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Office of the President

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Research Director
Education and Innovation Committee
Parliament House
George Street
BRISBANE QLD 4000

Our ref 337/19

Dear Research Director

Education (Strengthening Discipline in State Schools) Amendment Bill 2013

Thank you for providing Queensland Law Society with the opportunity to comment on the *Education (Strengthening Discipline in State Schools) Amendment Bill 2013* (the Bill).

Please note that in the time available to the Society and the commitments of our committee members, it is not suggested that this submission represents an exhaustive review of the Bill. It is therefore possible that there are issues relating to unintended drafting consequences or fundamental legislative principles which we have not identified.

We make the following comments for your consideration.

1. **Clause 9 – Replacement of ch 12, pt 1**

Detention on a non-school day

This section introduces a new legislative basis for student discipline and the policies surrounding student discipline. We note that the proposed s275(2) forms the basis for student discipline to be carried out after school hours and on a day other than a school day. We consider there should be strict parameters around detention, particularly with regard to detention on a non-school day or "Saturday detentions". Given that schools will largely be closed on Saturdays provision may need to be made for emergency situations, to ensure that a child subject to a Saturday detention is adequately protected and supervised.

We consider that there should be an obligation on the principal to confirm the carer of the child is made aware of any proposal to detain a child on a Saturday to ensure that the child can be safely transported to and from school at pre-arranged times. We also submit that there should be opportunities for the parents to raise objection to a Saturday detention where previous commitments of the child would be disrupted.

We note there may be practical issues faced by principals relating to communication with separated families. We submit that it is important to place an obligation on principals to communicate with the parent or guardian with whom the student was due to be on the day of the proposed detention.

The Society considers that compliance with Saturday detention may be difficult for children and their families who live in regional and remote areas. In such areas, many children travel to the nearby town by a school bus that only operates on school days. We submit that it is not reasonable to expect that parents should drive children a substantial distance to school on Saturday. We also query how this provision will take into account the practicalities for families who rely solely on public transport given that it may not operate on weekends, or may operate less frequently. More generally, we query if punishment may follow where a child is unable to attend a Saturday detention through no fault of their own. We suggest that policy or legislation should establish processes to ensure that additional punishment is not imposed on these students.

We submit that any changes to the legislation should place parameters around the conduct of Saturday detention and the requirements that must be complied with to ensure the safety of the child. Additionally, we consider the legislation should ensure provision is made for emergency situations, adequate staffing levels, workplace health and safety issues and that the child's safety is paramount.

Alternatively, we note that under proposed s276 this is an area that may be a matter for the chief executive to establish through policy and procedure. The Explanatory Notes state:

> While the Bill does not prescribe the types of disciplinary interventions or how they are to be imposed, it will enable the Director-General of the Department of Education, Training and Employment (DETE) to make policies or procedures that provide guidance about how principals should control and regulate discipline. The policy and procedures will not be used to force particular disciplinary action on principals. Rather, they will guide principals to adopt appropriate processes that ensure adherence to natural justice principles and protect the safety and wellbeing of students and staff. The Bill clearly expresses the power to make policy or procedures about detention (conducted by principals or teachers), community service interventions, discipline improvement plans and other matters the Director-General considers appropriate. The Bill requires that principals comply with any policy or procedure made by the Director-General.[1]

The Society would welcome consultation as part of the development of these policies or procedures, particularly as they are relevant to ensure principles of natural justice are present as part of the disciplinary process. We would encourage parameters as previously contained in Chapter 12, pt 2, to be similarly implemented.

Community service

The Explanatory Notes state that "the Bill provides clear authority for Community Service Interventions, actions under a Discipline Improvement Plan and detention to be performed on a non-school day, for example a Saturday" (proposed s276(2)).

[1] Explanatory Notes, *Education (Discipline in State Schools) Amendment Bill 2013,* p.3.

