



THIRTY-SEVENTH PARLIAMENT

REPORT 20

**JOINT STANDING COMMITTEE ON DELEGATED
LEGISLATION**

***WESTERN AUSTRALIAN COLLEGE OF TEACHING
RULES 2006***

Presented by Mr Paul Andrews MLA (Chairman)

and

Hon Ray Halligan MLC (Deputy Chairman)

November 2006

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Date first appointed:

28 June 2001

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“3. Joint Standing Committee on Delegated Legislation

3.1 A *Joint Delegated Legislation Committee* is established.

3.2 The Committee consists of 8 Members, 4 of whom are appointed from each House. The Chairman must be a Member of the Committee who supports the Government.

3.3 A quorum is 4 Members of whom at least 1 is a Member of the Council and 1 a Member of the Assembly.

3.4 A report of the Committee is to be presented to each House by a Member of each House appointed for the purpose by the Committee.

3.5 Upon its publication, whether under section 41(1)(a) of the *Interpretation Act 1984* or another written law, an instrument stands referred to the Committee for consideration.

3.6 In its consideration of an instrument, the Committee is to inquire whether the instrument –

- (a) is authorized or contemplated by the empowering enactment;
- (b) has an adverse effect on existing rights, interests, or legitimate expectations beyond giving effect to a purpose authorized or contemplated by the empowering enactment;
- (c) ousts or modifies the rules of fairness;
- (d) deprives a person aggrieved by a decision of the ability to obtain review of the merits of that decision or seek judicial review;
- (e) imposes terms and conditions regulating any review that would be likely to cause the review to be illusory or impracticable; or
- (f) contains provisions that, for any reason, would be more appropriately contained in an Act.

3.7 In this clause –

“adverse effect” includes abrogation, deprivation, extinguishment, diminution, and a compulsory acquisition, transfer, or assignment;

“instrument” means –

- (a) subsidiary legislation in the form in which, and with the content it has, when it is published;
- (b) an instrument, not being subsidiary legislation, that is made subject to disallowance by either House under a written law;

“subsidiary legislation” has the meaning given to it by section 5 of the *Interpretation Act 1984*.”

Members as at the time of this inquiry:

Mr Paul Andrews MLA (Chairman)

Dr Graham Jacobs MLA

Hon Ray Halligan MLC (Deputy Chairman)

Ms Jaye Radisich MLA

Hon Shelley Archer MLC

Hon Barbara Scott MLC

Hon Vincent Catania MLC

Mr Tony Simpson MLA

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REPORT OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

IN RELATION TO THE

WESTERN AUSTRALIAN COLLEGE OF TEACHING RULES 2006

1 BACKGROUND

1.1 The *Western Australian College of Teaching Act 2004* (“**the Act**”) establishes the Western Australian College of Teaching (“**the College**”) as a body corporate (s 5 of the Act).

1.2 It is to be managed by a board of management having 19 members, 9 of whom are to be appointed by the Minister for Education and Training (“**the Minister**”) under s 9(1) of the Act, and 10 of whom are to be elected under s 9(2) of the Act (s 7 of the Act).

1.3 Section 9 (5) of the Act provides:

The election of members under subsection (2) is to be conducted by the Electoral Commissioner, appointed under the Electoral Act 1907, in accordance with the rules.

1.4 The Minister is to appoint persons to act as members of the Board until members are elected under s 9(2) of the Act. (Item 14 of Schedule 1 of the Act, which has effect by virtue of s 10 of the Act.)

1.5 Section 85(2)(d) of the Act provides that the Western Australian College of Teaching’s Board of Management (“**the Board**”) may, with the approval of the Governor, make rules that make:

provision in respect of the election of members of the Board under section 9.

1.6 *The Western Australian College of Teaching Rules 2006* (“**the Rules**”) were adopted by resolution of the Board on 2 August 2006 and published in the *Government Gazette* by command of the Governor on 16 August 2006.¹

1.7 The Committee considered the Rules at its meeting on Wednesday, 18 October 2006.

¹ *Western Australian Government Gazette*, Wednesday 16 August 2006, No 141, p3078.

2 COMMITTEE'S CONCERNS

Unauthorised sub-delegation

2.1 The Committee notes that:

- rule 5(1) purports to confer power on the Electoral Commissioner to appoint a Returning Officer “*to conduct an election*”;
- rule 5(4) purports to confer power on a Returning Officer, not the Electoral Commissioner, to appoint others to assist in the conduct of an election;
- rule 3(2) speaks of the “*Returning Officer conducting the elections*”;
- rule 6(1) provides that:

The Returning Officer may take such action and give such directions as are considered necessary for the conduct of an election —

(a) to ensure the secrecy of the ballot and that no irregularities occur in or in connection with the election, or

(b) to remedy any inconsistency or inadequacy that arises in the application of the rules of the College;

- rules 6(3) and 6(5) respectively make a Returning Officer’s decision final and purport to confer a power to declare an election null and void on the Returning Officer; and
- other rules are also predicated on the Returning Officer being the person ‘conducting’ the election.

