EDUCATION AND INNOVATION COMMITTEE

Members present:

Mrs RN Menkens MP (Chair)
Mr MA Boothman MP
Mr RG Hopper MP
Mr MR Latter MP
Dr AJ Lynham MP
Mr NA Symes MP

Staff present:

Ms B Watson (Research Director)
Ms M Salisbury (Principal Research Officer)

PUBLIC BRIEFING—INQUIRY INTO THE EDUCATION AND OTHER LEGISLATION AMENDMENT BILL 2014

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 8 OCTOBER 2014

Brisbane

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Committee met at 10.45 am

CHAIR: Welcome. For those not present at the earlier proceedings, I ask everyone present to turn off their mobile phones or set them to silent. Media recording these proceedings are asked to adhere to the committee's media guidelines. Copies of the guidelines are available if needed. These proceedings are being broadcast live via the Queensland parliament website and will also be recorded and transcribed by Hansard. Once available, the transcript will be published on the committee's webpage.

We welcome representatives from the Department of Education, Training and Employment, who are back to provide a second briefing on the Bill. The department first briefed the committee on 27 August 2014 and a copy of the transcript from that briefing is available on the committee's webpage.

I will now introduce the members of the Education and Innovation Committee. I am Rosemary Menkens, the member for Burdekin and the chair of this committee. With me are Mr Ray Hopper, the member for Condamine and deputy chair; Mr Mark Boothman, the member for Albert; Mr Michael Latter, the member for Waterford; Mr Neil Symes, the member for Lytton; and Dr Anthony Lynham, the member for Stafford. Mr Steve Bennett, the member for Burnett has sent his apology.

As this is a proceeding of parliament, the privilege and contempt provisions of the Parliament of Queensland Act 2001 apply to the briefing. You are, however, able to request that any material or information you provide be kept private and the committee will consider that request. You may also object to particular questions. These procedural considerations are outlined in schedule 8 of the parliament's standing orders—instructions to committees regarding witnesses.

I now welcome from the department Mr Bevan Brennan, the Assistant Director-General, State Schools—Operations; Dr Pat Parsons, the Executive Director, Strategic Policy and Intergovernmental Relations; Mr Stuart Busby, Acting Executive Director, Portfolio Services and External Relations; and Ms Jean Smith, Director, State Schools—Operations.

BRENNAN, Mr Bevan, Assistant Director-General, State Schools—Operations, Department of Education, Training and Employment

BUSBY, Mr Stuart, Acting Executive Director, Portfolio Services and External Relations, Department of Education, Training and Employment

PARSONS, Dr Pat, Executive Director, Strategic Policy and Intergovernmental Relations, Department of Education, Training and Employment

SMITH, Ms Jean, Director, State Schools—Operations, Department of Education, Training and Employment

CHAIR: Mr Brennan, do you or the other officers have any general comments or advice you would like to provide before we ask further questions about the Education and Other Legislation Amendment Bill?

Mr Brennan: With the approval of the committee, Mr Busby would like to make a statement to the committee before we commence the questioning.

Mr Busby: I would like to thank all the members of the committee for having us back here today to respond to the issues raised by stakeholders. Before making some general comments to open the proceedings, I just want to turn to our previous attendance at the hearing and take the opportunity to correct a response that I provided at that previous briefing. I indicated that the department records all hostile person decisions on the OneSchool database and that all decisions would be recorded on that database. This is on page 8 of the transcript, which I think is on the

committee's website. I wish to advise the committee that, in fact, not all of these decisions are recorded on OneSchool. Presently, the written directions that can be given by state school principals must be copied by the principal to the regional director. The regional director is responsible for collating these and providing them for the purposes of the department's annual report. In terms of OneSchool, the principal often will enter a record in the parent contact section of the student's individual profile. It is not proposed at this point to change the procedure to require all records to be kept on OneSchool.