There is no further information contained in the Bill regarding the operation and role of either of these disciplinary measures. We note that parameters and processes should also apply to Community Service Plans or actions under a Discipline Improvement Plan. We note the explanatory notes indicate "participation is dependent on the cooperation of students and parents." We consider this policy should be clearly stated either within the legislation or policy and procedures established by the chief executive.

2. Clause 10 – Omission of ch 12, pt 2

As discussed above, we note that the omission of chapter 12, part 2 removes the parameters around detention. The legislation previously ensured that students were not detained for over 20 minutes during school lunch recess or one-half hour after the school program for the day is finished.[2] We also note that periods of detention to be served after school previously required a teacher or principal to inform a parent of the child of the proposed period of detention before it is imposed.[3]

We consider these parameters are important in ensuring that detention is imposed in a reasonable way which does not interfere with a child's ability to get safe transportation home and for parents or carers to be informed about the child's whereabouts. We consider that a parent or guardian should consent to after school or non-school day detentions or at least be consulted with regard to this type of detention. Given there is no discussion in the amending legislation around these parameters, we reiterate the above submission that this is an area which requires strict parameters under legislation or policy issued by the chief executive. We suggest this policy should also state appropriate timeframes and requirements for communication with parents or carers before detention is enforced. The Society would welcome the opportunity to be consulted regarding proposed parameters around disciplinary timeframes.

3. Clause 12 – Replacement of ch 12, pt 3, divs 1 to 3

Grounds for suspension – charge-related grounds

The Society notes the expansion to the grounds of suspension includes the introduction of a ground for suspension on "charge-related grounds" where the student is charged with a serious offence. Furthermore, proposed s282(2) notes that it is ground for suspension if:

> *(a) The student is charged with an offence other than a serious offence; and*
>
> *(b) The principal is reasonably satisfied it would not be in the best interest of other students or of staff for the student to attend the school while the charge is pending.*

The Society is concerned that this empowers a principal to make a decision based on behaviour that occurs beyond the school gates which may be entirely unrelated to conduct affecting the school. We are also particularly concerned that this suspension can occur when a student is charged with an offence, rather than on the basis of a conviction. This is inconsistent with the presumption of innocence. There have been no decisions on the facts of any allegations being made at the stage of a student being charged, and a suspension can

[2] *Education (General Provisions) Act 2006,* s283(3).

[3] *Education (General Provisions) Act 2006,* s283(4)

adversely affect the student, especially if charges are later dropped or the student is not convicted.

We note the application of both the *Youth Justice Act 1992* and the *Bail Act 1980.* Under the *Youth Justice Act 1992* a court or police officer must consider the need to ensure that if the child is released, the child will not, for example, commit an offence or endanger anyone's safety or welfare. Further, we note s48 of the *Youth Justice Act 1992* sets out a number of considerations for the court or police officer with regard to bail or other related matters. The court or a police officer is required to consider the safety of others as part of the decision for a person to be released on bail. There are also strict requirements that must be complied with for the alleged offender who is granted bail. Given these provisions in legislation related to youth justice matters, we question the need for the creation of a ground of suspension arising from a student's contact with the youth justice system.

The *Youth Justice Act* also includes a requirement that the court or police officer deciding whether to grant a young person bail should have regard to "the child's character, criminal history and other relevant history, associations, home environment, employment and background." Our members report that it is often a condition of bail that an accused child continues to attend school. For example, a Judge may take into consideration school and wider community ties, positive school peer associations and knowledge that a child will be adequately supervised throughout school time when making a decision to grant bail. Any decision to suspend a student on such grounds will lead to further isolation of the child by removing them from formal school ties. Further, such a decision may undermine a judicial decision regarding bail conditions crafted to reinforce a young person's engagement with education and their community, thereby reducing the risk of future offending.

