



Education (Queensland College of Teachers) Amendment Bill 2019

Report No. 14, 56th Parliament
Education, Employment and Small Business
Committee
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Education, Employment and Small Business Committee

Chair	Ms Leanne Linard MP, Member for Nudgee
Deputy Chair	Mrs Jann Stuckey MP, Member for Currumbin
Members	Mr Bruce Saunders MP, Member for Maryborough
	Mrs Simone Wilson MP, Member for Pumicestone
	Mr Michael Healy MP, Member for Cairns
	Mr Nick Dametto MP, Member for Hinchinbrook

Committee Secretariat

Telephone	+61 7 3553 6657
Fax	+61 7 3553 6699
Email	eesbc@parliament.qld.gov.au
Technical Scrutiny Secretariat	+61 7 3553 6601
Committee webpage	www.parliament.qld.gov.au/EESBC

Acknowledgements

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Abbreviations

Act	<i>Education (Queensland College of Teachers) Act 2005</i>
AITSL	Australian Institute for Teaching and School Leadership
department	Department of Education
Guide to Certification	<i>Guide to the Certification of Highly Accomplished and Lead Teachers in Australia</i>
HAT	Highly Accomplished Teacher
IEU-QNT	Independent Education Union, Queensland and Northern Territory Branch
ISQ	Independent Schools Queensland
LSA	<i>Legislative Standards Act 1992</i>
LT	Lead Teacher
Professional Standards	Australian Professional Standards for Teachers
QCAT	Queensland Civil and Administrative Tribunal
QCEC	Queensland Catholic Education Commission
QCT	Queensland College of Teachers
QTU	Queensland Teachers' Union
Regulation	Education (Queensland College of Teachers) Regulation 2016

Chair's foreword

This report presents a summary of the Education, Employment and Small Business Committee's examination of the Education (Queensland College of Teachers) Amendment Bill 2019.

This Bill presents an opportunity to recognise high performing school teachers across Queensland and encourage them to continue their role in the classroom. Quality teachers are at the very heart of maintaining a high quality education system in this state. I take this opportunity to acknowledge the significant contribution that teachers make each and every day and thank them for their continued service in this regard.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the committee, I thank those organisations which made written submissions on the Bill. I also thank Parliamentary Service staff and the Department of Education.

I commend this report to the House.



Ms Leanne Linard MP
Chair

Recommendations

Recommendation 1

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The committee recommends the Education (Queensland College of Teachers) Amendment Bill 2019 be passed.

1 Introduction

1.1 Role of the committee

The Education, Employment and Small Business Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The committee's primary areas of responsibility include:

- Education
- Industrial Relations
- Employment and Small Business
- Training and Skills Development.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles, and
- for subordinate legislation – its lawfulness.

The Education (Queensland College of Teachers) Amendment Bill 2019 (the Bill) was introduced into the Legislative Assembly and referred to the committee on 12 February 2019. The committee was required to report to the Legislative Assembly by 28 March 2019.

1.2 Inquiry process

The committee invited written submissions on the Bill. Five submissions were received and are listed in Appendix A.

The committee received a public briefing about the Bill from the Department of Education (the department) on 25 February 2019. Appendix B contains a list of officials who briefed the committee.

The committee received written advice from the department in response to matters raised in submissions.

The committee held a public hearing on 13 March 2019 (see Appendix C for a list of witnesses).

The submissions, correspondence from the department and transcripts of the briefing and hearing are available on the committee's webpage.

1.3 Policy objectives of the Bill

The explanatory notes summarise the policy objectives of the Bill as to:

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

¹ *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

1.4 Government consultation on the Bill

As set out in the explanatory notes, stakeholders consulted on the Bill include the Queensland College of Teachers (QCT), the Queensland Civil and Administrative Tribunal (QCAT), the Queensland Catholic Education Commission (QCEC), Independent Schools Queensland (ISQ), the Queensland Teachers' Union (QTU) and the Independent Education Union (IEU-QNT).²

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Education (Queensland College of Teachers) Amendment Bill 2019 be passed.

² Explanatory notes, p 4.

2 Examination of the Bill

2.1 Policy background – improving teacher quality

2.1.1 National approach to certification

The national approach to recognise high performing teachers and encourage them to continue as classroom teachers has been developed over some years through councils of Education Ministers. The explanatory notes describe this history:

The Australian Institute for Teaching and School Leadership (AITSL), a public company wholly owned by the Commonwealth Government, established in 2009 by the then Ministerial Council for Education, Early Childhood Development and Youth Affairs, provides national leadership for the Commonwealth, state and territory governments by promoting excellence in the profession of teaching and school leadership.

