



# Submission to the Education, Employment and Small Business Committee - Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018



## About Queensland Independent Schools

**Community confidence in the independent schooling sector remains strong with over 121,000 students enrolled in 207 independent schools across Queensland in 2018. These schools educate approximately 15 percent of the state's total school-age population and about 20 percent of all secondary students.**

The strength of Queensland's independent schooling sector lies in the rich mix of education choices and opportunities local schools provide families. Independent schools are as diverse as the students and parents who make up their close-knit communities. Of Queensland's 207 independent schools: 183 educate children with disability; 109 cater for students for whom English is a second language or dialect; 184 enrol Indigenous students; 72 offer international education programs; 33 provide boarding services; and 17 cater specifically for students who have disengaged from mainstream education.

Common to all independent schools is their commitment to strong student outcomes, high standards of behaviour, and the welfare and wellbeing of students.

Over the past ten years, enrolments at Queensland independent schools have increased by 21 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.

## Working with Children (Risk Management and Screening) Act 2000

Independent Schools Queensland (ISQ) welcomes the proposed changes to the *Working with Children (Risk Management and Screening) Act 2000*. ISQ broadly supports the intent of the legislation in updating the processes around the employment of staff in independent schools and the process of obtaining a *Working with Children Clearance*. The working with children clearance is one important component in a Child Safe framework that independent schools implement daily.

It is an important component as it gives an assurance that the non-teaching employees of a school have undergone a police check for offences related to child harm. Yet, significant as it is, it cannot be the only factor relied upon by schools in employing staff. Schools are responsible for undertaking activities such as employment screening, training, supervision etc as part of their robust child risk management strategy.

Independent schools in Queensland are defined as regulated businesses under the *Working with Children (Risk Management and Screening) Act 2000* and as such provide "regulated employment" to all staff with the exception of staff who are "an approved teacher" or "a volunteer who is a parent of a child attending the school". (Schedule 1 Part 1 Sec 3). Independent Schools Queensland supports the continuing provision that allows a parent to be exempted from the requirement to hold a Working with Children Clearance while volunteering at the school that their child attends, noting that schools have in place a range of strategies to ensure the protection of children in such circumstances e.g. that parents always work under the direct supervision of school staff whilst volunteering.

### New section 175 Clearance required to employ person in regulated employment

The proposed new s175 which requires that a school (the employer) not employ or continue to employ a person in regulated employment unless the employee holds a working with children clearance (“No Card No Start”), while supported, has the potential to cause some unintended consequences for independent schools.

The current system for obtaining a working with children clearance requires that the applicant lodge the required form and then wait for the working with children clearance to be approved. This process can and often does take up to 6 weeks, with a lesser time usually required for the renewal of a working with children clearance. While we understand that Blue Card Services are planning to upgrade the portal and associated processes to shorten the time frames from application to issuing of a working with children clearance, a time frame of any greater than 4-5 days from application to approval could significantly disadvantage the employment capacity of an independent school (as well as impacting on the employability of individuals).

Independent schools need to have the capacity to replace staff at short notice and this proposed change may adversely affect the school’s capacity to remain child safe due to its incapacity to employ and start staff immediately. We recognise that the legislation will now allow for people to apply for a working with children clearance prior to commencing employment (if they are planning to work for a regulated employer), however, prospective employees may be unwilling to go to the expense of gaining a working with children clearance on the “possibility” of being employed by a regulated employer.

The proposed s175 also states that a school may not “continue to employ” an employee unless they hold a working with children clearance. This could pose issues where a school is able to employ a certain person today, and tomorrow they are not able under the Act to employ the very same person.

Whilst the intent of the legislation is understood to ensure that all employees hold a current working with children clearance, it is noted there are significant daily safeguards in the system (daily police checks on child related offences) and there is concern that the implementation of this section may become onerous and pose unintended consequences. Once an employee has lodged an application for the renewal of a working with children clearance, the time frame for the decision on a working with children clearance is out of their control. However, both the employee and employer may be disadvantaged by disrupted employment arrangements because the employee is deemed to not have a “current” clearance.

### Interaction with s347 Replacement of lost or stolen card

Independent Schools Queensland also questions the interaction of s347 – Replacement of lost or stolen card with section 175. The new s347(1) states that if a card is lost or stolen, then the person, within 14 days must apply for a replacement card. s347(3)(a) states that the chief executive must – (a) cancel the lost or stolen card; and (b) issue a replacement working with children card to the person.

This would mean that the employee would be without a working with children clearance in the time between cancelling the lost or stolen card and being issued a replacement card. What does this mean for the person’s employment status in this period? Section 175 would seem to suggest that the person could not continue to hold employment in this period as they would be considered to no longer hold a valid working with children card.

## New section 156 Regulated employment

There is a question around the definition of regulated employment s156 and in particular s156(4) where it is stated that the employment of a person is not regulated employment if the person does not work for not more than 7 days in a calendar year. This appears to conflict with the provisions of s 175 where the employer must not employ a person unless they hold a working with children clearance. Independent Schools Queensland would appreciate clarification on how s156(4) will be interpreted in a school situation where the person being employed will not be employed for more than 7 days (e.g. a casual grounds person employed for a week to assist with a gardening project).