Now I will turn to submissions received by the committee. The committee received a total of five submissions on the Bill: from the Queensland Catholic Education Commission, the Queensland Secondary Principals Association, the Non-State Schools Accreditation Board, the Queensland Law Society and the Queensland Family and Child Commission. The department provided written responses to the committee on the issues raised by these stakeholders as well as clarified other matters referred to in the submissions. While I acknowledge the committee is still examining the Bill and is yet to finalise the report, the department notes that the written submissions indicated a general level of support for the proposed amendments contained in the Bill.

Given the purpose of the briefing here today, I propose not to go over all the content of the Bill. Instead, I will focus remarks on a couple of issues raised by stakeholders, which I hope will assist the committee in analysing the Bill.

First, I will speak in relation to non-state schools whose governing bodies are established by letters patent. While noting general support for the amendments relating to letters patent schools, several stakeholders raised discrete issues with these amendments. The Queensland Catholic Education Commission raised concerns about the imposition of an offence provision specifically for letters patent schools. I understand Mr Byrne raised that again in this morning's hearing. As noted in the department's response to the committee, these amendments create a mechanism to enable governing bodies established by letters patent to vary their governance structure outside of the processes provided for in the incorporating legislation. It is imperative that the Non-State Schools Accreditation Board be promptly advised if a letters patent school chooses to avail itself of this new process. It ensures that the accreditation board is aware of and can appropriately oversee the governance arrangements for these schools, including matters relating to suitability of the governing body. The penalty imposed is consistent with the penalty for failing to disclose other information to the accreditation board. In fact, the amendment includes a requirement to provide this information in section 167, which lists a range of information of which governing bodies are required to notify the accreditation board in the 14-day period. This is a standard provision in the Act for providing particular types of information to assist the board in meeting its functions.

The accreditation board has indicated support for the letters patent amendments while proposing additional amendments to address issues identified in relation to a small number of governing bodies incorporated other than under letters patent or the Corporations Act. I acknowledge that the amendments do not address those issues raised by the board. The issues identified by the accreditation board raised complex policy issues that are undergoing further policy analysis. The department is working closely with stakeholders to resolve these issues as promptly as possible. They may or may not result in legislative amendments. We are unclear of our proposed response yet. We are working with the board and stakeholders to try to resolve those issues.

I note that the Law Society made comments as well on definition of 'director'. The paragraph referred to by the Law Society has been applied in the Accreditation Act without issue since 2001. However, in the event that amendments are required to address the issues raised by the accreditation board about these other types of bodies, the department will consider the operation of the paragraph to which the Law Society referred to ensure it continues to operate as intended.

Next, I will move along to the verification of criminal history provisions. I note some issues raised by the Queensland Law Society around obtaining and the use of criminal history information. The department has responded in detail to these concerns in the written response. I also listened in to the committee hearing this morning and heard again the issues raised by the society, which seemed to be more about the existing legislation and policy around the capacity for principals to suspend and exclude students on the basis of charges and convictions. This is not new law; it is currently policy and it is currently in place.

As noted, a principal may suspend a student who has been charged with a serious offence as defined in the working with children legislation to include things like rape and other serious sexual, violent offences or other offences in circumstances where it would not be in the best interests of

students and staff at the school for the student to continue to attend the school. Also, a student can be excluded if they have been convicted of a criminal offence but also only in circumstances where it would not be in the best interests of other students or staff for the student to continue to be enrolled at the school. The amendments make no changes to these disciplinary powers.

The intention of the amendments is to provide the director-general with the power to request certain limited information from the Queensland Police Commissioner for the specific purpose of making a disciplinary decision about whether a student's ongoing attendance at the school poses a risk to other students and staff. The chief executive—the director-general—will only provide a principal with information obtained by the Queensland Police Commissioner that the chief executive deems relevant to allow the principal to make an informed decision about the student's suspension or exclusion and to relay the reasons for the decision to the student.

The provisions in the Bill make it clear that the criminal history information obtained must not be used for any purpose other than these disciplinary decisions. This means the information cannot be used for enrolment decisions. As noted in the department's response to the public submissions, strict protocols around the storing, destruction, use and sharing of this information that is obtained by the director-general from the Queensland Police Commissioner will be put in place. As part of this process, the department will ensure that principals and other relevant departmental officers are fully informed and familiar with the strict guidelines being developed.