2.2 The Committee also notes r 7, which provides:

Where the Returning Officer is appointed by the Electoral Commissioner to conduct the election, the Commissioner shall perform the function of an Election Tribunal and shall deal with all disputes, complaints and charges of misconduct referred by the Returning Officer, and with any complaints and charges of misconduct which relate to, or are directly concerned with, the Returning Officer.

confers an appellate role on the Electoral Commissioner when a Returning Officer is appointed. This is consistent with the Returning Officer having power under the Rules to conduct an election.

- 2.3 The Act does not authorise or contemplate delegation of the power conferred by s 9(5) of the Act on the Electoral Commissioner to conduct elections.
- 2.4 The Committee considered whether r 5(1) of the Rules could be ‘read down’ so as to confer a power to “*assist*” the Electoral Commissioner in the conduct of elections, rather than “*conduct*” the elections, on the Returning Officer.
- 2.5 However, in the Committee’s opinion:
- the other rules mentioned in paragraph 2.1 above, particularly rr 5(4), 6(3), 6(5) and 7, conferred powers inconsistent with “*assistance*” rather than “*conducting*”; and
 - the frequent use of the word “*conduct*” in association with the Returning Officer’s duties in the Rules suggested that it was this officer who was intended to undertake the obligation conferred by s 9(5) of the Act.

Problems with terminology

- 2.6 The Committee had difficulty in scrutinising the Rules due to inconsistent terminology.
- 2.7 The interpretation provision of the Rules 2006, r 1 provides:

In these rules, unless the contrary intention appears —

‘College’ means the Western Australian College of Teaching;

‘Rules’ refers to the Rules of the College;

‘Election rules’ means those referred to in the College Rules;

‘Electoral Commissioner’ means the Electoral Commissioner of the Western Australian Electoral Commission appointed under the Electoral Act 1907;

‘Returning Officer’, in relation to an election, means the Returning Officer appointed for that election under rule 5(1) or 5(2); and

‘The Act’ means the Western Australian College of Teaching Act 2004.

Inconsistent references to the rules

- 2.8 The Committee noted inconsistency in terminology in r 1 of the Rules. “*Election rules*” is defined to mean “*those referred to in the College Rules*”. However, there was no definition of “*College Rules*”.
- 2.9 In the Committee’s opinion, “*College Rules*” should not mean the same as the term “*Rules*” alone, as they were different phrases. Further, as the term “*Rules*” was designated for use when the Rules of the College were intended, there was no need for the descriptive word “*College*” if the intention in using that phrase in the definition of “*Election rules*” was simply to refer to rules of the College. Combining the two defined terms “*College*” and “*Rules*” produced the Western Australian College of Teaching Rules of the College, which appeared to add nothing further to the defined term “*Rules*”.
- 2.10 In any event, the Committee observed that, in fact, the term “*Election rules*” was not used in any of the substantive provisions of the Rules.
- 2.11 Rule 3(1) used the undefined phrase “*the rules of the College*”, with a lower case for the word “*rules*”, as did rr 6(b), 8(1)(k) and 10(d). However, it appeared to the Committee from the context, that what was meant was, in fact, the defined term “*Election rules*”.
- 2.12 The defined term, the capital “*R*” version of “*Rules*”, is used only once in the Rules, in r 17(3), where mention is made of Schedule 1 to “*these Rules*”. However, this reference was inconsistent with the defined term “*Rules*”. In context, the reference should have been to the defined term “*Election rules*”.

Inconsistent use of the defined term “College”

- 2.13 The Committee noted that the word “*College*” was also used inconsistently in the Rules.
- 2.14 That term is defined to mean the Western Australian College of Teaching. However, it is used in contexts where the Board appears to have been intended, not the College as a whole, or it is unclear whether the reference was intended to be to the College or the Board. For example:
- rule 4(1) states that a casual vacancy in “*the College*” shall be filled by the process set out in r 3. The reference here appears to be to the Board; and
 - rule 9(6) provides:

Nominations for the elected teacher representatives of the College shall be in writing, signed by the nominee and endorsed by two College members proposing and seconding the nomination.

The first reference appears to be a reference to the Board but the second reference could either be to a member of that Board or to the College more generally.

Use of defined term “Member of the College”

2.15 The term “*Member of the College*” is defined in s 3 of the Act as:

a person who —

(a) is registered as a teacher;

(b) is provisionally registered as a teacher;

(c) holds a limited authority to teach; or

(d) is an associate member of the College.

