

## **Response to stakeholder submissions made to the Education and Innovation Committee inquiry into the Education Legislation Amendment Bill 2012**

### **Abbreviations:**

AITSL - Australian Institute for Teaching and School Leadership

2011 Bill – Education and Training legislation Amendment Bill 2011

Committee – Education and Innovation Committee

EGPA – *Education (General Provisions) Act 2006*

Former Committee – Industry, Education, Training and Industrial Relations Committee

National Standards - National Professional Standards for Teachers

QCEC – Queensland Catholic Education Commission

QCT Act – *Education (Queensland College of Teachers) Act 2005*

QTU – Queensland Teachers' Union

QLS – Queensland Law Society

SSDE – State Schools of Distance Education

## Issue 1: E-kindy

Stakeholder	Support/not support	Comments	Department comment
QTU	Support	<ol style="list-style-type: none"> <li data-bbox="703 218 1357 320">1. QTU believes a child participating in a distance education program should be considered enrolled in that school.</li> <li data-bbox="703 363 1357 432">2. Concern QTU wasn't consulted on the proposed amendments.</li> </ol>	<p data-bbox="1364 218 2143 360"><b>1. <u>Participants should be considered enrolled in school</u></b> The section 419H of the Bill provides that a child enrolled in e-kindy is not a student of, or enrolled in, a state school, nor is the child considered enrolled in a program of distance education.</p> <p data-bbox="1364 403 2143 505">This aims to ensure that certain aspects of the EGPA do not apply to SSDE in relation to delivery of e-kindy, including for example:</p> <ul data-bbox="1364 512 2143 614" style="list-style-type: none"> <li data-bbox="1364 512 2143 544">• calculation of enrolment numbers for funding purposes;</li> <li data-bbox="1364 550 2143 582">• fee arrangements prescribed under Chapter 3; and</li> <li data-bbox="1364 588 2143 614">• provisions around exclusion and suspension.</li> </ul> <p data-bbox="1364 657 2143 726">The Committee is referred to the page 11 of the Explanatory Notes in this regard.</p> <p data-bbox="1364 769 2143 871">This aligns with treatment of children enrolled in <i>Bound for Success</i> pre-preparatory learning programs at State schools in a number of remote communities.</p> <p data-bbox="1364 914 2143 1016">Staff employed by the SSDE to deliver e-kindy will be employed under the normal award conditions that apply to other staff at the school.</p> <p data-bbox="1364 1059 2143 1190"><b>2. <u>Consultation</u></b> Concerns raised about consultation are noted. A regular DETE/QTU monthly meeting is held and can be used to discuss the Bill and clarify any outstanding issues with QTU.</p>
QCEC	Support	<ol style="list-style-type: none"> <li data-bbox="703 1195 1357 1374">1. Concerned that there be no misunderstanding that e-kindy is part of formal schooling when it is not. Recommends the Minister make the governance arrangements very clear in the second reading debate.</li> </ol>	<p data-bbox="1364 1195 2143 1444"><b>1. <u>E-kindy not part of formal schooling</u></b> Views of QCEC noted. For the most part kindergarten programs are delivered by non-state organisations. In cases, where there is no cost-effective or viable alternate providers, such as e-kindy and pre-prep (bound for success) in discrete Indigenous communities, the Queensland Government provides the service directly to children.</p>

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		<p data-bbox="712 715 1294 850">2. Concerned about the implications of the extension of the requirement to report likely sexual abuse, to teachers of e-kindy – raise practical implications.</p> <p data-bbox="759 895 1317 1031">Concerns over requirement that e-kindy staff required to report a likelihood of future sexual abuse will place burden on staff to establish grounds when not in face-to-face setting.</p> <p data-bbox="759 1075 1346 1246">QCEC recommends Committee seek clarification on what staff professional development resources, unique to distance education, will be developed to enable staff to establish grounds to report a likelihood of sexual abuse.</p>	<p data-bbox="1373 138 2136 274">The Bill simply ensures SSDE can deliver a kindergarten program, as now they are limited to providing primary, secondary and special schooling. It does not prohibit any non-government provider, including Catholic schools entering the market.</p> <p data-bbox="1373 319 2136 454">It will be 100% clear to families participating in e-kindy that it is not a part of formal schooling. The program delivery requires that an adult be present while the program is being delivered. This will usually be the child’s parent or guardian.</p> <p data-bbox="1373 499 2136 670">Section 419H of the Bill makes it very clear that a child enrolled in e-kindy is not a student of, or enrolled in, a state school, nor is the child considered enrolled in a program of distance education. The rationale for this is provided under the Department’s response to the QTU concerns above.</p> <p data-bbox="1373 715 1865 742">2. <u>Reporting allegations of sexual abuse</u></p> <p data-bbox="1373 751 2119 887">Staff members in state schools, including SSDE are supported through departmental training and policy material to identify appropriate and inappropriate behaviours and how to respond to them.</p> <ul data-bbox="1373 932 2119 1465" style="list-style-type: none"> <li data-bbox="1373 932 2063 1031">• The Department provides mandatory code of conduct training for staff at SSDE. The code of conduct training includes elements relating to child protection.</li> <li data-bbox="1373 1075 2119 1142">• Education Queensland staff complete online Student Protection Training on commencing work in a state school.</li> <li data-bbox="1373 1187 2119 1323">• Staff members are informed about the Student Protection Procedure, which outlines required responses to suspicions of harm. These requirements are consistent with the legislation.</li> <li data-bbox="1373 1367 2119 1465">• Fact sheet detailing the new legislative requirement have been produced and made available to all employees via the Department’s website. This included a fact sheet for</li> </ul>

