

# **Education (Strengthening Discipline in State Schools) Amendment Bill 2013**

## **QTU Submission to the Education and Innovation Committee**



## **INTRODUCTION**

1. Established in 1889, the Queensland Teachers' Union (QTU) has over a century of achievement in serving teachers throughout Queensland. In 2013 the QTU is the voice of 44,000 teachers in the Queensland Government's primary schools, secondary schools, special schools, senior colleges, TAFE colleges and other educational facilities.
2. This submission, in response to the *Education (Strengthening Discipline in State Schools) Amendment Bill 2013*, (the Bill) is made to the Education and Innovation Committee following consultation with QTU's supreme decision making body, State Council; a body that consists of elected branch delegates from around the state, representing diverse geographic and educational backgrounds. The submission is endorsed by QTU's Executive.
3. The QTU believes that schooling has a social purpose, to help young people become socially responsible contributors to Australian society, strengthening it as a society that is cohesive, democratic, and culturally rich and diverse. Public schooling should provide a quality education in a safe, caring and supportive environment in which there is mutual respect for the welfare, rights and dignity of students, teachers and parents/carers.
4. The QTU believes that unacceptable and inappropriate behaviour in mainstream schools needs to be addressed to satisfy the professional desire to provide the best learning opportunity to the individual student and the cohort of students as well as meeting the industrial goal of ensuring safe working conditions for QTU members.
5. The QTU believes that behaviour which disrupts the learning environment should be viewed with concern by the community if it interferes with the rights of students to take full benefit from their years of schooling. No student should be denied the opportunity to learn and socially develop because of disruptive behaviour. However, the QTU also recognises that a range of socio-cultural factors, beyond the immediate control of individual students can have a profound effect on student behaviour.

## **BACKGROUND TO THE BILL**

6. The existing legislative regime is the result of legislative changes made by the former state government to the Education (General Provisions) Act 2006. These changes included introducing new powers for a principal to exclude a student. As a key stakeholder, the QTU was consulted and supported these amendments.
7. The subsequent Departmental Policy and Procedure that was put in place balanced the rights, welfare and dignity of the school administrators, teachers, and wider student body as well as the rights, welfare and dignity of the individual student/s being excluded and their family.
8. One of the policy objectives of the Bill is "reducing administrative burdens", elsewhere described as "streamlining processes and reducing red tape". The QTU is informed that the Bill seeks to achieve this objective by removing legislative prescription around for example, behaviour management plans, behaviour improvement conditions and a range of timelines from the legislation.
9. However, proposed section 276 in clause 9 provides for the chief executive to make policy and procedure about the ways in which principals and schools regulate student discipline. Subsection (4) of the proposed section requires the principal to comply with policy and

procedure. Subsection (2) allows the policy or procedure to provide for detention, performance of community service, discipline improvement plans and any other matter considered appropriate by the chief executive. The discipline audit tool currently being piloted by the department expects clear statements of expectations endorsed by the community akin to behaviour management plan.

10. It is not possible for the QTU to make a complete submission on the proposals let alone the removal of administrative burdens or “red tape”, without the proposed policy or procedure. The QTU has sought access to the policy or procedure, as we understand the Committee has, but it has not been received at the time of this submission.
11. The QTU reserves the right, therefore, to amend the positions in this submission and to make further submissions if time allows in the light of the Department’s policy and procedure when it is available.

### **PURPOSE OF THE BILL**

12. The QTU understands that the purpose of the *Education (Strengthening Discipline in State Schools) Amendment Bill 2013* is to:
  - Provide Queensland state school principals with stronger disciplinary powers and more flexibility and autonomy around the making of discipline decision;
  - Bolster the grounds for suspension and exclusion; and
  - Reduce administrative burdens to enable quick and firm responses to problem behaviour.<sup>1</sup>

### **KEY ELEMENTS OF THE BILL THAT THE QTU SUPPORTS**

13. The QTU acknowledges a number of changes proposed by the Bill that may go toward enhancing discipline in Queensland state schools.

#### **REDUCTION OF RED TAPE**

14. One of the policy objectives of the Bill is “reducing administrative burdens<sup>2</sup>”, elsewhere described as “streamlining processes and reducing red tape<sup>3</sup>”. The QTU supports the apparent reduction of red tape within the Bill.

