

FOI Document 2006-11
Item no: 4

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Minister for Education and Training

Please quote / Our REF: 9808/DES File CR0010

Ms Janet Rodgers
Director
Western Australian College of Teaching
Level 2/165 Adelaide Terrace
PERTH WA 6004

Dear Ms Rodgers

WESTERN AUSTRALIAN COLLEGE OF TEACHING ELECTION RULES 2006

Thank you for your letter dated 23 June 2006 and the attached *Western Australian College of Teaching Election Rules 2006* as resolved at a meeting of the Board of the College on 21 June 2006.

I note from the letter that it is intended to hold the first election for the purposes of section 9(2) of the *Western Australian College of Teaching Act 2006* on 10 November 2006. There also have been other indications of the Board's intentions to that effect.

As a preliminary comment, it should be noted that there has been no previous official indication to me of the Board's intentions and it would appear that it has been assumed that the Minister has no other role than to forward your resolution to the Governor for approval. However, under our constitutional arrangements a Minister who is charged by the Governor with the administration of an Act is responsible to the Parliament for its administration.

This responsibility is translated to the procedures that must be observed in the making of rules or other forms of subsidiary legislation such as regulations or by-laws that are contemplated by an Act and are within the power conferred by an Act. In this case, approval by the Governor is made by the Governor in Executive Council. When a matter is approved, the Governor, the Premier and the Minister responsible sign an Executive Council minute paper. It is clear that a Minister

must be satisfied with a matter before it is presented for the approval of the Governor.

Following approval and publication in the Government Gazette, rules and other subsidiary legislation must be tabled before each house of Parliament, are considered by the Joint Standing Committee on Delegated Legislation, and are disallowable by either House of Parliament. It is also clear that no Minister would be willing to present a matter for approval without due preparation if there was a risk of disallowance.

Having regard to these facts, it may have been prudent for the Board to have obtained my views on the Board's proposals before a formal resolution was adopted so that that advice could be considered by the Board before a final draft was prepared (see section 14 of the Act).

As it is, that opportunity was lost and I regret to say that I find I am unable to forward the rules to the Governor in the form as resolved by the Board. I also regret that this may have the result of delaying the holding of the elections. As to that matter, I consider that the timetable may have been optimistic having regard to the fact that it would not be possible for the Board, as constituted with the elected members, to meet with any degree of convenience until early next year. In any event, on my reading of their instruments of appointment the terms of the members currently acting as members under section 9(2) of the Act expire only after elections are held. The advice to Cabinet at the time was that the appointments made under section 14 of the Schedule to the Act were until such time as an election can be held.

The rules as adopted include matters that cannot be included on legal grounds and matters that cannot be supported on grounds of policy. It is not possible, for instance, to use the power to make rules under section 9(5) of the Act to impose on the Electoral Commissioner the function of conducting a poll or referendum (see rule 3(1)).

Nor as a matter of policy can I support the proposal to have "voting by ticket" or for that matter a preferential vote (see rules 10 and 11 and rule 13(3)) as I consider these procedures to be inappropriate. I consider that the College is, and was always intended to be, pre-eminently, a professional body whose members are selected and elected for their professional contribution to education and not as members of blocs which may aim to obtain a particular sectional view within the College or for the College as whole. Also, it would not be appropriate for the Electoral Commissioner to police the election statements prepared by individual candidates (see rule 9(2)) as those should be vetted by the College itself before they are delivered to the Electoral Commissioner.

There are other more detailed matters that would bear more careful consideration which may be discussed with the Department of Education

Services which is ready to assist the Board with the task of preparing a suitable set of rules. If the College is open to accept the assistance of the Parliamentary Counsel's Office, regulations – as an alternative to rules – may be another avenue open to the College. That, however, is a decision for the College to make. I am advised that some registration bodies for other professions have regulations for their elections, but that some have rules, However, most examples have substantially fewer requirements than those the College Board has presented thus far.

I look forward to hearing from you and any reasonable request for assistance will be considered.

Yours sincerely

[signed]

Hon Ljiljanna Ravlich MLC
MINISTER FOR EDUCATION AND TRAINING

[stamped] 13 JUL 2006