Out of school conduct

We note that the grounds a principal may consider for suspension and exclusion are broadened by the proposed sections 282 and 292. Further, sections 282 and 292 each note under subsection 3 that:

> *To remove any doubt, it is declared that, for subsection (1)(c) or (d), conduct may be a ground for suspension even if the conduct does not happen on school premises or during school hours.*

We consider a principal may make a decision without the relevant facts, through no fault of their own, given that the conduct may have occurred in a private circumstance and without proper investigation. We suggest that it is important for a person to be given the opportunity to inform the principal's decision-making, particularly in light of s3(b) of the *Legislative Standards Act 1992* which provides that legislation should be consistent with principles of natural justice.

Additionally, the Society notes that the wording in s289(1) is somewhat ambiguous and could be drafted more clearly to reflect the meaning of the provision.

Increase in period of short suspension

Proposed s283(a) doubles the period allowable for a short term suspension from five to 10 days. We note that the section does not allow the student or parents to make a written submission against the suspension to the chief executive until the period of suspension is over 10 days.

We consider this does not sufficiently balance the importance of natural justice considerations for the student and their family with the needs of other students and the principal's power to manage the good order of the school. The Explanatory Notes, when addressing these changes, refer to the reduction of administrative burden on principals. We submit that the administrative burden on the state is a justifiable cost given the substantial impact of the decisions on affected students and their families. A suspension of up to 10 days has the effect of excluding a student, not only from their education but also their social support network, for a significant period of time. We therefore respectfully suggest that alternative ways of reducing the administrative burdens on school principals should be considered. We acknowledge that there are competing needs of other students to be considered, along with the young person being suspended. However we do not consider that a fair and transparent process, which supports a student's understanding of and engagement with school decisions that affect them consistent with the guiding principle of the Act found in section 7(c) affects the competing needs of other students at the school.

Exclusion

As noted above regarding suspension, the Society is concerned by the introduction of a basis for exclusion where a child or young person is convicted of an offence. We submit that further opportunities should be made available for alternative schooling arrangements. We note that for both suspensions and exclusions, the proposed legislation states that the principal or chief executive "must take reasonable steps to arrange for the student's access to an education program" during the suspension or exclusion. In the existing legislation, the principal (or chief executive) "must arrange for the student's access to an education program" that allows the student to continue their education in the following circumstances:

- If a student of a State school is suspended from the school for more than 5 days[4];
- If the principal suspends a student under s288C (Notice proposing exclusion and suspension pending final decision about exclusion)[5];
- If the principal suspends a student under s290 (Recommendation for exclusion and suspension pending final decision about recommendation)[6].

The Society is concerned that the proposed changes diminish the requirement placed on the education system to ensure students continue to engage with education. We suggest that the legislation should operate to ensure that students are able to participate in alternative

[4] *Education (General Provisions) Act 2006*, s286(2)

[5] *Education (General Provisions) Act 2006*, s288D

[6] *Education (General Provisions) Act 2006*, s291

schooling throughout suspensions or following exclusions. Our members report that places for students to participate in alternative schooling arrangements are limited, meaning many students may be left without educational opportunities.

Timeframes

We note that the Bill removes a number of formal requirements of timeframes for processes to be completed. For example, proposed s283 states:

> *(2) The suspension starts when the principal tells the student about it.*
> *(3) As soon as practicable after telling the student, the principal must give the student a notice in the approved form about the suspension.*

Similarly, s283(3) states "*as soon as practicable*" after telling the student and the principal, the chief executive must give each of them a notice in the approved form about the decision. The previous requirement under s288(2)(b) required that this be provided within seven days. This is also the case under s295(2)(b) regarding exclusion decisions.

Proposed s286(1) states that the chief executive must review the principal's decision to suspend the student "*as soon as practicable*." The requirement under s288 of the existing Act required a principal's supervisor to immediately consider the decision.

There are further sections which remove the timeframes for compliance, and we suggest that it may be more appropriate to impose specific timeframes given the importance of such decisions and the need for timeliness.

