QUEENSLAND GOVERNMENT

Department of
Education, Training and Employment

3 OCT 2014

Mrs Rosemary Menkens MP
Chair
Education and Innovation Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mrs Menkens

Thank you for your letter dated 26 September 2014 regarding the Education and Innovation Committee's consideration of the Education and Other Legislation Amendment Bill 2014 (the Bill).

As requested, please find enclosed the Department of Education, Training and Employment's response to the Committee on issues raised by stakeholders. I am pleased to note that the public submissions indicate general support for the proposed amendments contained in the Bill.

My Department appreciates the opportunity to further brief the Committee on the Bill at the public hearing to be held on 8 October 2014.

I look forward to receiving the Committee's report on the Bill.

Should you have any further queries, I invite you to contact Ms Melinda Rabbitt, Director and Cabinet, Legislation and Liaison Officer, Ministerial and Executive Services Unit on telephone 3034 4740 or by email melinda.rabbitt@dete.qld.gov.au.

Yours sincerely

DR JIM WATTERSTON
Director-General

Ref: 14/335288

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Office of the Director-General
Floor 22 Education House
30 Mary Street Brisbane 4000
PO Box 15033 City East
Queensland 4002 Australia
Telephone +61 7 3237 0900
Facsimile +61 7 3237 1369
Website www.dete.qld.gov.au
ABN 76 337 613 647

Department of Education, Training and Employment response to public submissions received by the Education and Innovation Committee on the Education and Other Legislation Amendment Bill 2014 (the Bill).

	Submission	Support	Issues Raised	Departmental response
1	**Queensland Catholic Education Commission** (QCEC)	Support – in part	**Non-state school governing bodies established by 'letters patent'.** Agree that proposed amendments provide clarity, however concerned about offence provision contained in the Bill (clause 9) imposing obligations only on a governing body established under letters patent.	The amendments create separate arrangements for governing bodies established under letters patent, whereby they may appoint additional directors for the purposes of the *Education (Accreditation of Non-State Schools) Act 2001* (Accreditation Act) other than the office holders recognised by their governing documents. Without the introduction of these amendments, governing bodies, established by letters patent, would be limited to the office holders, or their successors, appointed under the letters patent. This does not support modern governance arrangements for some of these schools. Other types of governing bodies are able to appoint additional directors in accordance with the relevant legislation under which they are established (e.g. the Corporations Act and the *Associations Incorporations Act 1981*). The capacity for a governing body established by letters patent to take up the opportunity to revise their governing body arrangements in light of this new power is optional. The requirement that the Non-State Schools Accreditation Board (Accreditation Board) be advised of a governing body's decision to utilise the power is entirely appropriate. It ensures the Accreditation Board is aware of the governance arrangements adopted for a school whose governing body is established by letters patent. It also enables the Accreditation Board to appropriately oversee the governance of these schools, including matters relating to the suitability of the governing body.

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				The Department of Education, Training and Employment considers the offence provision is appropriate to ensure that the Accreditation Board is promptly notified of directors appointed through this process. The penalty provision is consistent with other penalty provisions in the Accreditation Act for failure to disclose other information to the Accreditation Board.
		Support - in general	**Special Assistance Schools** The QCEC seeks clarification about the following matters:	
			• Why can only special assistance schools operate from a temporary site?	The amendments proposed around special assistance schools aim to improve educational outcomes for children and young people who have disengaged from education. Special assistance schools unlike 'conventional' non-state schools have a unique role. It is considered that special assistance schools require the flexibility offered by operating from a 'temporary site' in order to respond promptly to an identified need in a particular area for special assistance services. This ability allows for the re-engagement of disengaged youth from the local community into education and training. Such a need may for example arise in the event that a number of disengaged individuals are identified by school staff, community service workers or the police in a particular location, and the 'temporary site' mechanism is considered the most appropriate first response until the students can attend on the school's accredited special assistance campus, or alternatively enrol at another school. Given the nature and circumstances of a prospective special assistance student there is also often a need to build trust between the education provider and the student, and to demonstrate a clear benefit in participating in an educational

