

Child Safe Organisations Bill 2024

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Submission

CHILD SAFE ORGANISATIONS BILL 2024



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About Queensland Independent Schools

Community confidence in the independent schooling sector remains strong with more than 147,000 students enrolled in 236 independent schools across Queensland. These schools educate approximately 16.5 percent of the state's total school-age population.

Independent schools are valued institutions and a pivotal part of Queensland's education system. They are valued schooling choices for families, hubs of human and community connection, places of intellectual, civic and social development, employers and employment generators, education innovators and change-makers.

Independent schools are as unique as the communities they serve and offer parents a choice in the education of their children. Common to all independent schools is their commitment to strong student outcomes, high standards of behaviour, and the welfare and wellbeing of students.

Many independent schools educate international students or specialise in the education of students with disability. There has also been strong growth in the number of Special Assistance Schools for students who have disengaged from mainstream schools, and trade training schools that combine senior year studies with practical vocational education and training.

Over the past five years, enrolments at Queensland independent schools have increased by more than 11 percent. This growth is a clear indication that parents value an independent education and are prepared to invest their after-tax incomes in their child's schooling.

Independent Schools Queensland (ISQ) is the peak body representing Queensland's independent schooling sector. Independent Schools Queensland represents the interests of its member schools, fosters choice in education and protects the autonomy of independent schools. ISQ is a not-for-profit organisation and membership to ISQ is voluntary.

Submission

Independent Schools Queensland (ISQ) appreciates the opportunity to contribute to the public consultation on the Queensland Government implementation of the Royal Commission recommendations related to child safe standards (CSS) and a nationally consistent reportable conduct scheme (RCS). ISQ supports the introduction of the *Child Safe Organisations Bill 2024* (the Bill) which imbeds the Royal Commission recommendations in legislation.

Since the delivery of the Royal Commission into Institutional Responses to Child Sexual Abuse Final Report on 15 December 2017 (Royal Commission's Final Report), ISQ and independent schools across Queensland have worked hard to strengthen responses to child abuse and prevent it from occurring within organisations and we welcome this next step to ensure all organisations providing services for children are child safe.

Operational and Administrative Matters

ISQ supports the inclusion of non-state schools as prescribed entities for both the CSS and RCS, consistent with the recommendations of the Royal Commission's Final Report. ISQ would like to highlight the differing and often complex administrative and governance structures of non-state schools in the independent education sector. The sector also includes schools that deliver unique service offerings. In addition to operating non-state schools accredited by the Non-State Schools Accreditation Board, many entities in the sector also operate and/or facilitate Boarding Facilities, Early Childhood Education and Care Services, Registered Training Organisations, Vocational Education and Training Programs, Disability Support Services and Employment Support Services and these entities may also be affiliated with Religious Bodies. These extensive and varied structures and services see many organisations in the independent sector captured in the Bill under a number of the categories of Child Safe Entities in Schedule 1 and Reporting Entities in Schedule 2.

ISQ supports the Queensland Government's endorsement of the Queensland Family and Child Commission (the Commission) as the independent oversight body responsible for administering a legislated CSO system.

ISQ supports the amendment to the *Working with Children (Risk Management and Screening) Act 2000* particularly to avoid duplication by repealing the requirement for organisations to develop a Child and Youth Risk Management Strategy under Chapter 7, Part 3 of that Act.

Timeframes

ISQ welcomes the phased approach to commencement under clause 2 and supports the introduction of the CSS ahead of the RCS. ISQ appreciates the Commission's intention to provide targeted support to specific sectors as obligations are introduced and would like to see this support extended to sector regulators, for example the Non-State Schools Accreditation Board. Non-state schools operate within a robust and structured regulatory system that has significant penalties for non-compliance including revoking school's accreditation to operate. ISQ considers the time spent by the Commission in supporting both entities and their regulators to prepare for the commencement of obligations to be of vital importance. Therefore, a flexible and responsive approach to commencement must be considered to ensure readiness and avoid any unintended consequences.