In December 2010, Commonwealth, state and territory Education Ministers endorsed the Australian Professional Standards for Teachers ... developed by AITSL, which provides for a framework for the teaching profession. The framework is organised into four career stages; commencing at graduate; progressing to proficient for experienced teachers; then highly accomplished teacher (HAT); and finally at the highest career stage of lead teacher (LT).³

Education Ministers from all Australian governments endorsed a framework for nationally consistent recognition and promotion of quality teaching through certification of Highly Accomplished Teacher (HAT) and Lead Teacher (LT) in April 2012.⁴ *Certification of Highly Accomplished and Lead Teachers in Australia* describes the purposes of certification as:

- *to recognise and promote quality teaching*
- *to provide an opportunity for teachers to reflect on their practice*
- *to provide a reliable indication of quality teaching that can be used to identify, recognise and/or reward Highly Accomplished and Lead teachers.⁵*

The approach to certification is informed by the following principles:

- *standards-based*: certification is assessed against the *Australian Professional Standards for Teachers* [Professional Standards]
- *student-improvement focused*: certification recognises teachers who are highly effective in improving student outcomes
- *development driven*: certification is part of career development that includes professional learning and development and performance assessment
- *credible*: assessments of teacher performance are based on rigorous, valid, reliable, fair and transparent measures and processes
- *evidence-based*: certification must be built on nationally and internationally recognised best practice and contribute to the development of evidence about what works in promoting and recognising teacher quality.⁶

³ Explanatory notes, p 1

⁴ AITSL, *Certification of Highly Accomplished and Lead Teachers in Australia*, April 2012, https://www.aitsl.edu.au/docs/default-source/default-document-library/certification_of_highly_accomplished_and_lead_teachers_-_principles_and_processes_-_april_2012_file.pdf?sfvrsn=43eeec3c_0

⁵ AITSL, *Certification of Highly Accomplished and Lead Teachers in Australia*, April 2012, p 3.

⁶ AITSL, *Certification of Highly Accomplished and Lead Teachers in Australia*, April 2012, p 3.

AITSL's *Guide to the Certification of Highly Accomplished and Lead Teachers in Australia* (Guide to Certification) provides information about the requirements of the certification process and the roles and responsibilities of those involved.⁷ It is used in conjunction with the *Certification of Highly Accomplished and Lead Teachers*.

The nationally agreed approach to certification of HAT and LT includes:

- a pre-assessment stage of self-assessment and professional discussion about readiness to apply for certification
- a two-stage assessment process:
 - assessment of evidence including a written statement addressing each of the Professional Standards, documents about teaching practice, assessment, professional learning and engagement, referee statements and observation reports; for Lead teacher, description of an initiative they have led over at least six months
 - direct observation of classroom practice and professional discussions with the applicant, nominated colleagues and the principal.⁸

The QCT said:

*...a national certification process ... that is independent, rigorous, consistent and objective, with the QCT acting as certifying authority, may reward 'expertise' rather than 'experience' ...and deliver a credible and valid judgement of teacher performance that previous schemes have been unable to provide.*⁹

2.1.2 Queensland pilot of certification process

The Queensland Government committed, under the Letting Teachers Teach initiative, to develop and implement HAT and LT career stages by 2019.¹⁰ In 2017, the Department of Education (department) in consultation with QCT and stakeholders, commenced a pilot of the HAT and LT certification process in the Far North Queensland and North Coast regions. The certification process was aligned with AITSL's Guide to Certification and the QCT was the temporary certifying authority.¹¹

The QCT was able to be a temporary certifying authority for the pilot under section 232(a) of the *Education (Queensland College of Teachers) Act 2005* (the Act).¹² Section 232(a) provides that a QCT function is 'undertaking or supporting reviews and research relevant to the regulation of the teaching profession, including reviews and research commissioned and funded by the Minister'.

The department informed the committee that 500 teachers expressed interest in applying for certification during the pilot, and 184 applied. By the end of 2018, at the conclusion of the pilot, 44 teachers were successfully certified as HAT and three were successfully certified as LT.¹³ They include teachers from special education, early childhood, outdoor education as well as primary and secondary

⁷ AITSL, *Guide to the Certification of Highly Accomplished and Lead Teachers in Australia*, 2012, <https://www.parliament.qld.gov.au/documents/committees/EESBC/2019/CollegeTeachers2019/bp-4Mar2019Att2.pdf>

⁸ AITSL, *Certification of Highly Accomplished and Lead Teachers in Australia*, April 2012, pp 6-9.

⁹ QCT, submission 2, p 1.

¹⁰ Department of Education, public briefing transcript, Brisbane, 25 February 2019, p 1.

¹¹ Explanatory notes, p 2. See also Queensland College of Teachers, *Highly Accomplished Teachers (HAT) and Lead Teachers (LT): Queensland State Schools' Pilot Certification Process Information for Prospective Applicants*, p 1, https://www.qct.edu.au/pdf/PSU/Highly_Accomplished_and_Lead_Teachers_DET_Pilot.PDF

¹² Department of Education, Parliamentary Committee Briefing Note for the Education, Employment and Small Business Committee, 4 March 2019, p 2.