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				program. The ability for special assistance schools to operate a temporary site performs this function. There is no need demonstrated in respect of the operations of 'conventional' non-state schools that requires the same levels of responsiveness to an identified cohort of students requiring the capacity to operate temporary sites. It is therefore appropriate and consistent to restrict the ability to operate from a temporary site to special assistance schools. The Accreditation Board will be able to examine compliance with the specific requirements for these centres (i.e. complying with the temporary site criteria).
			• Whether the legislation takes into account the situation where a school is accredited as special assistance but does not receive the State government recurrent funding rate reserved for special assistance schools?	In addition to providing for the accreditation of non-state schools, the Accreditation Act also establishes a regime for deciding whether non-state schools are eligible for government funding. Under the existing legislative framework, an entity seeking to establish a non-state school must apply for accreditation and may also seek eligibility for government funding. The Accreditation Board is the decision-maker in relation to school accreditation. Decisions about accreditation are made against prescribed accreditation criteria about governance, financial viability, educational programs and student welfare, school resources and improvement processes. The Minister for Education, Training and Employment is the decision-maker for government funding eligibility applications. Eligibility for government funding is assessed against prescribed funding eligibility criteria (which relates to population, choice, spare capacity, enrolments and impact).

	Submission	Support	Issues Raised	Departmental response
				It is possible for a school to be accredited, even if it is not considered eligible for government funding. However, the applicant would need to satisfy the Accreditation Board that the school would be financially viable in the absence of government funding in order to be granted provisional accreditation. The amendments to the Accreditation Act regarding special assistance schools will not change this process outlined above. In this regard, there is no distinction between a 'special assistance' non-state school and a 'mainstream' non-state school. However, the nature of the school's operations, as a special assistance school, could have an impact on the assessment of the school against the government funding eligibility criteria. In particular, the minimum enrolment requirements will vary depending on whether the school is operating or intending to operate a special assistance school site or a mainstream site. These minimum enrolment criteria will be prescribed in regulation. To date, all of the existing provisionally accredited and accredited special assistance schools are eligible for government funding under the Accreditation Act.
			• What is the relationship with the Australian (Commonwealth) Government recurrent funding for special assistance schools?	Currently, the Minister for Education, Training and Employment determines whether to grant a non-state school special assistance status in accordance with criteria set out in Ministerial policy under the *Education (General Provisions) Act 2006* (EGPA). A non-state school can only seek this recognition after first obtaining provisional accreditation or accreditation under the Accreditation Act.

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				A non-state school recognised as a special assistance school by the Minister under policy generally attracts greater levels of State funding in recognition of the high level of need experienced by its students. Subject to passage of the Bill, the Ministerial policy will be amended so that schools provisionally accredited or accredited by the Accreditation Board as providing special assistance from a school site or sites, will be automatically recognised by the State Minister as a special assistance school. The school will attract funding at the rate applicable to a special assistance school for students at the sites offering special assistance. Section 6 of the *Australian Education Act 2013* (Cwlth) (the AEA) defines a special assistance school for its purposes to mean a school that: (a) is, or is likely to be, recognised by the State or Territory Minister for the school as a special assistance school; and (b) primarily caters for students with social, emotional or behavioural difficulties. If the Commonwealth Government's Minister for Education determines under the AEA that a non-state school is a special assistance school for the purposes of that Act, the school attracts Commonwealth Government recurrent funding applicable to that category of school, which is generally at a higher rate than other non-state schools. Whether a Queensland non-state school that offers both 'mainstream' and 'special assistance' schooling at different sites will attract the higher Australian Government recurrent rate for enrolments at the 'special assistance' site, is ultimately a matter for the Commonwealth Government.