2.16 It was unclear to the Committee why the undefined term “*College members*” was used in r 9(6), which provides:

Nominations for the elected teacher representatives of the College shall be in writing, signed by the nominee and endorsed by two College members proposing and seconding the nomination.

yet the defined term “*Members of the College*” was used in:

- r 9(10), which provides:

Members of the College shall be eligible to nominate for any position to be filled by election subject to section 9(2) of the Act; and

- in r 17(1), which provides:

Each candidate nominated for election may, by written notice given to the Returning Officer, appoint any person, whether or not a member of the College, to act as a scrutineer in respect of that election, being a person other than a candidate for that position.

2.17 The Committee found the inconsistent use of terminology confusing.

Uncertainty as to who may nominate a candidate for an election

2.18 The Committee noted that:

- section 9(2)(a) of the Act requires election of seven Board members, who are to be:
 - (i) *registered teachers, each of whom teaches at a government school; and*
 - (ii) *elected by registered teachers, each of whom teaches at a government school;*
- section 9(2)(b) of the Act requires the election of two Board members, who are to be —
 - (i) *registered teachers, each of whom teaches at a school that is part of a school system the governing body of which is the Catholic Education Commission of Western Australia; and*
 - (ii) *elected by registered teachers, each of whom teaches at a school that is part of that school system; and*
- section 9(c) of the Act requires election of one Board member, who is to be:
 - (i) *a registered teacher who teaches at a school other than a school referred to in paragraph (a) or (b); and*
 - (ii) *elected by registered teachers, each of whom teaches at a school other than a school referred to in paragraph (a) or (b).*

2.19 Having regard to s 3 of the Act, there is a distinction between Members of the College and those who are entitled to vote in an election. Further, only particular registered teachers are entitled to vote for particular Board members.

2.20 Rule 9(10) of the Rules provides that:

Members of the College shall be eligible to nominate for any position to be filled by election subject to section 9(2).

2.21 The Committee considered r 9(6) to be ambiguous as to whether it was permitting those members of the College who were not eligible to vote in the elections generally, or for any particular vacancy on the Board, to propose or second the nomination of a candidate for an election.

Uncertainty as to who may vote in an election

- 2.22 Rule 2(2) addresses the distinction between persons who may vote in the election of particular Board members by stating that:

All electors must be eligible members in accordance with section 9(2) of the Act.

- 2.23 The Committee presumed that the reference to “members” was to “*Members of the College*”, although s 9(2) of the Act refers to registered teachers as being eligible to elect Board members.

- 2.24 The undefined term “*eligible electors*” is used in rr 8(2)(c), 9(2) and 11(1) to refer to the roll of electors that must be kept and the persons to whom notice of election must be given. It is not clear to the Committee how such persons differ from the “*electors*” identified in r 2(2).

- 2.25 Rule:

- 9(14) speaks of a “*member*” not being able to vote more than once at any election; and
- 18(1) speaks of a “*member’s*” statement being attached to a poll.

- 2.26 While it appeared to the Committee that what was meant in rr 9(14) and 18(1) might be an “*eligible*” member (presumably of the College), that was not stated in the rule. Nor was the term “*elector*”, which was defined in r (2)(2) to identify such persons, used.

Conclusion

- 2.27 While some of the terminology issues were minor in themselves, the number of those issues gave rise to a concern that the Rules were uncertain.

3 CORRESPONDENCE

- 3.1 The Committee wrote to the Department of Education Services (“**the Department**”) on 19 October 2006, setting out its concerns with the Rules. A copy of that letter is attached as **Appendix 1**.

- 3.2 The Committee did not receive a response to its letter prior to its meeting on Wednesday, 1 November 2006. It, therefore, sent a letter to the Minister by facsimile transmission on 1 November 2006, copying its earlier letter to the Department, and alerting the Minister to the fact that the Committee would consider the question of whether to proceed with its protective notice of motion of disallowance at its meeting on 15 November 2006.

- 3.3 The Committee received a response from the Department, dated 1 November 2006, on 2 November 2006, advising that:
- following legal advice from the State Solicitor, an election that was underway had been cancelled; and
 - the Committee's concerns with the Rules would be addressed, either by re-drafting the Rules or, subject to direction from the Minister, by formulation of regulations.
- 3.4 A copy of the Department's response is attached as **Appendix 2**.
- 3.5 The Committee received a response from the Minister, dated 13 November 2006, on 14 November 2006 advising that:
- discussions had occurred between the Electoral Commissioner, the State Solicitor's Office, the Department and the Minister's Office;
 - the "*legal and other issues*" identified by the Committee had been "*largely confirmed by the State Solicitor*"; and
 - the Minister's preference was for future elections to be conducted under regulations.
- 3.6 A copy of the Minister's letter is attached as **Appendix 3**.
- 3.7 The Committee considered the correspondence from the Department and the Minister at its meeting on Wednesday, 15 November 2006, when it resolved to write to the Minister:
- advising that it did not consider it appropriate for the Rules to remain in apparent operation pending resolution of the strategy to address the identified problems;
 - seeking an undertaking from the Minister to repeal the Rules as soon as practicable; and
 - advising that in the event the Minister was not prepared to provide that undertaking, the Committee would proceed to a formal disallowance of the Rules.
- 3.8 A copy of the Committee's letter of 15 November 2006 is attached as **Appendix 4**.
- 3.9 The Minister responded by letter dated 17 November 2006, stating that:

It is for your Committee to decide whether or not to proceed with the motion to disallow the rules but you can be assured that it is intended to remedy the situation as soon as possible.

