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YOUTH ADVOCACY CENTRE INC

to the

EDUCATION AND INNOVATION COMMITTEE
of the
QUEENSLAND PARLIAMENT

Regarding the
EDUCATION (STRENGTHENING DISCIPLINE IN STATE SCHOOLS) AMENDMENT BILL 2013

SEPTEMBER 2013

The Youth Advocacy Centre Inc (YAC) has been operating for over 30 years and offers free, legal services, youth support and family support assistance and services to young people generally 10 years to 18 years (inclusive), particularly those who are in, or are at risk of being in, the youth justice system or the child protection system, and who live in or around Brisbane. It provides support on a limited basis to those under 10 and over 18 years of age and to young people outside of Brisbane via telephone, website and publications.

All services offered are voluntary and confidential. This means that YAC staff only work with a young person if they want to work with YAC staff and no contact is made with anyone (eg families, teachers, police, other adults) without the young person's permission (unless there is a risk of serious, immediate harm to the young person or someone else).

In any dealings with a young person, YAC is guided by the Convention on the Rights of the Child, in particular:

- the right of young people to be treated equally irrespective of "colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status";
- the right of a young person to have an opinion and to be heard in all matters affecting the young person; and
- the best interests principle to include consideration of the views of the young person.

Contact: Ms Janet Wight
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The Youth Advocacy Centre Inc (YAC) is supportive of all children having the greatest opportunity to receive an education in a safe and supportive environment. One of the basic tenets of Australian society is that all children have a right to education. Australia has affirmed this right by ratifying the International Covenant on Economic, Social and Cultural Rights (1966), the United Nations Convention on the Rights of the Child (1989) and the UNESCO Convention against Discrimination in Education[1]. The 2008 Melbourne Declaration, signed by all States and Territories, notes that:

> Improving educational outcomes for all young Australians is central to the nation's social and economic prosperity and will position young people to live fulfilling, productive and responsible lives.

The need for the legislative amendments

The Raising Children Network reminds us that teenagers test the limits.

> To start with, teenagers have the job of developing into independent adults. One way they do this is to test boundaries, and then see how others react to their behaviour. This teaches them what the social expectations are. As they receive feedback, they learn what's expected.
>
> On top of this is the way teenage brains work. Adults rely mostly on the logical, rational parts of their brain (the frontal lobe). But because of the way their brains are developing, teenagers rely heavily on the emotional parts. Teenage brains are wired to pick up emotional cues, so teenagers are more likely to react emotionally and even 'irrationally' to limits and rules.2

The Explanatory Notes state that "the current disciplinary processes presented principals with a number of obstacles in implementing strong school discipline". It claims that "chapter 12 sets out only a limited range of formal disciplinary strategies that principals can use to address student discipline". We argue that this is not correct.

Principals and teachers have always had the ability to manage behaviour within the school. It could not be otherwise, particularly as they are adults to a large extent *in loco parentis*. The amendment specifically noting this would not seem to add anything in this regard. Schools have had flexibility to respond to their individual circumstances because s 277 of the EGP Act currently simply requires that the principal must ensure there is a school behaviour plan without in any way dictating what must or must not be in it (but clearly it must be more than simply suspension, exclusion and detention or there would be no need for it) and further requires that there is consultation with parents, students and school staff.

> (1) A State school's principal must ensure a process is established for developing a behaviour plan for the school.
> (2) In developing the plan, the principal must consult with the following persons—
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> (a) the parents of children enrolled at the school;
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> (b) the school's staff and students.
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> (3) The plan for the school must—
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> (a) promote a supportive environment at the school so all members of the school community may work together in developing acceptable standards of behaviour to create a caring, productive and safe environment for learning; and

[1]

[2] http://raisingchildren.net.au/articles/discipline_teenagers.html

(b) promote an effective teaching and learning environment at the school that allows positive aspirations, relationships and values to develop; and

(c) foster mutual respect among staff and students at the school; and

(d) encourage all students attending the school to take increasing responsibility for their own behaviour and the consequences of their actions.

(4) Also, the plan must align with the department's policies about the management of student behaviour.