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			Request for consultation on ensuing consequential amendments to the *Education (Accreditation of Non-State Schools) Regulation 2001* (Accreditation Regulation).	The Department proposes to consult on the proposed amendments to the Accreditation Regulation.
			Details matters for particular consideration in developing amendments to the Accreditation Regulation.	The Department will consider the specific issues raised in the making of amendments to the Accreditation Regulation.
		Support	**Directions to 'hostile persons'** No issues raised.	The Department notes the support of QCEC for these proposed amendments.
		Support	**Compulsory schooling exemptions** No issues raised.	The Department notes the support of QCEC for the proposed amendments, however wishes to clarify the Bill does not require a register of exemptions to be kept. Instead a record of the decision is required to be kept for at least five years.
2	**Queensland Secondary Principals' Association** (QSPA)	Support	QSPA supports the amendments in the Bill relevant to their stakeholder interests. No issues raised.	The Department notes QSPA's support for the proposed amendments.
3	**Non-State Schools Accreditation Board** (Accreditation Board)	Support – in principle	**Meaning of a non-state school** The Accreditation Board notes the amendment provides that the definition of a non-state school cannot be a school that only offers a curriculum that is, or is a variation of, the whole or part of the primary or secondary curriculum of a foreign country and has limited knowledge of the context of the amendment.	Clause 53 of the Bill removes Chapter 18 from the EGPA that provided for International Educational Institutions. The proposed amendment referred to by the Accreditation Board is a consequential amendment to ensure that schools offering a curriculum of a foreign country are not within the definition of a non-state school.

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		Support – but proposes further amendment	**Amendment to the meaning of director under the Accreditation Act** Considers the amendments clarify the governance arrangements for 'letters patent schools'. Proposes further amendments for entities incorporated under legislation other than the Corporations Act, which have been identified by the Accreditation Board as having discrepancies between their constituent documents and the persons identified as the directors of the governing body.	The Department notes the Accreditation Board's support for the proposed amendments. The Department is aware of the issues identified by the Accreditation Board in relation to a small number of entities that are statutory corporations not established by letters patent, or under the Corporations Act. The Department understands that some statutory corporations are effectively seeking to exclude members of the governing body from being considered as directors for the purpose of the Accreditation Act. This contrasts with the amendments relating to letters patent schools, which enable a governing body to add additional directors for the purpose of accreditation. These issues are complex and require further analysis and consultation to determine whether legislative amendments are required. The Department is continuing to seek a resolution to these issues in consultation with stakeholders. Should amendments to the Accreditation Act be the preferred approach, the amendments will be progressed in the next available Bill.
		Support	**Amendment of s39 (suitability of governing body)** No issues raised.	The Department notes the Accreditation Board's support for the proposed amendments.
		Support	**Alignment of criminal history checking provisions** No issues raised.	The Department notes the Accreditation Board's support for the proposed amendments.
		Support	**Special assistance schools** Supports the recognition of special assistance as an attribute of	The Department notes the Accreditation Board's support for the proposed amendments.

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			accreditation, provisions relating to temporary sites and the transitional arrangements.	
4	**Queensland Law Society** (QLS)	Supports, but suggest further amendment is required	**Insertion of s7AA - meaning of director in the Accreditation Act** The QLS raises concerns that new section 7AA(c) may lead to confusion for schools owned by a church that has enabling legislation as to what constitutes the 'executive or management entity'. The QLS suggest an amendment to paragraph (c).	The Department notes that paragraph (c) referred to in the QLS submission is not being amended, and is contained in the existing definition of 'director' in schedule 3 of the Accreditation Act. The definition has generally been applied without issue, with the Accreditation Board identifying issues with only a small subset of entities. As noted above in response to issues raised by the Accreditation Board, the Department is considering how to address issues raised in relation to a small number of governing bodies that are statutory corporations not established by letters patent, or under the Corporations Act. Should the preferred resolution require legislative amendment, consideration will be given to the operation of paragraph (c) at that time.
		Does not support – expresses concerns	**Insertion of Division 1A – information about student charges and convictions** The QLS states the school disciplinary powers can be used when a student is charged with an offence, rather than on the basis of conviction and this in inconsistent with the presumption of innocence. As students are frequently advised by their legal representative not to comment on matters before the Court, a student may therefore be unable to provide a submission to the principal	The ability for principals to suspend a student on the basis of a charge for a criminal offence is not a new power. It was introduced through amendments to the EGPA contained in the *Education (Strengthening Discipline in State Schools) Amendment Act 2013*. These amendments came into effect in January 2014. The current proposed amendments to the Act do not alter the existing power to suspend students on the basis of a charge. The proposed new division 1A (clause 44 of the Bill) allows the chief executive to seek confirmation from the Commissioner of Police that a student has been charged or convicted of an offence. If appropriate, the chief executive will provide this information to the principal of the school. The information will