3.10 A copy of the Minister's response is attached as **Appendix 5**.

4 COMMITTEE'S CONCLUSION

4.1 The Committee considered the Minister's response at its meeting on Wednesday, 22 November 2006.

4.2 It noted:

- section 9(5) of the Act, which provides:

The election of members under subsection (2) is to be conducted by the Electoral Commissioner, appointed under the Electoral Act 1907, in accordance with the rules;

- section 85(2)(d) of the Act, providing that the Board may, with the approval of the Governor, make rules providing for the election of members of the Board under s 9 of the Act;
- it's concerns with the Rules had been acknowledged by both the Minister and the Department and "*largely confirmed*" by independent legal advice from the State Solicitor's Office;
- that elections underway pursuant to the Rules were "*called off*" by the Electoral Commissioner after advice on the Rules from the State Solicitor;
- the Minister's advice that the cancelled election would not proceed and that "*an alternative strategy*" was being developed to have members elected; and
- the preferred strategy to address the problems identified by the Committee was to formulate regulations under which the elections would occur.

4.3 The Committee recognised that s 86(1)(b) of the Act permits the Governor to make regulations with respect to any matter about which the College can make rules.

4.4 However, it appeared to the Committee that the nature and extent of the issues raised required significant redrafting of the Rules. Whichever strategy was eventually adopted, whether amendment of the Rules or drafting regulations and repealing the Rules, it would be likely to take some time to implement.

4.5 The Committee noted that disallowance solely of the rules invalidly conferring powers on a Returning Officer would render the balance of the Rules inoperative.

- 4.6 The Committee is concerned that, if not repealed, the Rules will remain on the public record.
- 4.7 The Committee resolved on 22 November 2006 to proceed with its motion to disallow the Rules on the basis that they are not authorised or contemplated by the Act.

Recommendation 1: The Committee recommends that the *Western Australian College of Teaching Election Rules 2006* be disallowed.