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			<p>principals and accompanying power point presentation to assist them to train their staff.</p> <ul style="list-style-type: none"> <li>Education Queensland provides resources to assist schools to determine an appropriate response to student sexual behaviour. <i>Students' sexual behaviour – a guide for schools</i> provides information to help school staff identify age appropriate sexual behaviours. The guide uses Family Planning Queensland's Traffic Lights Framework to assist staff in identifying, assessing and responding to sexual behaviours ranging from normal and developmentally appropriate through to inappropriate or problematic.</li> <li>In addition, the Principals' Checklist: Managing Students' Sexual Behaviour provides a step by step procedure for principals to follow.</li> </ul>
Committee		<p><u>General Query</u></p> <p>Why is the mandatory reporting provision being extended to staff dealing with e-kindy students, when it does not apply to other (face to face) kindy or child care services? Is this consistent with e-kindy <u>not</u> being considered part of formal schooling?</p>	<p>The reporting requirements do apply to other pre-preparatory services (i.e. services provided to pre-school-aged children) provided by state schooling system under the <i>Bound for Success</i> program, delivered in discrete Aboriginal and Torres Strait Islander communities in Queensland. That program is also not part of primary school, though it is delivered at state school sites. It is a child protection measure adopted to apply to provision of services by the State.</p> <p>The vast majority of early childcare services are delivered by non-government organisations and all but about 2% of these are now regulated under National Law.</p>

## Issue 2: Mandatory reporting

Stakeholder	Support/not support	Comments	Department comment
QLS	Support	Support amendments to ss. 365A, 366A.	<p>1. <u>Remove all criminal sanction for mandatory reporting requirements</u></p> <p>It is noted that it was always the intention of the <i>Education and Training Legislation Amendment Act 2011</i> that there be no</p>
	Does not support existing criminal	1. The provision should be extended to failure to report suspected actual abuse, as well as likely.	

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	sanctions for ss. 365 and 366.	Criminal charges against school staff who fail to report are not appropriate - internal disciplinary measures are more appropriate, as is provided for in the case of likely abuse.	<p>criminal sanction for failing to report a likelihood of future sexual abuse. This position was reflected in the Bill considered by the former Industry, Education, Training and Industrial Relations Committee and considered by the Queensland Law Society. The current Bill simply seeks to ensure this is given practical effect to, given concerns raised about section 204.</p> <p>The reporting requirements under sections 365 and 366 were introduced in response to recommendations of a report of the Board on Inquiry into the handling of complaints about sexual abuse by the Anglican Diocese of Brisbane. The requirements placed an obligation on school staff members to report allegations of sexual abuse perpetrated on school students by employees of the school. They aimed to prevent cover ups in schooling systems and ensure the best interest of students is paramount.</p> <p><i>The Education and Training Legislation Amendment Act 2011</i> expanded the requirement to require school staff members to report allegations of sexual abuse, perpetrated by any person, not just employees of the school. New reporting requirements were introduced to require reporting of a likelihood of future sexual abuse.</p> <p>These amendments were made in response to recommendations of the Queensland University of Technology Report titled: <i>Teachers reporting child sexual abuse: Towards evidence-based report of law, policy and practice.</i></p> <p>As the Committee would be aware, a criminal sanction was not introduced for the requirement to report a likelihood of future sexual abuse in order to mitigate concerns of over-reporting of inappropriate low level concerns.</p> <p>The policy justification for retaining criminal sanction for failing to report under sections 365 and 366 is as outlined in the Explanatory Notes to the 2011 Bill. Given the driver for</p>

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		<p>2. The definitions of sexual abuse and likely sexual abuse are insufficiently defined, making it difficult for staff to know what has to be reported.</p>	<p>introduction of the provisions, retaining a criminal sanction will: ‘... <i>provide a strong deterrent to the cover up of sexual abuse within schooling systems and school communities and ensure timely responses to concerns about sexual abuse</i>’.</p> <p>2. <u>Definition of sexual abuse</u> Following the former Committee’s consideration of the 2011 Bill, and in response to issues raised by a range of stakeholders, including the non-government schooling sectors, the 2011 Bill was amended to provide guidance around what is considered ‘sexual abuse’ for the purpose of reporting under the EGPA.</p> <p>Section 364 was amended to provide an inclusive statement of the circumstances in which sexual behaviour should be reported under the proposed mandatory reporting provisions.</p> <p>At the time, the QCEC raised concerns similar to those raised by the QLS that without clarity around what behaviour should be reported, staff would be compelled, to report consensual relationships between students in every instance. By listing circumstances, such as bribery, coercion, threats, power imbalance and disparity in intellectual capacity, the provision aims to provide some assurance that this is not the case. Schools will need to consider the facts available to see if the behaviour warrants reporting.</p> <p>In relation to the requirement to report likely future sexual abuse, the threshold for reporting was intentionally set very high – it requires more than a mere concern of risk of future sexual abuse, but rather, the staff member must <i>reasonably suspect</i> the student <i>is likely to be</i> sexually abused.</p> <p>A narrower exhaustive definition of the term was not included out of concern that it could inadvertently narrow the scope of the mandatory reporting provisions. Instead, staff members in state schools are supported through departmental training and policy material to identify appropriate and inappropriate behaviours and how to respond to them. Details about training</p>

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		<p>3. Concern that all reports must be passed to a police officer e.g ss. 365(2A), 366(2A) would deter young people from confiding in school staff about their personal relationships - confidentiality issues around this.</p>	<p>and materials are provided above in the response to issues raised by the QCEC about e-kindy.</p> <p>Non-state schooling sectors have also been supporting their staff through training, and have been given access to the departmental training material.</p> <p>The term is not defined in any other Queensland legislation where it is used, including the <i>Child Protection Act 1999</i>, <i>Commission for Children and Young People and Child Guardian Act 2000</i> and the <i>Public Health Act 1995</i>, nor in the existing education portfolio legislation.</p> <p>The Queensland Catholic Education Commission and Independent Schools Queensland were consulted about the proposed clarifying provision and supported its insertion into the 2011 Bill.</p> <p>It is noted that despite concerns raised by the QLS, since introduction of the requirements there has only been one case, to the Department's knowledge, regarding reporting under sections 365 and 366 - <i>R v Hayes</i> (Toowoomba Magistrates Court 1 December 2009). That case related not to whether there was sexual abuse, but rather whether the principal failed to comply with the requirement by not reporting as prescribed under section 366.</p> <p>The expanded sections 365 and 366 have been in operation since 9 July 2012. The Department has not been advised of any issues with interpretation and implementation to date.</p> <p>3. <u><i>Confiding in school guidance officers</i></u> The expanded reporting requirements only introduce into legislation reporting that has been required under Education Queensland Student Protection procedure for a number of years.</p>
Bravehearts Inc.	Support	Comment that there must be an appropriate	In Queensland state schools, non-compliance could, in some

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		disciplinary process in place.	<p>cases, be a breach of the Public Service Code of Conduct and the Department's Standard of Practice. Sanctions may include a caution, a requirement to undertake training, a pay reduction, or suspension or termination of employment.</p> <p>In non-state schools, a staff member may, in appropriate cases, be subject to the internal disciplinary processes applying within that particular school or schooling system.</p> <p>Depending on the circumstances of the matter, it may also be open for the Queensland College of Teachers to take disciplinary action against a teacher who fails to comply with the reporting obligation.</p>
Commission for Children and Young People and Child Guardian	Submission indicates no major concerns with proposed amendments		Submission noted
QTU	Support	Supports amendments to ensure original intent of <i>Education and Training Legislation Amendment Act 2011</i> .	Submission noted
QCEC	Support	1. Recommends that when the Minister is re-introducing the Bill for second reading, there be specific mention of how a failure to report is intended to be dealt with.	<p>1. <u>Clarify intention for remedy via disciplinary action</u></p> <p>The Ministers introductory speech for the Education Legislation Amendment Bill 2012 specifically noted the original intention of the legislation, i.e.: "No penalty was prescribed for failing to report a likelihood of future sexual abuse. This was intentional. A failure to comply with this specific obligation was to be dealt with by the education sectors through disciplinary action in appropriate instances. This aimed to mitigate concerns that the risk of criminal sanction would increase reporting of inappropriate low-level matters." ..... "The bill will clarify the Legislative Assembly's original intention that there is no criminal sanction for failing to report the likelihood of future sexual abuse."</p> <p>This is also made clear in the Explanatory Notes, which states at</p>



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		<p>2. QCEC recommends no earlier commencement date than January 2013 to enable staff training prior to commencement.</p> <p>3. The submission indicates that the considerable issues arose around the amending written processes and training when the 2011 amendments commenced and also following when it was found that amendment was required to clarify the original intention.</p> <p>4. QCEC recommends student protection legislation 'should never be rushed and always be subjected to the established parliamentary process in a timely way'.</p>	<p>page 3: "It was intended that failing to report under new sections 365A and 366A would be dealt with by employing authorities, which would consider taking disciplinary action in appropriate cases."</p> <p>2. <u>Commencement</u> The reporting arrangements concerning allegations of likely sexual abuse, will not commence before January 2013.</p> <p>3. <u>Training issues</u> When the issue regarding section 204 of the <i>Criminal Code</i> were identified, the non-state schooling sectors, including QCEC were consulted and agreed with the approach currently being taken to address the issue, including:</p> <ul style="list-style-type: none"> <li>• delaying commencement of the requirement to report a likelihood of future sexual abuse until amendments were made to overcome the section 204 issue; and</li> <li>• commencing the remaining reporting provisions, ensuring, in particular that the directors of governing bodies of Catholic schools could delegate their reporting responsibilities under the current section 366.</li> </ul> <p>4. <u>Due legislative process</u> The QCEC was consulted in relation to both the 2011 Bill and the Education legislation Amendment Bill 2011. Both Bills have been subject of inquiry by Parliamentary Committees. The QCEC has engaged in both Parliamentary Committee inquiries and promoted their views and positions in relation to the child protection measures proposed.</p> <p>The issue created by section 204 of the <i>Criminal Code</i>, was inadvertent, and not identified by any Government department, stakeholders or the former Committee during the development and Parliamentary consideration of the 2011 Bill.</p>
Committee		<u>General query:</u>	The Department does not collect data about the number of

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		<p>Recent media reports suggest that there has been an increase in reports of suspected abuse since the commencement of the mandatory reporting provisions. Could the Department comment on whether it sees an association between the threat of criminal sanctions for school staff failing to report, and an increase in reporting of unsubstantiated cases?</p>	<p>reports made to Queensland Police Service under the mandatory reporting provisions.</p> <p>The Queensland Police Service has advised that it is still too early to provide data or to identify any trends or emergent issues in relation to the recent changes in reporting requirements.</p> <p>Officers from my Department will meet with officers from the Queensland Police Service annually to monitor and discuss the effectiveness of the reporting arrangements.</p> <p>No issues have been raised with my Department in relation to implementation of the expanded requirements to date.</p> <p>The existing state school reporting policy has a wider application than the statutory mandatory reporting requirements under the EGPA. Under state school policy staff members report on suspected harm of children, including harm caused by neglect, physical or psychological abuse etc.</p> <p>In November 2011, changes to student protection reporting procedures were made following discussions with Queensland Police Service and the Department of Communities, Child Safety and Disability Services. Several changes were made including an amendment to the previous requirement to send all reports to both the Queensland Police Service and the Department of Communities, Child Safety and Disability Services. DETE now requires reports of sexual and physical harm to be sent to Queensland Police Service and the Department of Communities, Child Safety and Disability Services; and reports of emotional/psychological harm or neglect to be sent to the Department of Communities, Child Safety and Disability Services only. The effect of these changes significantly reduces the number of reports sent by DETE to QPS.</p>