	Submission	Support	Issues Raised	Departmental response
			against the proposed suspension.	better inform principals in making appropriate, fair and consistent decisions that will ensure safe, supportive and disciplined school environments.
		Does not support – expresses concerns	**Suspension will prevent enrolment at another school** The QLS is concerned that under section 329 a suspension pending the outcome of a charge will prevent the student from enrolling at another school. The QLS argues that this works against the efforts of the Department of Justice and Attorney-General and the Courts to monitor school attendance and to use Conditional Bail Programs to reconnect offending youths with education. The QLS states that the resolution of criminal charges can involve a lengthy timeframe during which a young person can re-engage with education to demonstrate positive efforts to the sentences judge. The QLS anticipates that the effect of the sharing of information about offences will result in an increase in the number of disengaged youth and an increase in crime.	Section 329 of the EGPA provides that a student suspended from a state school is unable to enrol in another state school, unless the enrolment is approved by the chief executive. The function of section 329 is to ensure that young people that may pose a risk to the safety of other students and staff are not enrolling in schools that may not be able to provide the support required to manage the risk that the student may pose. It should be noted that it is the standard approach that students suspended on the basis of a charge are permitted by the chief executive under section 329 to enrol in the school of distance education. The Department is committed to keeping every student engaged with learning. To achieve this, every student suspended for more than 10 days, or on a charge-related suspension from a Queensland state school is appointed a Regional Case Manager to ensure their continued learning and engagement, and to aid them in accessing programs and alternative pathways that suit their individual needs. As at the beginning of 2014, over 150 alternative education programs were in place across the State as well as 14 Positive Learning Centres and 21 Special Assistance Schools. These programs are being used to address the needs of those students who require highly specialised interventions, and to meet the Department's goal of keeping every student engaged in learning. It should be noted that only five charge-related suspensions

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				have been recorded against Queensland state school students in Semester 1, 2014 and no students have been excluded on the basis of a conviction. Further, some principals have chosen not to suspend students after receiving information in relation to charges against them. These principals have implemented strategies to manage the risk posed by the students and allowed them to continue to attend school and engage in learning.
		Does not support – expresses concerns	**Proposed new section 280A** The QLS expresses concern that the new division applies despite the *Criminal Law (Rehabilitation of Offenders) Act 1986,* section 5 to the extent as it relates to charges.	The *Criminal Law (Rehabilitation of Offenders) Act 1986* states that a charge is not a part of a person's criminal history. Despite this, the current amendments to the EGPA will allow the chief executive to request information on charges against students. Principals are responsible for the management of the school. This includes ensuring that the school learning environment is safe and supportive. Currently, a principal may suspend a student who has been charged with a serious offence or another offence in circumstances where it would not be in the best interests of other students and staff at the school for the student to attend the school. In order for the principal of the school to accurately assess the potential risk posed by a student, principals must be able to access information about charges pending against a student.
		Does not support – expresses concerns	**Vague descriptors for the exercise of the chief executive's power** The QLS considers that the section uses vague descriptors for the exercise of the chief executive's power.	The power to seek confirmation of a student's charge or conviction is proposed to support the enhanced disciplinary powers introduced in January 2014. These powers allowed a student to be: (a) suspended if the student is charged with a serious sexual or violent offence (as defined) or another offence

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			The QLS consider that the requirement that the chief executive must 'reasonably suspect' that a student enrolled at a state school has been charged with, or convicted of, an offence may infer that the chief executive may have to investigate the matter, resulting in parallel processes before the court and the school. The QLS also raises concerns that the section provides difficult parameters to be met by the Police Commissioner in terms of providing information or a brief description of the charge or conviction. If the matter is in the charge stage, the information held by the Police Commissioner is unlikely to be complete with no factual decisions made by the Court. Inaccuracy in the information may have serious repercussions for the student.	where it would not be in the best interests of other students or staff for the student to attend school; and (b) excluded if the student is convicted of an offence where it would not be in the best interests of other students or staff for the student to be enrolled at the school The amendments provide the chief executive with the power to request information from the Queensland Police Commissioner where the chief executive has formed a reasonable suspicion based on information from a principal that a student has been charged with, or convicted of, an offence. Such information is often provided to the principal by the student themselves, a parent, the victim or a witness to the incident. There is no intention for the chief executive to investigate the appropriateness of the charge or conviction when deciding whether to seek confirmation of a charge or conviction from the Queensland Police Commissioner. Requiring that the chief executive to have a 'reasonable suspicion' that a student has been charged or convicted is an appropriate threshold test to ensure that the power to obtain limited criminal history information is not abused, and is limited to only those situations where information about a charge or conviction has come to the school's attention. It is a test that is used elsewhere in the EGPA and across the Queensland statute book. The power is limited – the chief executive may only seek confirmation from the Queensland Police Service that a student has been charged with, or convicted of, an offence and to obtain a brief statement of the circumstances of the charge or conviction and to provide principals with information to assist them to make disciplinary decisions.