Supporting this, principals and schools have a clear behaviour management framework called **Schoolwide Positive Behaviour Support** (SWPBS) which is based is evidence-based. The departmental website at http://education.qld.gov.au/studentservices/behaviour/swpbs/index.html notes the following:

Schoolwide Positive Behaviour Support

The department is committed to ensuring Queensland state schools provide positive l earning environments for all students.

Schoolwide Positive Behaviour Support (SWPBS) framework helps schools to create positive learning environments by developing proactive whole-school systems to define, teach, and support appropriate student behaviours.

SWPBS was developed by leading behavioural experts in the United States and is used in more than 18,000 schools across the United States.

Since being introduced in Queensland in 2005, the SWPBS framework has helped more than 400 schools develop successful whole school behaviour management systems.

Data shows that when SWPBS is implemented with integrity it helps reduce problem behaviour and increase academic performance. Principals have also reported decreases in referrals of students to school administrators, allowing this time to be invested into other areas of school business. [our emphasis]

Through SWPBS, schools implement evidence-based approaches to managing student behaviour support issues at the local community level. With an emphasis on data-based decision-making, the program is evaluated regularly and practices are adjusted to make sure the process is achieving effective results for schools.

Practical information about SWPBS, evidence-based behaviour support and resources can be found on the SWPBS Learning Place Professional Community

…….

SWPBS is an evidence-based framework for establishing the social culture needed for schools to be effective learning environments for all students.

……

SWPBS assists schools to teach students expected social behaviours. This is the most effective response for preventing school-based behaviour problems including school violence and bullying. Teaching and supporting social behavioural skills to students creates student behavioural health and also contributes to academic support systems. [our emphasis]

SWPBS applies data-based decision-making to discipline, academics and social and emotional learning.

The site then provides examples of how this has been used to great effect by a number of schools. No data have been provided or information presented which indicate that the SWPBS is not producing the necessary results.

The legislative provisions in Chapter 12 do not purport to set out an exhaustive set of strategies for discipline or behaviour management. The provisions **enable** suspension and exclusion otherwise the school could not prevent those who would otherwise have a right to be receiving an education from attending. Detention is addressed legislatively as otherwise there could be a question of false imprisonment for effectively holding someone against their will.

It is unclear why the proposed legislative changes are being made when the discipline audit of schools is not yet complete. Dr Watterston advised the Committee at its Public Briefing that:

> "Feedback from schools which have undertaken those audits has found them incredibly useful in terms of examination of current processes that are in place but also learning from best practice from the auditors and sharing strategies that already work in schools. There is a big focus on discipline and management within our school system to try and minimise suspensions and exclusions and make them more dedicated to remedial strategies."

He further noted, in response to a question about areas where there might be "a high number of disadvantaged families or dysfunctional families where parents are just not encouraging their kids in education":

> "For a school's discipline to be effective, it needs to be a whole school process. You need to engage staff in consistent practices and those practices have to be based around supporting the child and understanding what those challenges are that they bring with them to school. Surprisingly, suspensions do not necessarily relate to the level of socioeconomic catchment. There are schools in really challenging areas that hardly ever suspend."

And again, in response to concerns expressed for those of non-English speaking background who fall behind in their education and lose interest as a result:

> "I think your comments go to the heart of the conversation we are having around discipline. It is rarely because students come to school and decide that they are going to mess up to a degree that will impact on the school. It is usually the reasons you are talking about – the challenge that students bring in terms of being able to learn from a literacy point of view....I guess the issue that needs to be borne in mind by all school principals is about going to the root of the problem which is causing the behaviour and seeing the behaviour as a symptom rather than the problem."
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> "To refer back to my previous answer about the underlying causes and what needs to be done in a school in terms of their behaviour management policy, the focus on communication is absolutely essential. What we are trying to do is teach behaviour. We are not just trying to manage misbehaviour. It takes a family as well as the school leadership team and teachers to ensure that behaviour improves."

A recent television report on alleged escalation of violence in schools in Australia claimed that one reason was because children with disabilities and learning disorders are going through the mainstream school system, without adequate help or support, noting that one in seven young children will have a mental health problem during their time in primary school and the rates increase to one in four once they enter high school. One former teacher said she did not believe children were "bad", rather that they were "damaged". Another former teacher and parenting expert was quoted as saying the [alleged] increased violence could also be "directly

linked to school curriculum changes, which means less time is being spent on socialising children in their first years at school" and that school environments are not child friendly.[3]

It would seem, on the basis of the above, that the proposed changes are not what is required to ensure that schools provide a safe learning environment which provides an educational opportunity for all children.