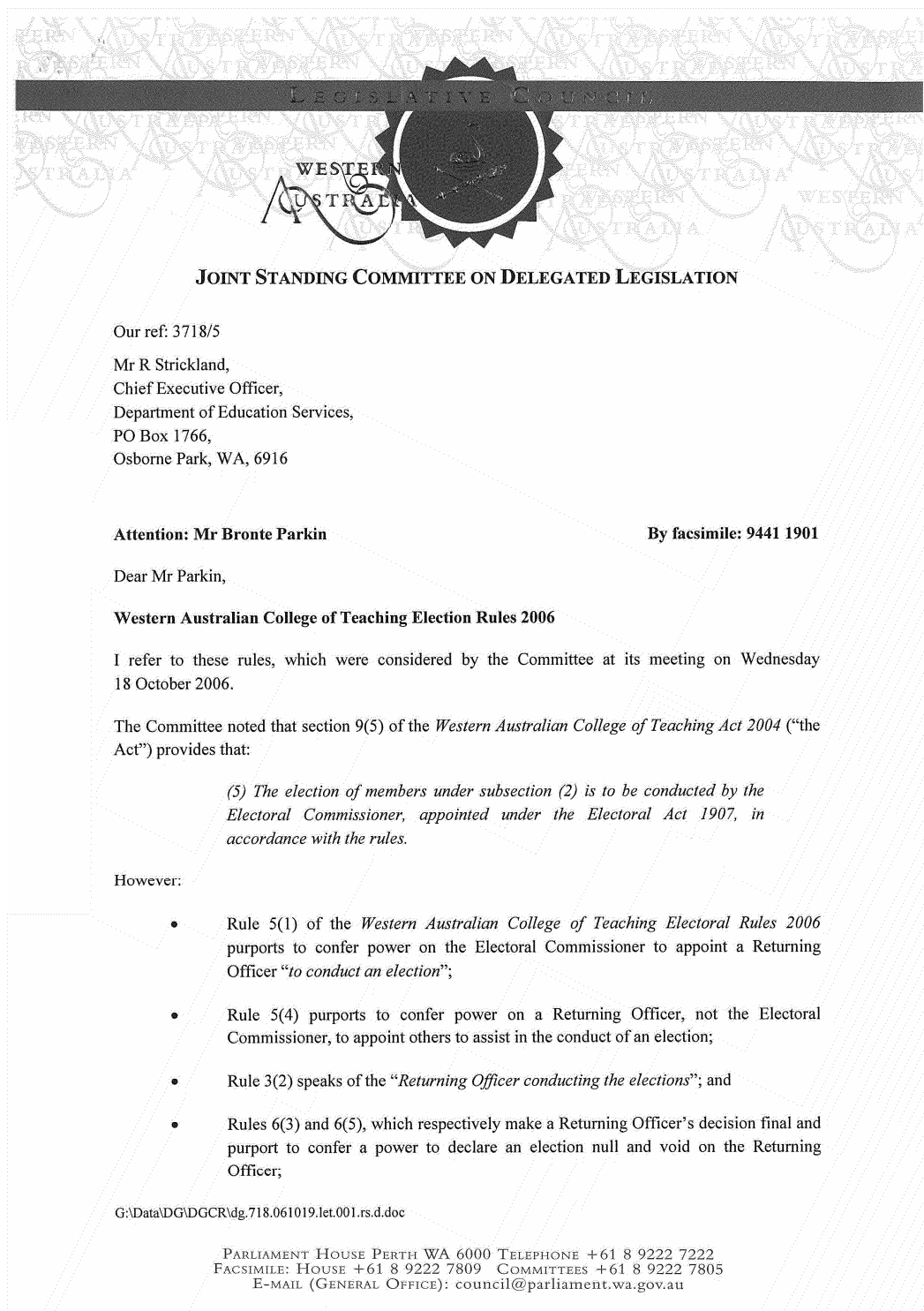
Hon Ray Halligan MLC
Deputy Chairman

23 November 2006

APPENDIX 1

LETTER TO DEPARTMENT OF EDUCATION SERVICES

19 OCTOBER 2006



- other rules are also predicated on the Returning Officer being the person “conducting” the election.

In the Committee’s opinion, the Act does not authorise or contemplate delegation of the power conferred on the Electoral Commissioner to conduct elections.

While the Committee considered whether r5(1) could be ‘read down’ so as to confer a power to “assist” the Electoral Commissioner in the conduct of elections, rather than “conduct” the elections on the Returning Officer:

- the other rules mentioned above, particularly r5(4), r6(3) and r6(5), confer powers inconsistent with assistance rather than conducting; and
- the frequent use of the word “conduct” in association with the Returning Officer’s duties suggests that it is this person who is undertaking the obligation conferred by s9(5) of the Act.

In the Committee’s opinion, the *Western Australian College of Teaching Electoral Rules 2006* are invalid to the extent that they purport to confer power to conduct elections on a Returning Officer.

The Committee had difficulty in scrutinising the *Western Australian College of Teaching Electoral Rules 2006* due to inconsistent terminology.

The interpretation provision of the *Western Australian College of Teaching Electoral Rules 2006*, Rule 1 provides:

In these rules, unless the contrary intention appears—

‘College’ means the Western Australian College of Teaching;

‘Rules’ refers to the Rules of the College;

‘Election rules’ means those referred to in the College Rules;

‘Electoral Commissioner’ means the Electoral Commissioner of the Western Australian Electoral Commission appointed under the Electoral Act 1907;

‘Returning Officer’, in relation to an election, means the Returning Officer appointed for that election under rule 5(1) or 5(2); and

‘The Act’ means the Western Australian College of Teaching Act 2004.

There is inconsistency in terminology in the interpretation rule. “Election rules” means those referred to in the “College Rules”. However, there is no definition of “College Rules”. “College Rules” cannot mean “Rules of the College” as they are different phrases and combining the defined terms “College” and “Rules” gives the defined term “Rules”, which is presumably meant to mean something different from “Election rules” as they are separated in the interpretation provision.

However, the Committee observed that, in fact, the term “*Election rules*” is not used in any of the substantive provisions of the *Western Australian College of Teaching Electoral Rules 2006*.

Instead there are various expressions used- r3(1) uses “*the rules of the College*”, using the lower case for the word “*rules*” as do r6(b), 8(1)(k) and 10(d).

However, from the context, it appears that what is meant is, in fact, the “*Election rules*” rather than “*Rules*”.

The defined term, the capital “*R*” version of “*Rules*”, is used only once in the *Western Australian College of Teaching Electoral Rules 2006*, in r17(3) where mention is made of Schedule 1 to “*these Rules*”.

However, this reference is inconsistent with the defined meaning of “*Rules*”. In context, the reference should also be to the defined term “*Election rules*”.

The word “*College*” is also used inconsistently in these Rules. The word is used in circumstances where it seems from the context that either the Board of the Western Australian College of Teaching College is intended, not the College as a whole, or it is unclear whether the reference is intended to be to the College or the Board of the Western Australian College of Teaching.

For example, r4(1) states that a casual vacancy in “*the College*” shall be filled by the process set out in r3. The reference here appears to be to the Board.

Rule 9(6) provides:

Nominations for the elected teacher representatives of the College shall be in writing, signed by the nominee and endorsed by two College members proposing and seconding the nomination.