¹³ Department of Education, public briefing transcript, Brisbane, 25 February 2019, p 2.

schools. The teachers work in small and large schools, in rural, remote, regional and metropolitan areas.¹⁴

Through the pilot the QCT:

*...has contributed to professional development for certification applicants, completed the training of more than 100 assessors, moderated and reviewed each assessment, and responded openly and transparently to requests for review.*¹⁵

2.1.3 Other jurisdictions

The explanatory notes state at the time of introduction of the Bill New South Wales and the ACT had legislation that provides for the teacher registration authority to certify teachers as HAT or LT. In the Northern Territory the teacher registration authority is the certifying authority.

In South Australia each school sector has an administrative scheme to assess teachers and a Ministerial Committee is the certifying authority. In Western Australia, only the independent school sector uses the national certification scheme, and the Association of Independent Schools WA is the certifying authority.¹⁶ The department provided an interstate comparison of HAT and LT certification that has been reconfigured as Appendix D.

2.2 Certification

The Bill proposes amendments to the Act and the Education (Queensland College of Teachers) Regulation (the Regulation), to create a certification framework for HAT and LT. Clause 4 proposes to insert new chapter 2A (Certification of teachers) into the Act to provide for certification. A teacher's certification would be for 5 years.

¹⁴ QCT, public hearing transcript, Brisbane, 13 March 2019, p 13.

¹⁵ QCT, public hearing transcript, Brisbane, 13 March 2019, p 13.

¹⁶ Explanatory notes, pp 4-5; Department of Education, Parliamentary Committee Briefing Note for the Education, Employment and Small Business Committee, 4 March 2019, Attachment 3.

Queensland's teacher registration authority, the QCT, is responsible for registration and discipline of teachers, and other related functions. Clause 3 of the Bill proposes to add the new function of certifying teachers as highly accomplished or lead teachers. Related functions of administering the certification process, deciding applications, and coordinating training for assessors are in new section 230B, inserted by clause 5.

Clause 7 amends the Act to provide that the Minister can not make directions to QCT in relation to a decision to certify or refuse to certify a teacher, or to renew or refuse to renew a teacher's HAT or LT certification.

In her introductory speech the Minister for Education and Minister for Industrial Relations stated:

The bill provides for a high-level framework without prescribing processes in detail. This ensures flexibility in the way certification is administered over time, to allow the college to be able to adapt to changes in national certification processes without needing significant legislative change. Consequently, elements of the certification process will not be prescribed such as the appointment of assessors, the procedures relating to assessment and the documentation required to be provided by applicants. These processes and procedures will be undertaken in accordance with the professional standards and guide to certification, which are available on the AITSL website.¹⁷

2.2.1 Eligibility for certification

Fully registered teachers who are Australian citizens or hold a visa that enables permanent residence, and are employed by an 'employing authority'¹⁸ may apply for certification under new section 67A. Clause 13 amends the Regulation to provide that, for certification purposes, the employing authorities are 'an employing authority for a state school', and 'an employing authority for a non-state school represented by QCEC.'

Teachers in independent schools have been able to apply to ISQ for certification, as it has been an AITSL recognised certifying authority since 2017. The Department advised ISQ can choose to participate in the legislative scheme in the future subject to amendment of the Regulation.¹⁹

2.2.2 Assessment process

Consistent with the national *Certification of Highly Accomplished and Lead Teachers in Australia*, assessment for certification is in two stages (proposed section 67C). Stage 1 is a preliminary assessment of the application and Stage 2 assesses the applicant's teaching practice. The requirements to be certified as HAT and LT are set out in AITSL's Guide to Certification. Under the Guide to Certification, assessment Stage 1 applicants must submit evidence 'generally from within the past five years' of their teaching practice.²⁰

After Stage 1 of assessment, the QCT must decide whether the certification application may proceed to Stage 2. An application may proceed to assessment Stage 2 only if the QCT 'is satisfied the applicant's abilities, experience, knowledge and skills meet the requirements stated in the professional standards...' (new section 67D).

¹⁷ Hon Grace MP, Minister for Education and Minister for Industrial Relations, Record of Proceedings, 12 February 2019, p 42.

¹⁸ An employing authority is defined in Schedule 3 of the Act as 'the person or entity responsible for the appointment of teachers to the educational staff of the school'.

¹⁹ Department of Education, Parliamentary Committee Briefing Note for the Education, Employment and Small Business Committee, 4 March 2019, p 4.

²⁰ AITSL, *Guide to the Certification of Highly Accomplished and Lead Teachers in Australia*, p 12.

The department provided this high-level summary of how certification would work.

An eligible teacher applies to the college [QCT] for certification in the approved form accompanied with a stage 1 fee of \$850. The approved form may require additional information and documents to be provided with the form to support the teacher's application for certification or renewal of certification. Two assessors then review the application and associated documentation against the professional standards for the career stage at which the teacher applies. They then provide a report to the college.