Suspension and exclusion

Principals' ability to exclude students was significantly enhanced in 2010 when principals, rather than their supervisors, were enabled to do this unless there was a risk of perception of bias. They have had the ability to suspend for some time.

It is claimed that the intention is to **reduce** the use of exclusions and suspensions but that seems hard to understand when:

> The bill amends the act by: inserting a head of power for principals to control school discipline; **increasing the period of short suspensions; expanding the grounds for suspension and exclusion; streamlining disciplinary processes; and reducing red tape around suspension, exclusion and cancellation of enrolment decisions.** [our emphasis]

It is alleged that "red tape" was a key concern of "stakeholders" (it is not clear which stakeholders) which "places undue administrative burden on principals and consumes their valuable time"[4]. One person's "red tape", however, is another person's safeguard of their rights or assurance of due process. Irrespective of whether contained in the legislation or not, natural justice/due process will have to prevail and principals' decisions will be open to challenge if they do not meet these accepted legal standards – principals will not simply be able to adopt processes they consider "meet the need and reasonable expectation of school communities". It is very important that there are clear processes and timeframes around providing information to students who are to be suspended or excluded so that they can exercise their right to be heard. Clear, written material is necessary so that young people and their parents and/or advocates know what is being alleged and can respond.

It is totally unacceptable that there is no legislative restriction on the matters of detention or community service in the proposed new section 275 and 276 – not even with respect to the age of the child. Removal of a person's right to free movement and the imposition of community service are sentence options under the *Youth Justice Act 1992* imposed by a court after proper processes have been followed and such orders have clear maximums, some of which have age related restrictions, and are imposed in line with a set of criteria – including that detention is a matter of last resort. It is also noted that these sentences could not be imposed on a child under the age of 10 years. It seems that the Education Department and schools would have greater powers than courts with none of the safeguards that the court process provides. This must be a breach of fundamental legislative principles for which there is no sufficient justification.

It is claimed that the Bill is not seeking to increase the use of suspensions and exclusions, but this does not seem to align with extension of the grounds for such action – particularly to conduct outside the school and outside school hours. The rider "provided the conduct adversely affects, or is likely to adversely affect, other students, the good order and management of the school or where the attendance of the student at school poses an unacceptable risk to the safety or wellbeing of other students or staff" is unacceptably broad with no criteria against which to make such a judgement and for such decisions to be made in a

[3] Today Tonight 27 May 2013 *Violence in Schools*

[4] Dr Watterston, Director-General, Department of Education and Training at the Public Briefing on 28 August 2013

manner which would apply consistently across the State, thereby risking a form of "territorial justice".

The vast majority of matters defined as "serious" under the *Commission for Children and Young People and Child Guardian Act* (CCYPCG Act) are most unlikely to be relevant to young people under 17. For those handful of matters which might be relevant, while a charge might on the face of it seem to be serious, the factual situation may indicate differently.

- Some years ago, YAC represented a boy who was charged with bestiality. The child was a newly arrived migrant from a CALD background. A group of Australian boys told him he could be part of their group if he "proved" himself by way of such an activity – they thought it a huge joke. Fortunately, the boy was discovered in time, but was still charged by police. The shame caused to him and his family was indescribable. There is no reason why any school he was attending should have been made aware of this to add to their trauma.
- With respect to the offences of unlawful carnal knowledge or indecent dealing in relation to a child under 16, this can occur as a result of a boyfriend/girlfriend situation where one of them is under 16 and they have sexual relations (as undesirable as that might be). If both parties are under 16, they can both be charged with an offence (and this happens).
- Mobile phones have also led to young people being charged with offences relating to child pornography: for example, through taking photos which they then send to a boyfriend/girlfriend because they are under 18.
- A former Children's Court judge from Western Australia used to cite this example of robbery with violence in company which came before him: a ten year old with a stick and with his ten year old mate demanding a chocolate bar from another child. YAC has also had experience of similar situations. It is also not uncommon for police to charge people with the most serious of offences which are, in fact, not sustainable in court and so the offence is downgraded to something more appropriate to the relevant action.

