be entered in the register.

Inquiries

Since 1971, when the Board of Teacher Registration and its predecessor, the Board of Teacher Education, began keeping records of disciplinary inquiries into alleged misconduct by teachers, the number of inquiries has varied significantly from year to year. The Board has had some comparatively busy years with eight inquiries in 1983 and nine and eleven inquiries in 1999 and 2000 respectively. But there have also been years when only one inquiry was conducted (1988, 1989, and 1991) and in 1980 not a single inquiry was held. In the first twenty years of keeping records, the two Boards report sixty-one inquiries into the conduct of registered teachers. This number must be considered in relation to the number of teachers registered by the Board over this period of time – from below 40,000 in 1971 to over 65,000 in 1992 (79,128 in 2001- the last year for which published numbers are available).

The Board's Annual Reports for some of the early years do not give a very clear picture as to what happened with inquiries but it is not difficult to get a fairly clear overview of the types of

inquiries, which have been held by the Board. A snapshot of the twenty-four disciplinary inquiries up to 1983, for example, gives us a good idea of the types of inquiries the Board had been hearing.

From 1971 to 1983, the Board had held twelve inquiries related to possession of illegal drugs, six for sexual assault, two for stealing, two for wilful exposure, one for seduction of a student and one for false pretences. And, as a result of these inquiries, ten teachers were deregistered, five were suspended for up to nine months, four were reprimanded, two were cautioned and in three cases no disciplinary action was taken.

Recent reports of the Board of Teacher Registration give a much clearer picture of the number and types of inquiries being held by the Board and also of the penalties being assessed.

Disciplinary Inquiries in 1998

A total of seven inquiries were held in 1998. Four inquiries into the conduct of previously registered teachers - all of which led to notations against the teachers' names in the register - and three inquiries into the conduct of registered teachers. Of the three inquiries into the conduct of registered teachers one was for an inappropriate relationship with a student, one for improper touching and one for indecent dealing. The first teacher received a reprimand and a three-year suspension, the second faced no penalty and the third teacher was deregistered. (BTR Annual Report 1998, p. 12)

Disciplinary Inquiries in 1999

The Board held 9 inquiries during the 1999 calendar year. Four of these inquiries were into the conduct of individuals no longer registered and five were inquiries into the conduct of registered teachers.

The disciplinary inquiries into the four individuals whose registration had lapsed all led to notations in the register to the effect that they had been convicted of an indictable offence (three) or not of good character (one). The notation stays in the register attached to the individual's name and will be reported on any request for information on that individual's status with the Board of Teacher Registration.

All five of the registered teachers, who were the subject of disciplinary inquiries in 1999, had their registration cancelled. The inquiries were all based upon the individuals being convicted of indictable offences and the offences were all of a nature that called into question the suitability of the individuals to continue as teachers. The specific offences were fraud; fraud with aggravation; indecent dealing; maintaining a sexual relationship with a child and indecent dealing and taking indecent photographs. BTR Annual Report 1999, p.14)

Disciplinary Inquiries in 2000

In the 2000 calendar year, the Board held eleven disciplinary hearings including four regarding individuals whose registration had lapsed and seven regarding registered teachers.

Of the four inquiries into the conduct of individuals whose registration had lapsed, two had notations entered against their names for having been convicted of an indictable offence and one

had a notation entered to the effect that he/she was not of good character. In the remaining case, the Board decided that it had insufficient evidence to determine whether the teacher was of good character.

The seven disciplinary inquiries into the conduct of registered teachers covered a fairly wide range of behaviour and penalties. Five of these teachers had been convicted of indictable offences (fraud and child pornography, misappropriation of school funds, wilful destruction and wilful damage; stealing school funds; and possession of child abuse publications and computer games) and faced a sanction. Three teachers had their registrations cancelled, one had full registration substituted with 12-month provisional registration and one was reprimanded. (BTR Annual Report 2000, p. 14).

The other two registered teachers who faced disciplinary hearings were not convicted but the Board was satisfied that it had sufficient evidence to act. One teacher had his/her registration cancelled and one was reprimanded and suspended to the end of the year.

Difficulties and Adjustments

The Board's Annual Reports give us some insight into problems, either procedural or legislative, which the Board has encountered over the years and also highlight steps taken to overcome these problems to be ever more effective.

Parental Refusal to Cooperate

As far back as 1981, the Board of Teacher Education was highlighting a problem it was having with alleged abuse cases against teachers. The 1981 Annual Report indicates that an inquiry into alleged misconduct by a teacher could not proceed because the parents of the child would not permit their child to be involved in an inquiry. The Annual Report indicates that the Board believed it needed much stronger investigative authority.