The college makes a decision as to whether the applicant is eligible for further assessment at stage 2. If eligible for stage 2, the applicant notifies the college that they wish to proceed and pays a further stage 2 prescribed fee of \$650. The teacher's teaching practice is then assessed by the assessors against the professional standards. The assessors provide a stage 2 report to the college. The college then makes the final decision as to whether the teacher should be certified as either a highly accomplished teacher or a lead teacher. Certified teachers are then placed on a record and they are certified for five years at that standard.²¹

The national assessment process outlined in *Certification of Highly Accomplished and Lead Teachers in Australia* has a strong focus on ongoing professional development and assessment of a teacher's expertise against the Professional Standards.

New section 230B (inserted by clause 5) expands QCT's functions to include deciding applications for certification, coordination of training for people involved in assessment of teachers for certification, and keeping records. In addition section 230B(3) enables the QCT to engage another entity prescribed by regulation to assist in performing these functions. Clause 13 proposes to amend the Regulation to prescribe entities that may be engaged to assist QCT for the purpose of proposed section 230B.

Some assessors were trained as part of the Queensland pilot of certification and QCT told the committee:

... significant work has commenced to train the QCEC assessors in preparation for the first group of applicants. Once these assessors have completed the training, we are planning to do the first Queensland based cross-sectoral moderation of certification involving Queensland assessors across all sectors including Independent Schools Queensland.²²

2.2.3 Fees and funding

The explanatory notes state that the costs to the QCT for the implementation and ongoing conduct of HAT and LT certification will be met by the fees charged to applicants and will be 'supplemented if necessary'.²³ The Bill includes proposed amendments to the Regulation to prescribe fees. Clause 14 amends Schedule 1 of the Regulation to prescribe the following fees, which the QCT advised are comparable to what is charged nationally:²⁴

- certification application - \$850.00 (Stage 1 fee)
- a notice by a teacher to the QCT for the certification application to proceed to assessment stage 2 - \$650.00 (Stage 2 fee)
- fee for renewal application - \$100.00 (Renewal fee)

Clause 8 amends section 298 of the Act to clarify that a regulation can prescribe different certification application fees for teachers employed by different employing authorities. The fees prescribed by clause 14 are the same for applications by teachers employed in the state and Catholic school sectors.

²¹ Department of Education, public briefing transcript, Brisbane, 25 February 2019, p 3.

²² QCT, public hearing transcript, Brisbane, 13 March 2019, p 13.

²³ Explanatory notes, p 4.

²⁴ QCT, public hearing transcript, Brisbane, 13 March 2019, p 16.

The department stated it is intended that the fees would 'significantly contribute to the costs of the certifying authority, while not representing a significant impediment or disincentive to applicants'.²⁵ The department advised that 'should it be deemed necessary', fees can be changed in the future to reflect the costs of certification to employing authorities.²⁶ The explanatory notes state:

*Different sectors, such as employing authorities represented by the QCEC, may choose to provide different levels of assistance to the College than other sectors, such as the State sector in the assessment process. The ability for a regulation to prescribe different fees for the sectors will enable the fees to be reflective of the level of assistance provided by particular employing authorities in the assessment process.*²⁷

The QCT and QCEC noted that there is potential for there to be a gap between funding from the fees set in the Regulation, and the actual cost to employing authorities. At this stage of implementation, if there is a gap the QCT advised it would be met by employers.²⁸ The QCEC noted the cost of replacing teacher assessors, who may be classroom teachers, will be part of the cost. Dr Perry indicated that Catholic school authorities support certification, and said there will be further discussions about the detail of how the costs would be covered within the Catholic school sector.²⁹

The department advised:

*Applicant numbers directly impact the most costly aspects of the process, including the quality assurance and review (moderation) of portfolios by the certifying authority. There will be an annual reconciliation of QCT's costs as a certifying authority, to ensure the revenue collected meets the cost of the provision of the certification services. Government will cover any shortfall in costs not covered by application fees.*³⁰

2.2.3.1 Committee comment

The committee notes that the full cost of certification will be affected by several variables, including the level of assistance provided by employing authorities, the number of applications received and the number of applications from teachers in regional and remote areas. The committee notes arrangements will be made to address any shortfall. The committee considers there is sufficient flexibility to adjust fees if necessary.

2.2.4 Remuneration

Highly Accomplished and Lead Teacher certification are voluntary career stages. The department informed the committee that remuneration is a matter for each education sector and the Bill does not require a Queensland school employing authority to recognise certification or to provide additional remuneration.³¹ The explanatory notes state:

...employing authorities are not required to participate in the prescribed certification process. Whether an employing authority recognises HAT and LT certification and how it affects matters

²⁵ Department of Education, Response to Submissions to the Education, Employment and Small Business Committee regarding the Education (Queensland College of Teachers) Amendment Bill 2019, 11 March 2019.

²⁶ Department of Education, Response to Submissions to the Education, Employment and Small Business Committee regarding the Education (Queensland College of Teachers) Amendment Bill 2019, 11 March 2019.

²⁷ Explanatory notes, p 3.

²⁸ QCT, public hearing transcript, Brisbane, 13 March 2019, p 17.