Universal Principle

Clause 11 of the Bill provides that a child safe entity must implement and comply with the child safe standards. In implementing and complying with the child safe standards, a child safe entity must provide an environment that promotes and upholds the right to cultural safety of children who are Aboriginal persons or Torres Strait Islander persons (the ***universal principle***).

ISQ raised in an earlier phase of consultation for the Bill, that it considers that the term ‘cultural safety’ is ambiguous and requires more definition to assist schools to ensure that they are complying with the universal principle. ISQ understands that the guidelines proposed to be made by the Commission under clause 108 of the Bill, to assist child safe entities to implement and comply with the child safe standards and universal principle, will include further guidance on the meaning of cultural safety.

Collaborative Regulation

ISQ supports the Bill’s requirement that the Commission and sector regulators collaborate with each other for the purpose of promoting implementation of, and compliance with, the CSS and Universal Principle. ISQ notes a collaborative regulatory approach should aim to reduce duplication of regulatory burden and penalties and that it should also aim to promote consistency in enforcement across all sectors working with children. While ISQ acknowledges the value in the Commission being supported by, and drawing on, sector regulators’ expertise and information, the Commission plays a vital role in maintaining consistency and equity across the entire Child Safe Organisation system. It is essential that the Commission maintains the intent of the Bill to deliver a collaborative regulatory model that has a proportionate approach to compliance, where coercive measures are only used when less interventionist measures have not successfully achieved compliance. ISQ supports the Bill’s focus on regulatory efforts aiming to improve safety for children in organisations, with less emphasis on meeting prescriptive compliance requirements.

Information Sharing Framework

ISQ supports the Bill’s intention to provide an information sharing framework that reflects the Royal Commission’s recommendations about enabling information to be shared between prescribed entities in a way that is purpose-driven and appropriate, and effective in identifying, preventing and responding to concerns of non-compliance (Volume 8, Royal Commission’s Final Report). ISQ also acknowledges information sharing is essential to a successful collaborative regulatory model that will reduce regulatory duplication and burden on schools.

ISQ notes a limitation of the Bill related to the reportable conduct scheme and information sharing. Currently the Bill allows the Commission to share information with Blue Card Services if the Commission becomes aware of a substantiated allegation of reportable conduct. ISQ would like to highlight that not all individuals working in a school are captured by working with children screening, notably registered teachers who make up approximately half of all staff employed in independent schools. While the Bill enables information to be shared by the Commission with sector regulators, it does not require it. This creates a potential gap in the appropriate screening of all staff employed in child related organisations. ISQ consider it to be a vital part of the scheme that this information sharing takes place between prescribed sectors and that the Bill should mandate information sharing with other sector regulators, for example the Queensland College of Teachers (QCT).

Furthermore, the Bill does not allow prescribed entities to request information from the Commission for pre-employment purposes. ISQ raised this concern during the consultation phase of the development of the Bill. The response provided indicated that the information could be shared as part of a standard reference checking process with previous employers, outside of the legislation. ISQ does not consider this a robust process that reflects the recommendations from the Royal Commission. ISQ considers information sharing could be strengthened to allow prescribed entities to request information about substantiated allegations of reportable conduct directly from the Commission as part of a pre-employment screening process.

Reportable Conduct Scheme

ISQ acknowledges the intent of the Bill to maintain national consistency with the introduction of an RCS as recommended by the Royal Commission Final Report and supports the inclusion of non-state schools as reporting entities. However, ISQ suggest some amendments to the Bill to reduce duplication, promote compliance and alleviate administrative burden.