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				Disciplinary decisions relating to charges and convictions are restricted, such as where the student is charged with or convicted of a serious offence or another offence in circumstances where it would not be in the best interests of other students and staff at the school for the student to attend the school. Therefore, it is not intended for information to be sought in relation to minor offences such as shoplifting or graffiti. As the power will be vested in the chief executive, confirmation of a charge of conviction will only be sought where the chief executive considers it appropriate to do so. The chief executive will only provide a principal with information obtained from the Queensland Police Commissioner that the chief executive deems relevant to allowing the principal to make an informed decision in relation to the risk posed by a student. The Department does not consider that the phrase 'a brief description of the circumstances of a conviction' is a difficult parameter to place on the commissioner of police. The Department notes that this phrase or similar phrases are used across the Queensland statute book in relation to obtaining criminal history information from the commissioner of police. The Queensland Police Service has been consulted and supports the amendments.
		Does not support – expresses concerns	**Notice to student of request to Police** The QLS raises concerns that the legislation does not specifically require that the student and his/her legal	Student disciplinary decisions are administrative decisions. In accordance with the Department's *Safe, Supportive and Disciplined School Environment* policy, when considering whether to suspend a student on a charge-related ground the Principal gives the student and parent the opportunity to

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			representative be informed of the request for criminal history information and the information provided.	consider the relevant evidence and the opportunity to discuss the allegation and respond if they chose. The notice of the decision to suspend or exclude a student based on a charge or conviction gives reasons for the decision, and a brief statement of the reason why the decision was made. In this regard the student and their parent will be aware of the criminal history information provided by the Police.
		Does not support – expresses concerns	**Reversing the onus of proof** The QLS raises concerns that the student will be suspended based on the information provided about a charge and that if the suspension is for longer than 10 days the student will be entitled to make submissions about the suspension. The substance of these submissions would inevitably require the student to provide a defence to a charge, thus reversing the burden of proof. This will lead to a circumstance where the student will be seeking to prove their innocence, as opposed to the usual criminal onus and standard. The QLS state the decision-maker will be effectively acting as a judicial officer without legal training when exercising this discretion.	Principals' disciplinary decisions are administrative decisions and are not part of the criminal process. Whether a student has been charged with an offence is a question of fact; the student has either been charged or not charged. The disciplinary powers, expanded in January 2014, do not pre-empt the administration of justice. The principal is required to consider whether the student's behaviour constitutes a ground for suspension. Principals are required to weigh the right of the individual student to attend school against the safety of other students and staff. The principal is not required to consider whether the student is guilty of the offence. Whether a person is guilty or not of an offence is for the court to decide according to proper criminal justice processes. The decision maker is not pre-empting the court decision or acting as a judicial officer, but rather, the person is taking action in relation to behaviour that impacts on the good order and management of the school by bearing on the safety and well-being of staff and students. As noted above, in accordance with the principles of natural justice, students are provided with the information forming the basis of the disciplinary decision and are afforded the