²⁹ QCEC, public hearing transcript, Brisbane, 13 March 2019, p 11.

³⁰ Department of Education, Parliamentary Committee Briefing Note for the Education, Employment and Small Business Committee, 4 March 2019, p 5.

³¹ Department of Education, public briefing transcript, Brisbane, 25 February 2019, p 3.

*such as remuneration and working conditions, will be a decision for each employing authority, and is not impacted by the Bill.*³²

The department advised that individual state schools will not be required to find additional funding to pay allocated teachers who are successfully certified at LT or HAT. Those costs will be met centrally by the department.³³ However, the committee was informed that provision has been made for state school teachers who are certified to be remunerated at higher salary levels.

2.2.5 Review of decisions

The Bill provides for internal review of QCT's certification and renewal decisions for HAT and LT. If QCT decides the certification application may not proceed to Stage 2, or decides to refuse to certify or renew HAT or LT certification, an information notice must be given to the applicant (under proposed sections 67E(2), 67H(3), and 67N(3)).

The Act provides that a person who is given an information notice and is dissatisfied with the decision, may apply for an internal review of the decision. The Act also provides that a person who is dissatisfied with the internal review may apply to QCAT for a review of the original decision.

The department advised that 'as the College is a statutory authority, it is appropriate for its decisions in relation to certification be subject to appropriate internal and external review processes (consistent with its registration decisions) to ensure transparency and accountability.'³⁴

The QCT supported the review process, which is 'aligned with the current framework around how decisions are considered within the college – it being able to go through an internal review and then be subject to an external review process. For other decisions currently, that is QCAT'.³⁵ The QTU suggested there may be some advantage in reviews by a body that established legal precedents, but advised it had agreed that reviews should be undertaken by QCAT.³⁶

The ISQ noted in its submission that the review processes provided for in the Bill differ from the ISQ's review practice, which is a review of procedure.³⁷

2.2.6 Transitional arrangements

Clause 9 inserts transitional arrangements into the Act to ensure that teachers who took part in the pilot are not disadvantaged upon commencement of the Bill.

New section 366 proposes that a teacher who, before the commencement of the section, was given notice by the QCT as having the abilities, experience, knowledge and skills stated in the Professional Standards for HAT or LT certification, may apply for a renewal of their certification. The clause provides that the QCT must keep records about certification as if the teacher was certified under new chapter 2A of the Bill.

New section 367 proposes that existing applications for certification made after 1 January 2019 but before commencement of this section of the Bill, that had not been decided or withdrawn, are taken to have been made under section 67A. This means that applications to the QCT for certification can be considered after the amendments commence.

³² Explanatory notes, p 3.

³³ Department of Education, public briefing transcript, Brisbane, 25 February 2019, p 3; Department of Education, Parliamentary Committee Briefing Note for the Education, Employment and Small Business Committee, 4 March 2019, p 4.

³⁴ Department of Education, Response to Submissions to the Education, Employment and Small Business Committee regarding the Education (Queensland College of Teachers) Amendment Bill 2019, 11 March 2019.

³⁵ QCT, public hearing transcript, Brisbane, 13 March 2019, p 15.

³⁶ QTU, public hearing transcript, Brisbane, 13 March 2019, p 19.

³⁷ ISQ, submission 3, p 3.

2.3 Issues raised by stakeholders

The IEU-QNT was concerned that teachers in non-state schools which are not affiliated with ISQ would not be eligible to apply to the QCT for HAT and LT certification.³⁸ The IEU-QNT also raised concerns about whether registered teachers in the early childhood sector could become certified as HAT or LT,³⁹ and QCEC raised issues about revocation of certification.⁴⁰

2.3.1 Teachers in independent schools

The IEU-QNT suggested amendment of the Bill to 'future proof' it and allow any independent school to seek to be a prescribed school.⁴¹

The department advised that ISQ would continue to be the certifying authority for teachers in independent schools, and the amendment proposed by the IEU-QNT would allow teachers to apply to both ISQ and the QCT. This duplication 'could lead to significant costs and administrative issues for the College'. The department advised that, if ISQ later decided to participate in the legislation, an amendment to the Regulation was considered sufficient to 'future proof' the legislation.⁴²

At the public hearing the Executive Director of ISQ confirmed:

We are a voluntary membership organisation; however, every independent school in Queensland is a member. ... I will mention that as an organisation we have for many, many years played a role in administering government programs – State government and Commonwealth government programs – and we undertake that work for any school. It is not dependent on membership. It would be the same case here. If there were a case of an independent school that chose not to join our association, we would welcome them to use our certification process.⁴³

The ISQ also stated that many independent schools have early childhood services onsite and that registered teachers from these schools would be eligible to apply through ISQ's certification process.⁴⁴

The committee notes that teachers employed in the state and Catholic sectors will be eligible to apply for certification to the QCT. Teachers in other non-government schools will continue to be able to apply for certification to ISQ as an AITSL-recognised certifying authority.