#### **TIMEFRAMES FOR PRINCIPALS**

15. The Bill includes improved timeframes for principals with respect to responding to issues around suspension and exclusion. The Bill simplifies processes with regards to communication with students and their parents.
16. The QTU believes that the timeframes in the Bill reduce administrative burdens around suspension and exclusion processes.

#### **CRITERIA FOR SUSPENSION AND EXCLUSION**

17. The Bill includes enhanced specification of criteria that can be used for suspension and exclusion of students from Queensland state schools. Section 284 of the existing

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<sup>1</sup> *Education (Strengthening Discipline in State Schools) Amendment Bill 2013*, Explanatory Notes, (p. 1)

<sup>2</sup> *Education (Strengthening Discipline in State Schools) Amendment Bill 2013*, Explanatory Notes, (p.1)

<sup>3</sup> *Education (Strengthening Discipline in State Schools) Amendment Bill 2013*, Explanatory Notes, (p.4)

legislation cites three 'Grounds for suspension of student'. The Bill expands this list to seven, adding:

s282(1)(c) conduct that adversely affects, or is likely to adversely affect, other students;  
 s282(1)(f) the student's attendance at the school poses an unacceptable risk to the safety or wellbeing of other students or of staff; and  
 s282(4) charge-related ground.

18. Similarly, section 288B of the existing legislation cites four 'Grounds for exclusion of student by principal'. The Bill expands this list to seven, adding:  
 s292(1)(d) conduct that adversely affects, or is likely to adversely affect, the good order and management of the school;  
 s292(1)(e) the student's attendance at the school poses an unacceptable risk to the safety or wellbeing of other students or of staff; and  
 s292(2)(a) the student has been convicted of an offence.
19. The QTU supports the enhanced specification of criteria to be used for suspension and exclusion of students from Queensland state schools.

#### **GOOD ORDER AND CONDUCT**

20. The QTU broadly supports changes within the Bill that make it explicit that actions outside of the school can be taken into account to determine their impact on the good order and conduct of the school. However, while recognising this as a positive, the QTU is conscious that schools should not be viewed as having a role in managing students' lives and issues with behaviour outside of school, which should primarily be managed by parents of caregivers.

#### **LIMITATIONS OF THE BILL**

21. The QTU believes that there are a number of key issues arising from the *Education (Strengthening Discipline in State Schools) Amendment Bill 2013* that the Committee should be made aware of.

#### **NATURAL JUSTICE**

22. The QTU acknowledges the Explanatory Notes state that,  
 "Natural justice principles will remain at the forefront of good decision making about disciplinary actions. The Bill requires principals to comply with DETE policy and procedure, which will ensure that decision makers follow due process and adhere to natural justice principles."<sup>4</sup>
23. The QTU notes that the Departmental Policy and Procedure will need to ensure that state school principals are guided through all matters related to this Bill to ensure that the principles of natural justice are followed.
24. The QTU also believes that the department will need to ensure that principals receive appropriate training before implementing the new powers and that beginning principals should receive ongoing mentoring and support.

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<sup>4</sup> *Education (Strengthening Discipline in State Schools) Amendment Bill 2013*, Explanatory Notes, (p.9)

### **DOUBLE JEOPARDY**

25. Section 282 of the Bill proposes to give principals the power to suspend students on charge-related grounds. The QTU expresses concern for principals around action pertaining to double jeopardy and for the legal rights of our members who might suspend a student on charge-related grounds who is later found not-guilty by the courts.

### **RED TAPE REDUCTION**

26. The QTU reaffirms support for the apparent reduction of red tape in the Bill. On the other hand, some of these provisions reappear as issues to be addressed by new Departmental Policy and Procedure. For example, while the requirement for principals to ensure that there is an approved behaviour plan for the school (s276) is omitted from the Bill, the Explanatory Notes state that,
- “a behaviour plan will remain an essential management tool for school communities to agree on appropriate standards of behaviour. The requirement that schools have a plan that describes the proactive approach to managing behaviour is retained in DETE’s new policy and procedure.”<sup>5</sup>”
27. From an operational point of view, the Discipline Audit Tool considers a school’s behaviour plan in Domains A and D.

### **CONTINUING EDUCATION DURING SUSPENSION**

28. Section 286 of the existing legislation requires that, in the case of a 1-5 day suspension, “principals must take reasonable steps to ensure that the student is given school work to complete during the suspension.” Section 284 of the Bill states that, “A principal who suspends a student must take reasonable steps to arrange for the student’s access to an educational program that allows the student to continue the student’s education during the suspension.” Arranging for access to an education program was previously a principal responsibility in the case of a student being suspended for 6-20 days. Between Term 3 2011 and Term 2 2012, 11.5% of suspension were long suspensions<sup>6</sup>, that is 6-20 day suspension. This Bill increases the Principal’s responsibility to arrange for access to an educational program from 11.5% of suspensions to 100% of suspensions.
29. The QTU notes the irony of increasing the responsibility for principals to arrange for the student’s access to an education program given the LNP state government’s cuts to government and non-government organisations throughout Queensland who were facilitating programs like *Get Set 4 Work*.
30. The QTU understands that the state government is presently engaged in an audit of alternative education programs across the state with the view to identifying gaps in service provision.
31. The QTU State Budget Submission (2013-14), citing the Department’s website, stated that,
- “There are 15 PLCs in Queensland located throughout the regions. Major regional centres such as Maryborough, Kingaroy, and Emerald

<sup>5</sup> *Education (Strengthening Discipline in State Schools) Amendment Bill 2013*, Explanatory Notes, (p.5)

<sup>6</sup> DETE. (2013). *School Disciplinary Absences 2011-12*, (<http://deta.qld.gov.au/publications/annual-reports/11-12/pdf/school-disciplinary-absences.pdf>)

have no facilities. There are no PLCs in any community West of Toowoomba.<sup>7</sup>”

### **PERSISTENT DISOBEDIENCE**

32. Section 292 of the Bill cites ‘Grounds for exclusion’ that include s292(1)(a) persistent disobedience. The QTU notes that under s289(1)(a) of the existing legislative regime, grounds for exclusion are “disobedience by the student.”
33. The QTU believes that the addition of the word “persistent” will mean that school communities will be required to maintain records of disobedience and that may result in less streamlined processes as principals or the chief executive will be required to collate, analyse and cite examples of disobedience to establish the case of “persistence”.

### **DETENTION**

34. The QTU acknowledges the increased level of autonomy that is given to principals with the removal of s283 from the existing legislation that relates to Detention. On the other hand, the QTU is opposed to the notion of Saturday detention, suggested in the Minister’s First Reading Speech<sup>8</sup>.
35. The QTU opposes any change to teachers’ working conditions that would involve supervising detentions outside of rostered duty time. The Teachers’ Award – State 2012 states that:
  - a. s6.7.1(a) Rostered duty time will commence no earlier than 8:00am and conclude no later than 5:00pm; and
  - b. s6.7.1(c) The weekly rostered duty time may be worked over less than 5 days Monday to Friday.

### **DISCIPLINE IMPROVEMENT PLANS**

36. The QTU understands that Discipline Improvement Plans (DIP) will become a new behaviour management tool under new Departmental Policy and Procedure. However, whereas failure to comply with the terms of a BIC are grounds for exclusion under the existing legislation, information on DIP included in the Bill’s Explanatory Notes, does not state that enrolment is conditional on compliance with the terms of a DIP.<sup>9</sup>
37. The QTU believes that non-compliance with a Discipline Improvement Plan should be added to the legislative Grounds for suspension (s282); Grounds for exclusion (s292); and (s317) Ground for cancellation.

### **COMMUNITY SERVICE INTERVENTIONS**

38. The Bill’s Explanatory Notes also introduce Community Service Interventions (CSI)<sup>10</sup>. The QTU expresses concern for the legal rights of principals and teachers when a student is injured while undertaking a CSI, particularly if the student is in the care of a host organisation in their local community.

<sup>7</sup> QTU. (2013). *QTU State Budget Submission 2013-14*, (p.32)

<sup>8</sup> Langbroek, MP, J-P. (2013) Education (Strengthening Discipline in State Schools) Amendment Bill, *Queensland Parliament Hansard*, 20 August 2013.