There is also another question about the operation of s156(4) in relation to the *Child accommodation services including home stays* as set out in s9 of *Schedule 1 Regulated employment and businesses for employment screening*. This provision currently regulates home stays and holiday arrangements for international students attending school in Queensland, and for billeting for district, State and National events such as sports carnivals, performance events etc. The *Working with Children (Risk Management and Screening) Regulation 2011 Schedule 3(1)* states that:

*Child accommodation services*

*For the Act, schedule 1, section 9, a function of employment is not a usual function of employment if— (a) the employment is organised by a school or a recognised body; and*

*(b) the employee performs the function—*

*(i) as a volunteer; and*

*(ii) not more than twice in the same year; and*

*(iii) for a period that is, or for periods that are each, 10 days or less.*

Independent schools rely on this “10 days or less” provision to assist them to organise short-term tours from visiting schools (within Australia and from overseas) without requiring a working with children clearance for every adult member of a household where the visiting child might be billeted for only 1 or 2 days. This allows for a “reasonableness” to the administration of the working with children clearance system that recognises that the working with children clearance is only one aspect of a robust Child Safe framework.

Similarly, Schedule 3 (2) of the Regulation allows that if the child accessing accommodation is a guest, then the volunteer accommodation service is not viewed as regulated employment and therefore is not required to hold a working with children clearance if the provision of accommodation is not more than twice in the same year, and the periods are for 10 days or less.

The Regulation provides a “reasonableness” that allows schools to undertake and contribute to the wider community by providing volunteer billets without requiring each person to hold a current working with children clearance. It was implemented after extensive consultation and agreement from the sector that this provides proper safeguards but also allows for schools to provide billets etc in the ordinary course of business. As it currently stands, the Regulation Schedule 3 is in direct contravention of the proposed s156(4) which appears to state a maximum of 7 days per year instead of the up to 20 days (but not more than 10 days at a time) for child accommodation services under the Regulation. Independent Schools Queensland would question changes that would reduce the capacity of schools to access the current provisions under Schedule 3 of the Regulations of up to a 10-day period that occur no more than twice in the same year as being exempt from the requirement to hold a working with children clearance.

## Division 2 Suspension of working with children authority s295 and s297

Under proposed s295, if a working with children authority is suspended, it is an offence to allow the person to perform work that is regulated employment or restricted employment while the authority is suspended. However, under s295(1)(e) *the person's employer must not terminate the person's employment solely or mainly because the authority is suspended*. The same provision occurs in s297(4) which states that: *A person's employer who is given a notice about the suspension under s297 must not terminate the person's employment solely or mainly because the person's working with children authority is suspended*.

In an independent school, there is no way for the person to continue to fulfil their work obligations if the working with children clearance has been suspended. It would be onerous and costly for schools not to be able to terminate the employment of a non-teaching staff member if their working with children clearance had been suspended.

## Three-year term for Working with children clearance

Under the legislation as it is currently in force, the working with children card must be renewed every three years. The new section 231 provides no change to this proposed renewal period, despite the strong support in the consultation process that, with the daily police checks that support and provide updates on any changes to a blue card status, this renewal period could be extended to 5 years without diminishing the effectiveness of the working with children clearance. Independent Schools Queensland would request that consideration be given to extending the renewal period from 3 years to 5 years.

Independent Schools Queensland notes that in s289, a working with children exemption now has a term of 3 years (as compared to indefinitely in the current Act). The requirement to renew the exemption is seen as a positive action as the use of the exemption card by a teacher (in this instance) would be for volunteer activities rather than for regulated employment and we would support this provision for volunteer activities.

## Summary

1. Independent Schools Queensland supports the continuing provision that allows a parent to be exempted from the requirement to hold a Working with Children Clearance while volunteering at the school that their child attends.
2. In order to be able to effectively implement the proposed No Card No Start requirement, a time frame of any greater than 4-5 days from application to approval could disadvantage the employment capacity of an independent school.
3. There is the potential for unintended consequences by introducing the requirement that a regulated employer may not "continue to employ" an employee unless they hold a current working with children clearance.
4. Clarification is needed for the employment status of a staff member whose working with children clearance has been cancelled due to a lost or stolen card and are in the process of being issued a replacement card.
5. Independent Schools Queensland would appreciate clarification on how s156(4) will be interpreted in a school situation where the person being employed will not be employed for more than 7 days.

6. Clarification and consistency is sought between the new s156 provisions which have a 7 day or less period for regulated employment and the provisions of *Children (Risk Management and Screening) Regulation 2011 Schedule 3* which allows child accommodation services for up to 2 times per year and up to 10 days.
7. Clarification is sought about the application of s295 and s297 which state that a school must not terminate the person's employment solely or mainly because the person's working with children authority is suspended.
8. It is recommended consideration be given to extending the renewal period of a working with children clearance from 3 years to 5 years.

For further information about this submission please contact:

David Robertson

Executive Director Independent Schools Queensland

E:

P: