

24 September 2012

Ms Rosemary Menkens MP
The Chair
Education and Innovation Committee
Parliament House,
BRISBANE QLD 4000

By post and email: eic@parliament.qld.gov.au

Dear Ms Menkens

**QUEENSLAND CATHOLIC EDUCATION COMMISSION (QCEC)
RESPONSE TO THE EDUCATION LEGISLATION AMENDMENT BILL 2012**

We refer to your letter dated 27 August 2012. The Queensland Catholic Education Commission (QCEC) is grateful for the opportunity to provide comment and recommendations on the *Education Legislation Amendment Bill 2012 (ELA 2012)*.

QCEC is the peak body at state level for twenty-two Catholic school employing authorities with 138 000 students and around 17 000 employees.

The response which follows places a particular focus on the amendments to the *Education (General Provisions) Act 2006* and the *Education (Queensland College of Teachers) Act 2005*.

The QCEC response represents the views of the Commission which have been informed by consultation and advice from the QCEC Student Protection Subcommittee. The members of this subcommittee are senior practitioners from the Catholic school authorities and education officers within the QCEC Secretariat who have a very close working knowledge of the implementation of current legislative requirements in Catholic schools. Formal legal opinion also informs part of this response.

Once again, QCEC wishes to reaffirm that Catholic school authorities are fully committed to ensuring the safety of children and young people in Catholic schools in Queensland. This means that Catholic school authorities are also committed to being fully compliant with all legislative requirements.

In particular, by complying with the accreditation requirements under the *Education (Non-State Schools Accreditation) Act 2001* and the *Education (Non-State Schools Accreditation) Regulation 2001*, Catholic schools in Queensland, together with other non-state school authorities, have extensive accountabilities which go beyond those of the state school sector.

Should the committee require oral input to support or clarify matters raised in this response, QCEC would be pleased to arrange for representatives to address the committee at its convenience.

I commend the following response to the Committee.

A handwritten signature in black ink, appearing to read 'G Power West', with a stylized, cursive script.

Gabrielle Power West

Acting Executive Director

Submission to the Education and Innovation Committee (EIC) of the Parliament of Queensland

Education Legislation Amendment Bill (ELAB) 2012

E-kindy

It is noted that the Bill amends the *Education (General Provisions) Act 2006* (EGPA) to enable State Schools of Distance Education to deliver *e-kindy* to eligible children.

While this provision is essentially a matter for the state sector of education, it is likely that Catholic children may be enrolled in *e-kindy*.

QCEC commends the Parliament for this initiative which will make kindergarten available to children unable to attend kindergarten in a physical setting particularly those in rural and remote areas.

However, QCEC notes that, by putting *e-kindy* under the authority and control of State Schools of Distance Education, there is a distinct possibility that this will create the impression in the minds of parents that this form of kindergarten is a part of formal schooling.

When the Minister is introducing the *ELAB 2012* to the House, QCEC strongly recommends that he makes a clear statement regarding the governance arrangements for *e-kindy* to ensure that parents are very clear about this matter.

This recommendation is offered in the context of the strenuous efforts made by non-state school authorities to emphasise that the governance of a Catholic school is entirely separate from the governance of a kindergarten particularly a non-state kindergarten.

It is also noted that in Part 2 of *ELAB 2012*, Clause 3(1) amends section 9 of the *Education and Training Legislation Amendment Act 2011* to ensure the requirement to report the likelihood of future sexual abuse under section 365A of the *EGPA* applies to children registered in *e-kindy*.

Later in this submission, detailed comments will be offered in relation to the section of *ELAB 2012* which deals with *mandatory reporting of sexual abuse*. However, at this point it is noted that this requirement of staff to report likelihood of future sexual abuse will place a burden on them to establish the grounds on which they should report which is different and greater than the significant burden placed on staff in a face-to-face setting.

It is recommended that the EIC seek clarification regarding the staff professional development resources, unique to a distance education setting, which will be developed by the department of Education, Training and Employment (DETE) to enable staff to discharge this responsibility.

National Professional Standards for Teachers

It is noted that, under the *Education (Queensland College of Teachers) Act 2005* (QCT Act), the Queensland College of Teachers (QCT) has a function to develop, maintain and amend professional standards and the QCT has developed the *Professional Standards for Queensland Teachers* (the Queensland Standards).

The QCEC welcomed the decision of Education Ministers to endorse the *National Professional Standards for Teachers* (National Professional Standards) developed by the Australian Institute for Teaching and School Leadership (AITSL) in December 2010.

QCEC supports the amendment to the QCT Act contained in ELAB 2012 which will facilitate the QCT adopting the National Professional Standards in lieu of the current Queensland Standards.

Mandatory reporting of sexual abuse

QCEC was actively involved at a number of stages of the development of the *Education and Training Legislation Amendment Act 2011* which amended the *EGPA* to expand existing reporting requirements so that staff members of state and non-state schools are required to report to the police suspected sexual abuse perpetrated by any person, not just employees, as well as a likelihood of future sexual abuse.

During this period, QCEC supported the widening of the legislation to include suspected sexual abuse perpetrated by any person but expressed serious concern about the practical issues around reporting the likelihood of future sexual abuse. In particular, QCEC recognises the significant challenges around staff establishing the grounds on which they will decide to make a report.

In pre-legislation negotiations, DETE and the Minister of the day sought to allay this concern by advising that the *ETLA 2011* would include a clause stating that no penalty was prescribed for failing to report a likelihood of future sexual abuse under new sections 365A and 366A. It was stated that this would mitigate concerns that the risk of criminal sanction would increase reporting of inappropriate low level matters.

While QCEC still had some reservations, it accepted that the relevant section of the *ETLA 2011* 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.

QCEC accepts Clause 4 of ELAB 2012 which amends section 11 of the *Education and Training Legislation Amendment Act 2011* to insert new subsection 366A (9) into the *EGPA* to clarify that section 204 of the *Criminal Code* does not apply to a staff member of a non-state school who fails to report a likelihood of future sexual abuse under section 366A. Viz “To remove any doubt, a person who omits to do an act required under this section does not commit an offence against this or another Act”.

QCEC understands that these new subsections 365A (10) and 366A (9) provide that a person does not commit an offence under the *EGPA*, or another Act, only because the person fails to report a likelihood of sexual abuse under section 365A or 366A.

It is also QCEC’s understanding that this provision aims to clarify that the failure to report a likelihood of future sexual abuse under section 365A or 366A is not a misdemeanour under section 204 of the *Criminal Code*.

QCEC notes that as was the original intention, a failure to report may be dealt with by means other than criminal sanction, such as disciplinary action by the employing authority, in appropriate circumstances but this does not appear to be stated specifically in the legislation.

Therefore, QCEC strongly recommends that it would be prudent that, when introducing the legislation to the Parliament for further debate, there would be specific reference to the Government's intention that a person's failure to comply with the section be addressed by disciplinary processes managed by their employer and/or professional body. Such a statement recorded in Hansard would be very useful should any dispute arise in the future as this could be a reference for seeking clarity regarding the Parliament's intentions.

Previous advice from officers of DETE indicates that the anticipated commencement date for this particular amendment would be January 2013.

QCEC strongly recommends that the commencement date is no earlier than January 2013 to allow school authorities sufficient lead time to advise school staff of the change in their reporting responsibilities and conduct the obligatory training in the processes for reporting sexual abuse and likely sexual abuse.

QCEC wishes to draw attention to the considerable issues which arose, firstly over the need to amend written processes for reporting and the related training when the ETLA 2011 was passed and secondly, when the ETLA 2011 was found to be deficient in the matter of the intention that '*a person who omits to do an act required under this section does not commit an offence against this or another Act*'.

Compliance issues regarding student protection legislation in Queensland are serious and complex with regard to the resources demanded of school authorities, the consequences for staff who fail to comply and, most importantly, their capacity to create safe school communities.

QCEC strongly recommends that when the Parliament is considering any form of student protection legislation that the time-frame for developing such legislation should never be rushed and always be subjected to the established parliamentary processes in a timely way. The responsibility of those charged with drafting legislation and those who are required to provide sound legal advice to Government should never be compromised by expediency.

Anniversary letters

QCEC notes that the *ELAB 2012* seeks to amend the *EGPA* in relation to the matter when state school students are notified about the decision to permanently exclude them and they are advised about their right to periodically seek a revocation of the decision.

It is understood that the *ELAB 2012* seeks to remove the requirement to send anniversary letters to persons who have been permanently excluded who will continue to have the right to seek a revocation of their exclusion each year until they turn 24 years of age.

QCEC understands that this amendment relates specifically to state schools and Catholic schools will adopt their own procedures for exclusion of students.