The Board was concerned that, in another case which came to its attention during 1981, it has not been possible to proceed due to the reluctance of parents to involve their children in an official inquiry. In the Board's view, where employing authorities have reason to believe that a teacher has been guilty of misconduct towards pupils, the case should be fully investigated and the evidence placed in the hands of police and the Board at the earliest possible opportunity. (p.16)

The theme of reluctant children, parents, or witnesses in sexual abuse cases was not unique to Queensland or Australia in the 1980's but the Boards of the day seem to have been quite frustrated by it. Annual Reports for the next few years contain comments about inquiries that could not proceed because of a lack of willingness to have children involved but it is not clear that any specific legislation (however fruitless it may have been) was ever recommended to solve the problem.

Even before the Board of Teacher Registration replaced the Board of Education in 1987, there is no further mention of this concern in the Annual Reports. We can speculate that a number of factors were responsible for this apparent change in attitude. Society was becoming more

insistent that these types of allegations had to be dealt with and parents in general were beginning to have expectation that children's complaints would be handled sensitively and with some degree of skill.

Teacher Not Present For Inquiry

In its Annual Report of 1984 the Board identified another problem with the administration of inquiries into alleged misconduct. If a teacher failed to attend an inquiry into his or her conduct or to send representation, the Board could proceed 'ex parte' (without the individual) but no determination could be made until the teacher was given an opportunity to appear. This usually meant a lengthy adjournment to make the proper notifications and in some cases a newly constituted Board would lack sufficient members, who had heard the case, to make a determination. It became a successful delaying tactic.

In an effort to stop the growing practice of teachers choosing not to be present for their hearing, the Board changed its by-laws to require one month's notice to be given to the subject of an inquiry. After the month had elapsed, the inquiry could go forward to completion even if the teacher chose to be absent and without representation.

Teacher No Longer Registered

The next major concern of the Board in relation to inquiries was identified in the Annual Report of 1994. The Board was unable to proceed with an inquiry into the conduct of a teacher if that teacher's registration had lapsed. It was therefore possible for a teacher to avoid an inquiry by resigning and stopping payment of fees. The concern of course was that such a teacher could then go on to seek employment in other jurisdictions and the Board had no formal way of determining, or commenting on, the individual's suitability.

The Board has sought the power to inquire into misconduct cases where a teacher's registration has subsequently lapsed, to inquire into the fitness of an applicant to be registered as a teacher, and to prosecute where an applicant has attempted to obtain registration by false pretence, for example by submitting false documents. (p.15)

The Board continued to press this issue as a priority until amendments to the Act were proclaimed in 1997, which enabled the Board to undertake disciplinary inquiries into the conduct of individuals who were no longer registered as teachers. The inquiry could proceed as long as the Board had reason to believe that the individual had been a registered teacher at the time of the alleged misconduct.

Other Amendments

In 1997, the government introduced further amendments to the *Education (Teacher Registration) Act 1988* 'brought about largely through government concerns over paedophilia' (BTR Annual Report, 1997, p.2). These amendments included provision for the incorporation of endorsements next to a teacher's name in the register. So a teacher who was found guilty of misconduct would

have an endorsement or notation entered into the register next to his name. The endorsement could read 'not of good character' or convicted of an 'indictable offence'. The endorsement became part of the official record of that teacher's career and would be reported in response to any inquiries into the teacher's license.

Another amendment, which came into effect in 1998, was the implementation of national police record checks on all new applicants for registration. Although the Board may choose to overlook single convictions for some infractions, like drink driving offences, it was now able to make a more informed decision on the suitability of applicants.

Also, because of an amendment, which came into force in 1998, the police and the courts have a duty to notify the Board when a teacher is charged, committed to trial or convicted of an indictable offence. And employing authorities must notify the Board if a teacher is dismissed or resigns in the face of sexual allegations. The goal of course being that no one alleged to have committed, or convicted of an offence will be able to avoid the scrutiny of the Board. These statutes have been further strengthened by the *Child Protection Act* (1999) (Qld.) and the *Commission for Children and Young Peoples Act* (2000) (Qld.).

Conclusion

Over the years since its inception, the Board of Teacher Registration in Queensland has conducted many inquiries into the conduct of its members. It has responded to perceived weaknesses in its legislation and procedures to make it more effective and more responsive to the needs of the profession and society. Now, perhaps more than at any time in its history, a passage from the Annual Report of 1984 truly reflects the reality of its relevance.

Prior to the commencement of compulsory teacher registration in 1975,... there was no legal impediment to a person found guilty of serious professional misconduct, even if dismissed by one employer, from continuing to teach in Queensland for another employing authority.

Now, ten years later, the system of compulsory teacher registration ensures that all Queensland students are taught by persons with qualifications acceptable to the Board. Teachers convicted of criminal offences are now subject to disciplinary action by the Board (which) has become a point of reference for any member of the community who has grounds for a complaint involving alleged professional misconduct by a teacher. (p. 3-4)

Keywords

Teacher Registration; Discipline; Queensland; Australia.

References

Board of Teacher Registration, Queensland; Annual Reports 1981-2000.