2.3.2 Early childhood teachers

The IEU-QNT questioned whether early childhood teachers could apply for certification, and stated the Bill does not identify how QCT-registered teachers working in kindergartens or other early childhood settings might access certification.

The department advised that the Bill is based on the 2015 'Letting Teachers Teach' policy 'to introduce [HAT and LT] certification to retain teachers in school classrooms, not kindergartens or early childhood settings.' Further, the department said:

The Bill does not provide for registered teachers working in kindergartens or other early childhood settings that are not part of a school to apply to QCT for certification.... Consequently, the Bill is designed to provide the College with the authority to certify school teachers.⁴⁵

³⁸ IEU-QNT, submission 5, p 1.

³⁹ IEU-QNT, correspondence dated 14 March 2019.

⁴⁰ QCEC, submission 4, p 2.

⁴¹ IEU-QNT, submission 5, p 1.

⁴² Department of Education, Response to Submissions to the Education, Employment and Small Business Committee regarding the Education (Queensland College of Teachers) Amendment Bill 2019, 11 March 2019.

⁴³ ISQ, public hearing transcript, Brisbane, 13 March 2019, p 6.

⁴⁴ ISQ, public hearing transcript, Brisbane, 13 March 2019, p 8.

⁴⁵ Department of Education, correspondence dated 21 March 2019, Attachment p 2.

The department also advised that AITSL commissioned an Expert Panel to undertake a national review of teacher registration. Its report, *One Teaching Profession: Teacher Registration in Australia* includes recommendations for a consistent national approach to the registration of early childhood teachers and a review of the Professional Standards and their inclusivity and applicability to early childhood teachers. The department advised:

*Considerations around the applicability of the [Professional Standards], including the higher career stages, to early child teachers will be considered as part of this national process, subject to the Education Council's agreement to implement the recommendations of the national review.*⁴⁶

In addition the department advised that as the proposed application fees for certification may not meet the full costs of the certification process, employers will meet some costs:

*Without arrangements entered into between the College and an employing authority (such as a private childcare or an individual independent school) to pay costs for registered teachers to be trained and to undertake assessing, the College would become responsible for absorbing these additional costs.*⁴⁷

2.3.3 Direct application by teachers to Queensland College of Teachers

The IEU-QNT was also concerned that arrangements between the QCT and employer bodies may make it more likely that teachers will only be supported in seeking certification on 'pre-approval' from their employer. Applications for certification are made by teachers under proposed section 67A, inserted by clause 4.

The department advised:

Whether the College approves or does not approve applications is not contingent on the employer/College arrangements. This does not represent a source of influence of the employer on an application.

*The College will be the final and independent decision maker, consistent with its recognition by AITSL as a certifying authority.*⁴⁸

2.3.4 Revocation of certification

The Bill does not provide a specific power for the QCT to revoke certification of highly accomplished and lead teachers.

The QCEC submission stated there is a public expectation that teachers whose actions bring themselves and or the teaching profession into disrepute would not be able to continue to hold highly accomplished or lead teacher certification. Dr Perry indicated at the public hearing that the situations where revocation may be required are rare, that the AITSL guidelines do not address revocation, and that it is not an easy issue to resolve. The QCEC intends to raise the issue with AITSL.⁴⁹

The department noted that the QCT has powers to take disciplinary action against a registered teacher. The department advised it will work with the QCEC, AITSL, the QCT, and other certifying authorities to develop a policy on revocation as part of the national certification framework.⁵⁰

⁴⁶ Department of Education, correspondence dated 21 March 2019, Attachment p 2.

⁴⁷ Department of Education, correspondence dated 21 March 2019, Attachment p 3.

⁴⁸ Department of Education, correspondence dated 21 March 2019, Attachment p 4.

⁴⁹ QCEC, public hearing transcript, Brisbane, 13 March 2019, p 9.

⁵⁰ Department of Education, Response to Submissions to the Education, Employment and Small Business Committee regarding the Education (Queensland College of Teachers) Amendment Bill 2019, 11 March 2019.

The QCEC said it was comfortable the issue is not currently finalised and wanted the committee to note the issue should at some point be addressed. Dr Perry said ‘the solution will be working with AITSL to have it included in the guidelines and then to have a national approach to it.’⁵¹

2.3.4.1 Committee comment

The committee notes the department and stakeholders will work together to promote a national approach to the issue of revoking teacher certification.

⁵¹ Department of Education, public hearing transcript, 13 March 2019, pp 9-10.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The Bill raises minor issues of fundamental legislative principle; it contains no offence or penalty provisions.

The committee brings the following to the attention of the Legislative Assembly.

3.2 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

Proposed section 67A sets out eligibility requirements for a teacher to apply for certification as either HAT or LT, including the teacher must be an Australian citizen or permanent resident.⁵² Further, a teacher can only apply if employed by an employing authority (prescribed by regulation) for a prescribed school.

3.2.1 Issue of fundamental legislative principle

Parliamentary committees consider the reasonableness and fairness of treatment of individuals as relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals.