Notification procedure change – written submissions

A number of sections in the Bill change the provisions regarding how notice is provided and the process required to be followed.

The current *Education (General Provisions) Act 2006* also requires that the principal give the student a notice stating that the student is suspended, the reason for the suspension and the period of the suspension.[7] Proposed s293 states the process for exclusion and that the notice must be in the approved form. Similarly we note that the previous section regarding a show cause notice for cancellation of enrolment of students above compulsory school age required the notice to contain:

> *(a) The action the principal proposes taking*
> *(b) The grounds for the proposed action*
> *(c) An outline of the facts.*

We note that under proposed s300 it is not clear whether parents are notified about the suspension or exclusion continuing. We consider there is a need for principals to ensure that information regarding suspension and exclusion is communicated to the parent or carer and the communication is not the role of the child or young person.

The Society accepts that the legislation aims to reduce the red-tape and administrative burdens on principals. However, we consider that any notice must contain details about the grounds and facts on which the principal and school rely upon for the basis of the disciplinary action. The Society consider that the right of review and right to reasons are fundamental

[7] *Education (General Provisions) Act 2006* s285

components of natural justice, including retaining meaningful opportunities for the views of young people and their families to be canvassed. Written communication regarding decisions will reduce the possibility of misunderstanding and allow students and their families an opportunity to give a considered response. This is particularly important in light of the inherent power imbalance that exists between a student and a decision-maker in a position of authority, and also the lack of funding for young people to access support during a meeting process.

Appeals, submissions, streamlining process

The Bill amends the process for appeals and submissions which were previously provided to the principal's supervisor, and introduces the process that appeals will go to the Director-General of the Department for consideration. The Society can see the benefit in having the Director-General consider appeals. We consider that the process that exists under the current *Education (General Provisions) Act* can be a complicated process that may be difficult for young people to comprehend, and we support the simplified process. In line with these changes we consider this presents opportunities for comparison between the outcomes for different young people being suspended or excluded from schools and ensuring that policies across schools are relatively consistent in their responses to disciplinary issues. We would welcome further amendments to legislation and policies that ensure that children are being treated equally and have suitable appeal rights. We note that an inquiry by the Australian Law Reform Commission recommended:

> *National standards for school discipline should be developed setting out the permissible grounds for exclusion and the processes to be followed when a government school proposes to exclude a student.*[8]

In line with these comments, we note our general position is that there should be wider powers for an external body, such as the courts or QCAT, to independently review decisions such as exclusions, which can have a significant impact on young people's engagement with education. Our members have reported that young people who are excluded often do not know their rights in relation to the review process or have adequate support to undertake an appeal or submission.

Support persons

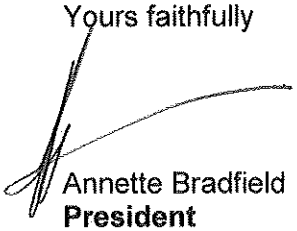
The Society is aware that there is very limited funding available for legal representation to assist young people in navigating reviews of decisions in this jurisdiction, which can be quite complex. We consider that it is important for the legal rights of children to be protected through the provision of adequate legal support in disciplinary proceedings. We also consider that provision should be made to allow a child to have an independent support person, parent or guardian present should they wish to at any stage in the disciplinary process. The Society suggests that better support will lead to more effective and streamlined processes. We consider this should be improved as part of the focus on reducing the number of suspensions and exclusions in a manner consistent with the safety of all students.

Thank you for providing the Society with the opportunity to comment on the Bill. For further inquiries, please contact Policy Solicitor, Ms Raylene D'Cruz on [redacted] or

[8] ALRC Report No. 84 (1997) "Seen and heard: priority for children in the legal process" available from: http://www.alrc.gov.au/publications/report-84

[redacted] or Graduate Policy Solicitor, Ms Jennifer Roan on [redacted] or

Yours faithfully



Annette Bradfield
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