However, the apparent restriction to a "serious offence" is likely to be rendered irrelevant by virtue of the clause which provides that a Principal can suspend for a charge for any offence where s/he "is reasonably satisfied it would not be in the best interests of other students or of staff for the student to attend the school while the charge is pending". Again, this is unacceptably broad and could be for the most trivial of matters.

We note the comment "we do not work from the point of view of proof beyond all reasonable doubt. Principals make decisions on the basis of the balance of probabilities of what occurred". (Mr Streatfeild). How would Principals know "what occurred" to be able to make any such determination? Is it intended that police will now as a matter of course advise a young person's school if they are charged with an offence? They will not be privy to the young person's case in any event so how could they be able to make any appropriate judgement?

The Explanatory Notes assert that in relation to suspension based on a charge:

- having a discretion whether to exercise a power to suspend
- suspension ceasing because a student is excluded or enrolment is cancelled
- a decision whether to exclude is made as soon as possible after a charge is dealt with

equate to **safeguards** . This is clearly a complete misunderstanding of what a safeguard is and does.

It has been a basic tenet of English and therefore Australian law that a person is innocent until proven guilty and that a person should only be punished once for an offence. The proposed legislative changes would offend both of these long established legal principles.

The principal is required to "take reasonable steps" to provide an educational program for students who are suspended. It was noted in the Public Briefing that this "depends on what is available in the area". This is likely to mean fewer opportunities for students in rural and remote areas in this situation. For those students whose suspensions are in the context of family dysfunction or lack of support in relation to their education, the proposal that they be provided with work to do at home is clearly no alternative at all.

Being suspended or excluded on a short or long term basis can have a serious effect on an individual young person's education and life chances as well as on the community more broadly. The Explanatory Notes concede that "suspensions and exclusion interrupt a student's education and can cause students to fall behind their peers academically. Consequences of a disrupted education include an increased likelihood to engage in antisocial behaviour and eventual school drop out." Without an education, young people can find it difficult to gain employment and consequently experience financial difficulties. There seems to be a strong correlation between early leaving from school, criminal activity, poverty, unemployment and homelessness.

The full implications of suspension or exclusion may not be clear to the student themselves until many years later. "I thought it was cool not to go to school. But I was only 13 then. Now I realise I needed school. It's too late now."[5] The questioning of rules and challenging of limits is a normal part of human development and the child becoming an autonomous adult, as is clearly understood and demonstrable now through advances in neuroscience. Additionally, it has been observed that "at the present time the gap between school culture and the wider Australian culture, of which adolescents are a part, is wider than at any other time in history". This South Australian report saw boys as being disaffected, resistant, resentful, angry and retaliatory, concluding that the education system needed to recognise students as "young adults preparing to live in the world of the twenty first century".[6]

A report by US school psychologists has noted;

> "Research repeatedly has demonstrated that suspension, expulsion, and other punitive consequences are not the solution to dangerous and disruptive student behaviors. In fact, evidence indicates that dangerous students do not become less dangerous to others when they are excluded from appropriate school settings; quite often they become more so. Youth who are not in school and not in the labor force are at exceedingly high risk of delinquency and crime. Each year's class of dropouts drains the nation of more than $200 billion in lost earnings and taxes every year. Billions more are spent on welfare, health care and other social services."[7]
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> "Positive discipline strategies are research-based procedures that focus on increasing desirable behaviors instead of simply decreasing undesirable behaviors through punishment. They emphasize the importance of making positive changes in the child's environment in order to improve the child's behavior. Such changes may entail the use of positive reinforcement, modeling, supportive teacher-student relations, family support and assistance from a variety of educational and mental health specialists."[8]

[5] From a Brisbane survey quoted in a paper by Kathryn Hayes at the QLS Children's Legal Interests Forum, CHOGM 2001.

[6]

[7] National Association of School Psychologists (NASP) *Fair and Effective Discipline for All Students: Best Practice Strategies for Educators*

[8] Ibid

The Bill does indeed adversely affect the rights of students and parents in its expansion of disciplinary interventions and, in the view of the Youth Advocacy Centre, the justification for this is not adequately made.