In this rule, the first reference would appear to be to the Board of the Western Australian College of Teaching but the second reference could be to a member of that Board or the College more generally.

There is a defined term “*Member of the College*”:

a person who —

(a) is registered as a teacher;

(b) is provisionally registered as a teacher;

(c) holds a limited authority to teach; or

(d) is an associate member of the College

It is unclear why the term “*College members*” is used on some occasions and “*Member of College*” on others in the *Western Australian College of Teaching Electoral Rules 2006*. Is “*College member*” meant to signify a member of the Board?

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The term “*eligible electors*” is used in r8(2)(c), r9(2) and r11(1) to refer to the roll of electors that must be kept and the persons to whom notice of election must be given.

However, this term is not defined. Rule 2(2) uses the term “*eligible members*”, stating:

All electors must be eligible members in accordance with section 9(2) of the Act.

Rule 9(10) of the *Western Australian College of Teaching Electoral Rules 2006* provides that “*Members of the College shall be eligible to nominate for any position to be filled by election subject to section 9(2)*”.

This is a wider group than permitted by s9(2) of the Act, which refers to “*registered teachers*” being elected to the Board and that only certain registered teachers may vote for each position. Are “*Members of the College*” to have power to nominate a registered teacher for a position, regardless of whether those members have power to vote? As drafted, the sub rule appears to be directed at self nomination.

The Act provides that different subgroups of registered teachers are eligible to elect different representatives.

Rules 2(2) and 9(10) of the *Western Australian College of Teaching Electoral Rules 2006* could be given meaning and read as the relevant group of registered teachers as “*eligible members*”, “*eligible electors*” or the “*Members of College*” if the interpretation clause were ignored. However, this is not the way in which legislation is read. Interpretation clauses are given meaning.

Rule 9(6) of the *Western Australian College of Teaching Electoral Rules 2006* provides for the nomination of candidates by “*College members*”. This widens the persons who can nominate others beyond “*eligible*” registered teachers. Due to the inconsistency in the use of terminology, it is not clear whether this is intended.

Similarly, rule:

- 9(14) speaks of a “*member*” not being able to vote more than once at any election;
- 17(1) speaks of a “*member*” being appointed a scrutineer; and
- 18(1) a “*member’s*” statement being attached to a poll.

While what is meant in rules 9(14) and 18(1) may be an “*eligible*” member, it is not clear whether r17(1) is so confined or whether it refers more widely to members of the College.

Due to lack of consistency in use of the defined term “*College*” and its use to refer on some occasions the Western Australian Teacher College and on other occasions to that body’s Board, several rules are uncertain

The lack of consistency in the use of the terms “*member of the College*”, “*eligible members*”, “*College members*”, “*electors*”, “*eligible electors*” and “*member/s*” in conjunction with the definition of

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“registered teacher” and “Member of the College” in the Act renders some rules uncertain and others difficult to interpret.

While some of the terminology issues are minor in themselves, the number of those issues gives rise to a concern that the *Western Australian College of Teaching Electoral Rules* are not contemplated by the Act due to uncertainty. In any event, if the Committee were to disallow only those rules that were clearly uncertain, important provisions would be removed from the *Western Australian College of Teaching Electoral Rules 2006* which might render the balance of those rule ineffective.

In the Committee’s view, the *Western Australian College of Teaching Electoral Rules 2006* require revision and amendment to address its concerns.

The last date for disallowance of these regulations is 24 October 2006. Given this date, the Committee resolved on 18 October 2006 to place a protective notice of motion of disallowance on the regulations. This is the Committee’s standard practice when time for disallowance elapses prior to it having an opportunity to consider the response of the body responsible for an instrument to its concerns. The motion for disallowance will not be debated in the House for some 10 sitting days (generally a period of some 2 months). In the event the Committee’s concerns are addressed in the interim, the motion will be withdrawn.

Would you please provide your written response to the matters raised in this letter by **5 pm on Friday 27 October 2006**. If you have any queries, please contact the Committee’s Advisory Officer (Legal), Ms Susan O’Brien, on 9222 7428.

Yours sincerely



Paul Andrews MLA


Chairman

19 October 2006

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APPENDIX 2
LETTER FROM DEPARTMENT OF EDUCATION SERVICES
1 NOVEMBER 2006

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 Department of Education Services
Government of Western Australia

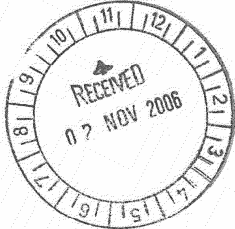
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PUBLIC

Our Ref: BP:bp/ SM0011-1
Your Ref: 3718/5

Mr Paul Andrews MLA
Chairman
Joint Standing Committee on Delegated Legislation
Parliament House
PERTH WA 6000



Dear Mr Andrews

WESTERN AUSTRALIAN COLLEGE OF TEACHING ELECTION RULES 2006


I refer to your letter dated 19 October 2006 in which the Committee's concerns with the Election Rules were outlined. The issues raised were noted and by the Department and were also referred to the WA Electoral Commissioner.

As you will now be aware, the main attention over the past week has focussed on the validity of the Rules vis-à-vis the Returning Officer.

Following legal advice obtained by the Commissioner from the State Solicitor, the Election that was already underway as a postal ballot, has now been called off by the Commissioner.

I would like to assure you that the Committee's concerns with the Rules are being addressed as a priority. These concerns will be rectified, either as re-drafted Rules or, subject to the Minister for Education and Training's wishes, as Regulations, in which case instructions will be provided in due course to the Parliamentary Counsel's Office.

Yours sincerely


RICHARD STRICKLAND
CHIEF EXECUTIVE OFFICER



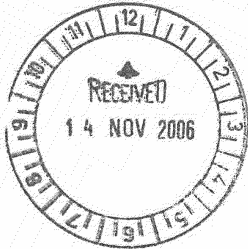
1 November 2006

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ABN 86 936 328 779

APPENDIX 3

LETTER FROM MINISTER FOR EDUCATION AND TRAINING

13 NOVEMBER 2006

	Minister For Education and Training	
PUBLIC		
(I)		
Please quote		
Our REF:	01-012548/BP: bp/DES File SM0011-1	
Your REF:	3718/5.	
		
<p>Mr Paul Andrews MLA Chairman Joint Standing Committee for Delegated Legislation Parliament House PERTH WA 6000</p>		
<p>Dear Mr Andrews</p> <p>WESTERN AUSTRALIAN COLLEGE OF TEACHING ELECTION RULES 2006</p> <p>I refer to your letter of 2 November 2006 and attached copy of a letter dated 19 October 2006 to the Department of Education Services identifying issues with the rules.</p> <p>As you know, the WA Electoral Commissioner has now called off the College election after considering the matters raised by your Committee and the independent legal advice he obtained from the State Solicitor. The legal advice pertained to the major issue identified by your Committee on the role of the returning officer vis-à-vis the Electoral Commissioner.</p> <p>This action was taken after the subsequent contact that was made by the Department of Education Services' Legal Officer with your Committee's Advisory Officer (Legal), Ms Susan O'Brien, on 23 October, and after the discussions that took place during that week between the Electoral Commissioner, State Solicitor's Office, the Department of Education Services and my Office after the legal opinion was received. I was provided with a briefing of the intended halt to the election on 27 October.</p> <p>The decision to call off the election was made on 1 November and announced to teachers via a media release by the Electoral Commissioner on 2 November. I understand that on 2 November the Department of Education Services' Chief Executive Officer, Mr Richard Strickland, faxed his letter dated 1 November to you outlining the position.</p> <p>Given the unforeseen legal and other issues now identified by your Committee and largely confirmed by the State Solicitor, the events might have been avoided had the procedures been prescribed by regulations prepared by the Parliamentary Counsel's Office.</p>		
<p>12th Floor, Dumas House, 2 Havelock Street, West Perth, Western Australia 6005 Telephone: (08) 9213 6800 Facsimile (08) 9213 6801 Email: ljiljanna-ravlich@dpc.wa.gov.au Web Address: www.wa.gov.au</p>		

It is therefore my firm preference that future elections be conducted under regulations rather than by rules and I have written to the College informing them of this. The current rules can act as a useful starting point for regulations and will form the basis of drafting instructions by the Department of Education Services. I will advise you further once I know the College's response and there is agreement to proceed in this manner.