<sup>9</sup> Education (Strengthening Discipline in State Schools) Amendment Bill 2013, Explanatory Notes, (p.3)

<sup>10</sup> Ibid

39. Furthermore the QTU notes concern for the well-being of QTU members supervising a student undertaking a CSI. The QTU notes that such members may become susceptible to vexatious claims.
40. The QTU reaffirms its opposition to any changes to teachers' working conditions that would involve supervising CSI outside of rostered duty time.
41. The QTU reaffirms its position that the Departmental Policy and Procedure will need to be available to guide principals and ensure that natural justice is afforded to students. In particular, the QTU draws the committee's attention to the *United Nations Convention on the Rights of a Child*<sup>11</sup>:
- Article 3.1 *In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*
- and
- Article 28.2 *States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.*

#### **REQUIRED CLARIFICATIONS OF THE BILL**

42. The QTU believes that the Bill will create new and significant implications for principals and school leaders. The QTU calls for the department to engage with education stakeholders, including the QTU, to consider the implications for principals and school leaders and to work with stakeholders to develop a training package to provide ongoing support and mentoring for principals and school leaders. Further, the QTU calls on the department to ensure that new principals and school leaders receive appropriate professional development and mentoring.
43. The QTU is concerned with the legal implications of the new language that is inserted into Chapter 12, part 1 of the Bill. The existing legislation states that principals have a strategic obligation to ensure appropriate plans are in place for their school whereas s275(1) of the Bill states that, "The principal of a state school must control and regulate student discipline in the school." This new language could be interpreted as principals being responsible, not just for strategic planning, but for day to day actions of all students. For example, if student A punches student B, to what extent is the principal responsible for not having 'controlled and regulated' student A?
44. The new language adds to the perception that schools, not communities, are responsible for behaviour. This perception is further fuelled by the introduction of principals or the chief executive, on behalf of the school, suspend or exclude based on a charge-related offence committed outside of the school.

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<sup>11</sup> United Nations. (1989). *Convention on the Rights of the Child*. General Assembly Resolution 44/25.



## **QTU POSITION**

45. The QTU believes that there are many steps that the state government should allocate funding to that will assist schools deal with discipline problems. The state government should act immediately to provide funding to:
- Reinstate 200 resource teachers whose positions were removed from state high schools;
  - Recognise the unique role of guidance officers for the identification of specific learning difficulties and the modification of extremely maladaptive behaviour;
  - Implement QTU class sizes policy;
  - Equip all schools with withdrawal room facilities for students who persistently misbehave, and provide adequate staffing for withdrawal room supervision;
  - Provide behaviour management personnel in all schools (one male and one female) to assist teachers and students with behaviour management issues;
  - Provide additional staffing and resources to develop programs that address the links between poor academic achievement and inappropriate student behaviour, or that cater for students at risk of disengaging from education;
  - Review investigation guidelines to ensure that teachers and principals are not harassed through vexatious and malicious complaints; and
  - Require students who are suspended to demonstrate a clear understanding both of how they transgressed the school code of behaviour and an action plan outlining behavioural choices that they will make should a similar situation arise in the future.
46. The QTU also notes that the additional resources that would have flowed from the Gonski funding model would have empowered local schools to put in place real and meaningful preventative measures to address student behaviour. The state government's failure to secure the additional Gonski resources is a failure to support schools in managing discipline.

## **SUMMARY**

47. The QTU believes that the *Education (Strengthening Discipline in State Schools) Amendment Bill 2013* does provide more flexibility and autonomy around the making of discipline decisions that, without appropriate guidance, has the potential to increase litigation against principals by students and their parents/guardians who believe that they have been denied natural justice.
48. The QTU believes that the Bill does bolster the grounds for suspension and exclusion and supports the enhanced criteria for suspension and exclusion. The QTU reaffirms its commitment to work with other stakeholders and the department to ensure that appropriate Departmental Policy and Procedure is developed to balance the rights, welfare and dignity of the school administrators, teachers, and wider student body as well as the rights, welfare and dignity of the individual student/s being excluded and their family.
49. The QTU believes that the *Education (Strengthening Discipline in State Schools) Amendment Bill 2013* does reduce administrative burdens through legislation, however this submission has cited instances of the burdens reappearing as Departmental Policy and Procedure.