### Issue 3: National Professional Standards for Teachers

Stakeholder	Support/not support	Comments	Department comment
Queensland College of Teachers (QCT)	Support	Notes it is important there be the ability to develop and adopt standards other than the national ones, with Ministerial approval, should that become necessary.	Submission noted. The Bill gives the QCT the capacity to adopt standards other than the National Standards, with approval of the Minister (clause 21, new section 235(1)(b)). The provision is meant as a fail-safe in the event that the National Professional Standards no longer exist. It is not Queensland Government policy to amend or add to the National Standards (in contrast to nationally consistent registration, where Queensland may wish to require additional elements). The Bill makes it clear at new section 235(2) that the National Standards cannot be amended.
QTU	Neither support nor non-support indicated.	<ol style="list-style-type: none"> <li>1. The Department has not adequately consulted with the QTU. Changes to the current standards are, according to the certified agreement for teachers, to be agreed between the Department and the Union.</li> <li>2. Ministerial approval should not be required for development or adoption of standards other than the National Standards, as this compromises the independence of the Queensland College of Teachers.</li> <li>3. Recommends a joint implementation agreement</li> </ol>	<p>1. <u>Consultation</u> The Department consulted with a range of stakeholders, including the QTU, when developing Queensland's Implementation Plan for the National partnership Agreement on <i>Improving Teacher Quality</i>. This included adoption of the National Standards.</p> <p>2. <u>Ministerial approval</u> The requirement for Ministerial approval to adopt or develop professional standards other than the National Standards is necessary to ensure that the power to develop professional standards is not exercised inconsistently with Queensland's commitments, through the Minister, at national level.</p> <p>Responsibility for developing National Standards lies solely with AITSL, in consultation with the States and Territories. The standing Ministerial Council has approved the National Standards developed by AITSL.</p> <p>This position is consistent with section 290(4) of the QCT Act where a code of practice, or an amendment of a code of practice, has no effect until it is approved by the Minister by gazette notice.</p> <p>3. <u>Implementation</u></p>

Stakeholder	Support/not support	Comments	Department comment
		between the Department and the Union should be developed to guide adoption or implementation of National Professional Standards in Queensland state schools.	On-going consultation is occurring through the DETE/QTU Teacher Professional Issues Taskforce, including collaborative development of a plan to support implementation of the Standards in state schools.
QCEC	Support		Submission noted
Committee		<p><u>General query</u></p> <p>Could the Department please comment on the rationale for requiring Ministerial approval? Is this because the national standards are part of a national agreement?</p>	Essentially yes, this safeguard ensures the National Standards are adopted, in accordance with the National Partnership Agreement on Improving Teacher Quality, except where otherwise approved by the Queensland Government. AISTL (rather than the QCT) is responsible for developing (or amending) National Standards, endorsed by the Standing Ministerial Council. It is important to ensure that Queensland does not act inconsistently with these agreements.

#### Issue 4: Anniversary letters

Stakeholder	Support/not support	Comments	Department comment
QLS	Not support	<ol style="list-style-type: none"> <li>The anniversary letter process is an important reminder to young people of their right to apply to have an exclusion decision revoked.</li> </ol>	<ol style="list-style-type: none"> <li><u>Effectiveness of anniversary letters</u> The requirement to send anniversary letters is being replaced with a one-off notification about a student's review rights to be given at the time a student is permanently excluded, together with advice through case managers.</li> </ol> <p>The Government has decided that this is a better way to inform students about their review right. It is unclear whether anniversary letters always reach intended recipients as the Department is not always advised of a change of student addresses once case management has ceased.</p> <p>Since 2006, The Department has significantly enhanced case management of excluded students. Regional case managers are appointed to work with all excluded students to facilitate the student's successful re-engagement in education or another eligible option such as TAFE. Case managers also follow up with the student within one month of the student's enrolment in a new school or other education or training program, and again within six months to ensure the student's continued</p>

		<p>Recommends the Committee ask the Department how many letters are sent to children in the care of the state, to understand what effect the amendment might have on those people.</p>	<p>engagement. Case managers are able to assist students and their parents understand their review rights and capacity to seek a revocation of the decision. Case managers also work with Child Safety Officers with children in the care of the State.</p> <p>2. <u>Children in care</u> In 2011, fifty students in the care of the State were excluded at least once. Anniversary letters are sent to students who have been permanently excluded.</p>
QTU	Support	<p>1. Concern QTU wasn't consulted on the proposed amendments.</p> <p>2. Notes in the Explanatory Notes the proposal will "enhance support for front line educational services" and proposes the Government provide details of the ways support of front line educational services will be enhanced.</p>	<p>1. <u>Consultation</u> The proposed changes to Anniversary letters were discussed at the State-wide Behaviour Committee meeting on 23 May 2012. The QTU was represented at the meeting.</p> <p>2. <u>Front line services</u> By not sending anniversary letters each year, regional staff time used for this administrative task will be able to be used for supporting front-line services instead.</p>
QCEC	Neither support nor non-support indicated.	QCEC understands amendment applies to state schools and Catholic schools will adopt their own procedures for exclusion of students.	The amendment applies to state schools only.