Yours sincerely



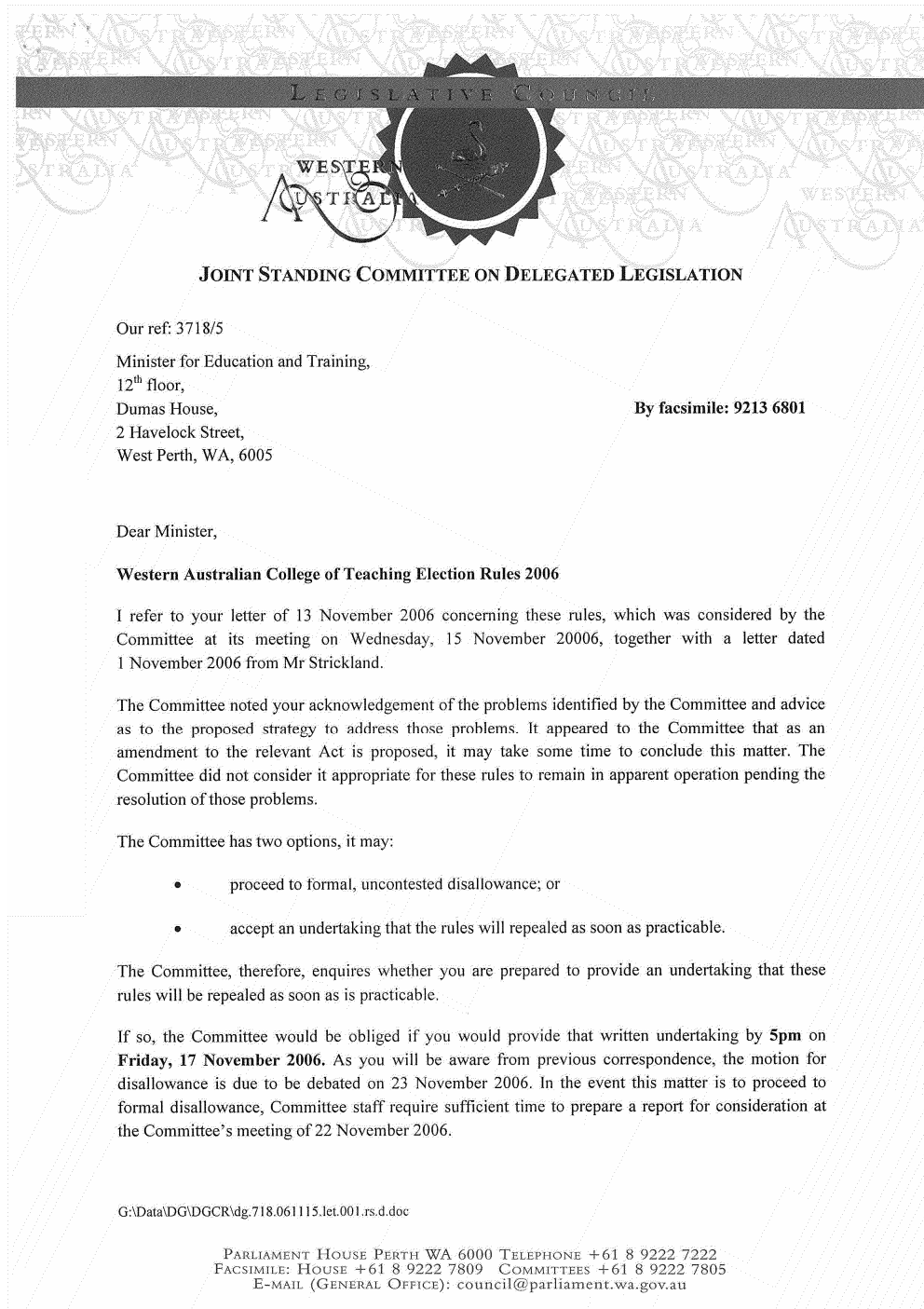
Hon Ljiljanna Ravlich MLC
MINISTER FOR EDUCATION AND TRAINING

13 NOV 2006

APPENDIX 4

LETTER TO MINISTER FOR EDUCATION AND TRAINING

15 NOVEMBER 2006



Delegated Legislation (Joint Standing Committee)

Page 2

If you have any queries, please contact the Committee's Advisory Officer (Legal), Ms Susan O'Brien, on 9222 7428.

Yours sincerely



Hon Ray Halligan MLC

Deputy Chairman

15 November 2006

CC: Mr R Strickland,
Chief Executive Officer,
Department of Education Services,
PO Box 1766,
Osborne Park, WA, 6916



By facsimile: 9441 1901

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APPENDIX 5

LETTER FROM MINISTER FOR EDUCATION AND TRAINING

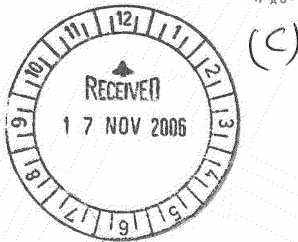
17 NOVEMBER 2006

 Minister For Education and Training 

Please quote: DES 06271/BP:bp/DES File SM0011-1

Our REF: 3718/5

Your REF:



Hon Ray Halligan MLC
Deputy Chairman
Joint Standing Committee on Delegated Legislation
Parliament House
PERTH WA 6000

Dear Mr Halligan

WESTERN AUSTRALIAN COLLEGE OF TEACHING RULES 2006


Thank you for your letter of 15 November 2006.

At the time of my reply dated 13 November 2006 I stated the College and I had not properly formulated the course to be adopted to overcome the problems found by the Committee with the rules. I indicated that it was my preference that elections be conducted under regulations, but until I hear from the College in response to a letter I sent the College, also on 13 November, that matter is still under consideration.

However, as you are aware the election has been called off and will not proceed. In the meanwhile, you can be assured that an alternative strategy will be developed with the College to have members elected in place of the interim members.

It is for your Committee to decide whether or not to proceed with the motion to disallow the rules but you can be assured that it is intended to remedy the situation as soon as possible.

Yours sincerely

 17 NOV 2006

Hon Ljiljanna Ravlich MLC
MINISTER FOR EDUCATION AND TRAINING

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Web Address: www.wa.gov.au

30/11/06