The exclusion of teachers who do not hold citizenship or a visa that enables permanent residence reflects eligibility requirements under AITSL’s Guide to Certification.⁵³ Other requirements under the Guide to Certification include full teacher registration, assessed as satisfactory in annual assessments of performance in the preceding two or three years, evidence that demonstrates the impact of the applicant’s practice, observation reports of the applicant’s lessons, and referee statements.⁵⁴

It is important to note that proposed section 67A(3) defines ‘permanent resident’ by reference to section 30(1) of the *Migration Act 1958* (Cwlth), which provides:

...A visa to remain in Australia (whether also a visa to travel to and enter Australia) may be a visa, to be known as a permanent visa, to remain indefinitely.

It is unclear to what extent any otherwise eligible teachers may be restricted from certification. The combined effect of requirements for teaching experience and for a visa that allows employment is likely to be that few, if any, teachers would be restricted by proposed section 67A.

3.3 Institution of Parliament

Section 4(2)(b) of the LSA requires legislation to have sufficient regard to the institution of Parliament.

⁵² By virtue of proposed section 67A(3) *permanent resident* means the holder of a permanent visa within the meaning of the *Migration Act 1958* (Cwlth), section 30(1).

⁵³ AITSL, *Guide to the Certification of Highly Accomplished and Lead Teachers in Australia*, 2012.

⁵⁴ AITSL, *Guide to the Certification of Highly Accomplished and Lead Teachers in Australia*, 2012, pp 9-12.

3.3.1 Delegation of legislative power - Section 4(4)(a) *Legislative Standards Act 1992*

3.3.1.1 Matters prescribed by regulation

Proposed new chapter 2A in the *Education (Queensland College of Teachers) Act 2005* provides for a range of matters to be prescribed by regulation. Those matters include application fees, which are routinely prescribed by regulation. In addition, the Bill provides for assessment procedures for certification, and the ‘employing authorities’ by which a teacher must be employed to apply for certification to be prescribed by regulation.

Certification of LT and HAT is intended to be implemented consistently in Australian jurisdictions, in line with certification arrangements endorsed by Education Ministers in 2012.⁵⁵ The Minister for Education stated when introducing the Bill, the high-level framework in the Bill ensured flexibility to adapt to changes in national certification over time, without needing significant legislative change.⁵⁶

Proposed section 230B enables the QCT to engage another entity prescribed by regulation to assist it in performing its certification functions, and clause 13 proposes to amend the *Education (Queensland College of Teachers) Regulation 2016* to prescribe three entities the QCT may engage to assist with these functions.

Clause 8 proposes amendment of section 298 to provide that a regulation may prescribe different fees in relation to certification applications and renewal applications made by teachers employed by different employing authorities.

3.3.1.2 Potential issue of fundamental legislative principle

Section 4(4)(a) of the LSA provides that a Bill should allow the delegation of legislative power only in appropriate cases and to appropriate persons.

In relation to prescribing an ‘employing authority’, the committee notes that ISQ is not included in the proposed amendments to the regulation, as ISQ has been a certifying authority since 2017, and has opted to continue to do so. Teachers in non-government schools are able to apply to ISQ for certification as a LT or HAT.

Both the department and ISQ confirmed to the committee the understanding that ISQ could be prescribed in the regulation at a future time, should the independent schools sector decide it was appropriate for the QCT to undertake certification for teachers employed at independent schools.⁵⁷

The committee considers that the matters to be prescribed by regulation do not appear to be unreasonable nor likely to involve interference with individual rights and liberties. The committee is satisfied that, in the circumstances, the delegations of legislative power have sufficient regard to the institution of Parliament.

3.4 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain most of the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill’s aims and origins.

The explanatory notes state the Bill is ‘generally consistent with fundamental legislative principles’, and:

⁵⁵ AITSL, *Certification of Highly Accomplished and Lead Teachers in Australia*, April 2012.

⁵⁶ Hon Grace Grace MP, Minister for Education and Minister for Industrial Relations, Record of Proceedings, 12 February 2019, p 42.

⁵⁷ ISQ, Submission 3, p 3; Department of Education, Response to Submissions to the Education, Employment and Small Business Committee regarding the *Education (Queensland College of Teachers) Amendment Bill 2019*, 11 March 2019.

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

*The prescription of fees in a regulation is appropriate to subordinate legislation.*⁵⁸

The committee notes the requirement in section 23(1)(f) of the LSA is that explanatory notes for a Bill are to include, in clear and precise language:

[A] brief assessment of the consistency of the Bill with fundamental legislative principles and, if it is inconsistent with fundamental legislative principles, the reasons for the inconsistency.

To comply with this requirement, explanatory notes should either state that a Bill is consistent with fundamental legislative principles, or set out any areas of inconsistency, with reasons for any inconsistency. While the explanatory notes partly satisfy the requirements of the Act, best practice is for explanatory notes to:

- clearly identify each specific issue of fundamental legislative principle that arises and the specific clause giving rise to the issue
- set out the reasons for any inconsistency with the fundamental legislative principles
- provide any justification for that inconsistency.

⁵⁸ Explanatory notes, p 4.

Appendix A – Submitters

Sub #	Submitter
001	Queensland Teachers' Union
002	Queensland College of Teachers
003	Independent Schools Queensland
004	Queensland Catholic Education Commission
005	Independent Education Union – Queensland and Northern Territory Branch

Appendix B – Officials at public departmental briefing

Department of Education

- Mr Dion Coghlan, Assistant Director-General, Human Resources
- Ms Janita Valentine, Executive Director, Organisational Transformation and Capability
- Mr Stephen Nicolson, Principal Advisor, Legislative Services

Appendix C – Witnesses at public hearing

Independent Education Union of Australia – Queensland and Northern Territory Branch

- Dr Paul Giles, Assistant Secretary

Independent Schools Queensland

- Mr David Robertson, Executive Director
- Ms Josephine Wise, Director, Education Service

Queensland Catholic Education Commission

- Dr Lee-Anne Perry AM, Executive Director
- Ms Nina MacKenzie, Principal Policy Advisor

Queensland College of Teachers

- Dr Judy Neilson, Senior Manager, Certification
- Ms Deanne Fishburn, Executive Manager, Professional Standards

Queensland Teachers' Union

- Ms Kate Ruttiman, Deputy General Secretary
- Ms Leah Mertens, Research Officer - Professional Issues

Appendix D – Interstate comparison of Highly Accomplished and Lead Teachers certification

(Based on material provided by the Department of Education)

State	Certification	Certifying Body	Certification Cost	Legislation
NSW	Highly Accomplished or Lead Teacher (HAT or LT) 'Accreditation' available in all three sectors.	NSW Education Standards Authority (NESA) moderates. Teacher Accreditation Authority for the Department is Executive Director, NSW Public Schools.	Applicant Fee - HAT \$1210; LT-\$1430 Preliminary assessment – HAT \$65; LT \$65 Submission (with preliminary assessment) – HAT \$540; LT \$650 Submission (without preliminary assessment) – HAT \$605; LT \$715 No cost for recertification.	<i>Education Standards Authority Act 2013</i> prescribes functions of the NESA (s12). <i>Teacher Accreditation Act 2004</i> prescribes certification process notably sections 39 and 40). Fees prescribed in Regulation.
WA	HAT & LT Certification available. Independent Sector only utilising National Certification.	Association of Independent Schools WA (AISWA).	\$500 fee. No cost for recertification.	No prescription.
SA	NAT & LT Certification available – all three sectors.	Each sector is responsible for their own assessment processes. Recommendations made to the South Australian Teacher Certification Committee which makes the decision as the Certifying Authority.	State sector – \$650 (currently waived to build density of certified teachers) Association for Independent Schools SA (AISSA) fee is \$1825, paid in 3 instalments: \$125 – registrations \$850 – submission \$850 – final payment if application continues on to Stage 2 of the assessment. Plus \$400 renewal fee. Catholic Education fee is \$500.	No prescription.
NT	HAT and LT Certification available – all three sectors.	Teacher Registration Board of the Northern Territory.	\$1825 fee paid by applicant. Prior to submitting Stage 1 – \$925. Prior to submitting Stage 2 – Site Visit (if successful at Stage 1) – \$900.	<i>Teacher Registration (Northern Territory) Act</i> prescribes functions of Board (s11).
ACT	HAT and LT Certification available – all three sectors	ACT Teacher Quality Institute	\$1300 staged fee paid by applicant. \$50 preliminary application fee. \$750 Stage 1 payment. \$500 Stage 2 payment. \$350 renewal fee.	<i>ACT Teacher Quality Institute Act 2010</i> prescribes functions of Institute s11) and provides head of power (s98) for Regulation to prescribe certification process
QLD	HAT and LT Certification for all sectors*	QCT (Teacher Registration Body) for the State school sector and Catholic schools represented by the Queensland	\$1500 fee paid in stages Commencement of Stage 1: \$850. Commencement of Stage 2: \$650. Recertification fee of \$100*. ISQ fee \$1500 paid by the school in three increments:	<i>Education (Queensland College of Teachers) Act 2005</i> to prescribe functions of College, as well as processes for certification.* Fees prescribed in Regulation.

State	Certification	Certifying Body	Certification Cost	Legislation
		Catholic Education Commission.* For Independent Schools – ISQ.	\$50 application fee. \$500 Stage 1 Assessment fee \$950 Stage 2 Assessment fee.	
VIC	No	N/A	N/A	N/A
TAS	No	N/A	N/A	N/A

*Subject to the passage and commencement of the Education (Queensland College of Teachers) Amendment Bill 2019 that will establish a regulatory scheme for the certification of HAT and LT for the State School sector and Catholic Schools represented by the Queensland Catholic Education Commission.