Non-state schools in Queensland operate within a complex existing reporting framework that already contains multiple reporting definitions, thresholds, pathways and timeframes. This existing framework carries varied individual and organisational penalties for non-compliance. The burden of maintaining compliance with these existing obligations is significant at an organisational level. Independent schools must ensure policies and procedures accurately reflect the numerous legislated obligations and staff are trained and supported to implement them. For example, some of the existing reporting obligations in s76-78 of the *Education (Queensland College of Teachers) Act 2005* (the QCT Act) relate to the conduct of registered teachers and the school's obligation to notify the Queensland College of Teachers (QCT) when:

- the school starts to deal with an allegation of harm caused, or likely to be caused, to a child because of the conduct of a teacher of the school;
- the school stops dealing with the allegation for any reason, the outcome of the school's dealing with the allegation must be notified; and
- the school dismisses a teacher if the school considers that the circumstances call into question the teacher's competency to be employed as a teacher.

The introduction of a RCS will see a duplication of these obligations that is additionally burdensome due to inconsistencies in definitions, thresholds and pathways. ISQ recommends the Bill be reconsidered to ensure that there is less duplication and more clarity in reporting obligations and that relevant reporting thresholds align. This may require amendments to other legislation that already includes different reporting pathways for relevant entities. Any necessary information sharing provisions should also be included in the Bill to enable the sharing of confidential information and the lawful exchange of information between relevant entities.

Furthermore, ISQ considers the meaning of *reportable conduct* in clause 26 of the Bill will be difficult for organisations and individuals to interpret. For the meaning of reportable conduct, ISQ suggests that the Bill should include a more streamlined and consistent approach with that of other legislation. For example, the definition does not align with the existing reporting definitions in s76 of the QCT Act, which references the definition of 'harm' in the *Child Protection Act 1999*.

Section 9 of the *Child Protection Act 1999* defines harm as follows:

- (1) *Harm, to a child, is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing.*
- (2) *It is immaterial how the harm is caused.*
- (3) *Harm can be caused by—*
 - a. *physical, psychological or emotional abuse or neglect; or*
 - b. *sexual abuse or exploitation.*
- (4) *Harm can be caused by—*
 - a. *a single act, omission or circumstance; or*
 - b. *a series or combination of acts, omissions or circumstances.*

Clause 26 of the Bill, which defines the meaning of *reportable conduct* also references sexual, physical, psychological abuse and neglect and also uses the descriptor 'significant'. Alignment with the existing definition of 'harm' as utilised as a reporting threshold in the *Child Protection Act 1999*, the *Education (Accreditation of Non-State Schools) Act 2017* and the QCT Act would be preferable.

Of particular concern in clause 26 is the ambiguity of the meaning of the term 'sexual misconduct'. It relies heavily on a subjective understanding of 'sexual' conduct. The term 'sexual conduct' could also be interpreted as 'inappropriate conduct'. Non-state schools already have a reporting process for 'inappropriate behaviour' of staff (*Education (Accreditation of Non-State Schools) Regulation 2020 s16*), and this will further confuse the reporting pathway and threshold. The term 'ill-treatment' is similarly ambiguous. It allows for significant discretion and the examples provided in the Bill appear to all be within scope of other reportable terms (emotional and psychological harm, for example).

While ISQ acknowledges the intent of the Bill to maintain national consistency and the existing provisions in other jurisdictions may have informed the language used in clause 26, amendments could be made to better reflect the Queensland context while maintaining the same standard and intent and reducing duplication of reporting pathways.

Conclusion

ISQ supports the introduction of the *Child Safe Organisations Bill 2024* (the Bill) which imbeds the Royal Commission's recommendations in legislation as the next step in protecting children from harm and strengthening the safety of children in all sectors.

ISQ supports the Commission taking an educative role in providing dedicated support and guidance to entities to implement and comply with the CCS and RCS. It would like to see this commitment extended to working with existing sector regulators under the proposed collaborative regulation model to ensure consistency in implementation across all sectors.

ISQ considers information sharing a vital component of achieving the Royal Commission's recommendations and suggests the Bill could be strengthened to ensure consistency and timeliness as well as reducing duplication, regulatory burden and difficulties in interpretation.

Finally, ISQ supports the introduction of a RCS however suggests amendments could be made to the Bill to better support implementation through acknowledgement of existing obligations and the use of streamlined definitions.