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				opportunity to respond to it.
		Does not support – expresses concerns	**Time period for the destruction of criminal history information.** Proposed new section 280F provides that the chief executive must ensure that the information obtained from the Police Commissioner is destroyed as soon as practicable after it is no longer needed for the purpose for which it may be used. The QLS considers that there should be a strict timeframe and suggest that the criminal history information obtained from the police commissioner should be destroyed within seven days (for the sake of consistency, to be in line with the *Youth Justice Act 1992*).	It is impractical to place a specific timeframe on the destruction of information obtained by the chief executive from the Queensland Police Commissioner. The reason for this is that students are afforded the right to make a submission against the decision of a principal to exclude a student, or suspend a student for more than 10 days. This submission must then be considered by the chief executive or his delegate and the disciplinary decision reviewed. The information forming the basis of the decision cannot be destroyed before this process has been completed, and any prescription of timeframes for the destruction of material would necessitate a prescribed timeframe for the student to appeal the decision. It would be unfair and contrary to natural justice to restrict a student's window for appeal, as suggested in the QLS submission, for the sake of consistency with the *Youth Justice Act 1992*. To obviate any risks posed by information retention, there will be strict protocols around the storing and sharing of criminal history information obtained by the chief executive from the Queensland Police Commissioner. These protocols include an email address designated specifically for information requests to the chief executive from principals. Any relevant information obtained from the Police will be placed in the sensitive case record section of the OneSchool system with access to the information limited to the principal of the school and the chief executive or delegated officer. No hard copies of the information will be kept by the Department. Any designated departmental officers with access to the information will be provided with a written process and

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				training and will be informed that disclosure of the information is a breach of the confidentiality provisions in the EGPA and may lead to disciplinary consequences or criminal charges.
		Does not support – expresses concerns	**Independent assessment of the student by a behavioural scientist** The QLS suggests that the sharing of information should only occur in the context of an assessment as to whether the student "poses an unacceptable risk to the safety or well-being of the student or of staff". The QLS suggests that a behavioural scientist, external to the school could perform a confidential risk assessment to determine whether the student does in fact pose a risk to the school community. It could be legislated that the child's communication with that person is privileged to prevent such communication impacting Court proceedings. These kinds of assessments are regularly performed in other areas of law.	The Department agrees that the sharing of information should only occur in the context of an assessment as to the risk posed by a student to the safety and wellbeing of other students and staff. As school leaders, principals have a detailed understanding of their school context and of individual students in their school, and are therefore best placed to assess the likely risk that a student may pose to other students. Rigorous processes will be put in place to: • identify whether information should be sought from the Police, this will only occur where a student is assessed as posing a risk to the safety and wellbeing of other students and staff; • ensure that information that is shared with the principal meets strict criteria to ensure the information only relates to behaviour that may put others at significant risk; and • support principals to make fair and consistent decisions in relation to the safety of the school community based on the information provided. The resources being developed by the Department in relation to these rigorous processes include: • principals' guidelines for assessing risk and requesting and handling criminal history information; • protocols for the chief executive to request and transfer criminal history information; and • risk assessment matrix for principals.
		Does not support –	**Mature Aged Students (MASs)** The QLS has expressed concerns that	The amendment also supports the principle that schools are to be safe places to learn and work.

	Submission	Support	Issues Raised	Departmental response
		expresses concerns	the amendments will require the principal of a MAS state school to obtain criminal history information for each MAS when considering their enrolment application.	To support school autonomy and reduce red tape, the Bill will give principals of specific mature age student schools to make decisions about enrolment of MASs. The Bill also removes the current requirement for a MAS to seek a positive notice from the chief executive. The proposed amendment ensures that the principal, as chief decision maker, has the authority and the obligation to request a criminal history check on a mature-age student applicant. It is considered appropriate for principals to be able to seek the criminal history information because MASs are adults in a school environment where there may be minors. A MAS's criminal history will only be sought with their consent. It should be noted that if a principal decides a MAS poses an unacceptable risk to other students or staff, the enrolment decision is referred to the chief executive.
			Mature Aged Students The QLS notes the previous discretionary power to request criminal history information is now a mandatory requirement.	The legislative amendment changes the ability of a principal to request the criminal history about a prospective MAS from a discretionary power to a mandatory requirement. This change reflects current practice that has been in place since the introduction of the EGPA. In practice, the current discretionary power under section 32(2) of the Act to request a criminal history is used for <u>all</u> MAS applicants.
5	**Queensland Family and Child Commission**	Support	No issues raised.	The Department notes the Principal Commissioner's support for the proposed amendments.