Further, listening to the hearing this morning, there seemed to be a suggestion or understanding that principals will now be making decisions about enrolment of mature-age students. I want to clarify that the Bill will not change the position that is currently in the Act that only the director-general can refuse the enrolment of a student, including a mature-age student, on the basis that they pose an unacceptable risk to the safety or wellbeing of other students. The Bill does not change that. The Bill will enable the principal to obtain the criminal history of a mature-age student to assist them to inform their decision making. If they believe, based on that information and other information that they get currently, they can refer that up to the director-general and only the director-general can refuse the enrolment of that student. Thank you again for your time today. I am happy to open up to questions.

CHAIR: Thank you for that, Mr Busby and Mr Brennan. I understand that New South Wales allows for the chief executive or principal to obtain information from the police to help them assess whether the enrolment of a particular student is likely to be a risk to the health and safety of any person and to assist in the development and maintenance of strategies to eliminate or minimise that risk. In the research you would have undertaken in developing the Bill did you find out exactly what information is shared by police with the education system in New South Wales? Is it information about charges and convictions? Is it a brief description or something more? It sounds as though it might be quite comprehensive information given the purpose.

Mr Busby: I do not have the answer to that. Bevan or Jean, do you know the situation in New South Wales?

Mr Brennan: No, I do not. We have our own processes around that in relation to the decision a principal would make in those circumstances. Our processes have served us well in that the principal would collect information from the student or from the parent or from other people in a position to provide information. Certainly we have no intention whatsoever of requesting information from the Police Commissioner for the purpose of making a decision around enrolment. That is not to say that principals will not make considered decisions and collect information as much as possible around that decision to either enrol or recommend to the director-general that they do not believe that the enrolment should proceed. Again, in support of what Stuart said earlier, only the director-general of Education can make a refusal to enrol.

Mr Busby: There are currently processes and arrangements in place with youth justice for the DG of that agency to provide information to the department where they have exercised their discretion to let us know about a child's conviction. That information is not necessarily provided to principals—and my colleagues will correct me if I am wrong—but a flag can be put on a student's record if there has been notification about a charge via youth justice so that upon enrolment, if a principal sees that flag, they can contact someone internally in the agency and get some details around it which would help inform them in making their decision.

Mr Brennan: The other issue that is pertinent to this discussion in relation to the question you have raised is: the mere fact that the principal may be in possession of information around a charge or a conviction does not dictate what the principal will do. The principal still makes a careful

and considered decision about the wellbeing of the student who is in that circumstance and the other students in the school. The actual fact of the matter is: because a charge or a conviction is in place, that does not mean that student will not attend that school.

CHAIR: Has the department become aware of any example since the original law was implemented re suspensions on charges or what those outcomes are?

Mr Brennan: In the first semester of this year, to date there have been five charge related suspensions, but not one of those suspensions has proceeded to the exclusion of any of those five students.

CHAIR: That is interesting information, thank you. I know the committee will have quite a few questions that have arisen going through the Bill. In terms of the five-year period for the retention of the record of decisions, how does that compare with other records about attendance, such as parent notes about nonattendance? Is there a reason for any difference?

Mr Brennan: The reason, in fact, is related to the rights of appeal of the student and the thoroughness that Education Queensland would want to have in place. Therefore, until there is absolute certainty that there is no potential for an appeal to occur, we would choose to hold onto the records.

Mr Busby: The policy is to hold onto the records until any appeal or review rights have been exhausted, and existing provisions in the Act allow certain students who have been excluded to seek to make a submission against that exclusion for a period of up to when they turn 24. So there is quite a period after their schooling has finished that they have the capacity to seek a review or make submissions against that exclusion.

Mr SYMES: How long do students have to make a submission against a suspension or exclusion? If it is open-ended, does that suggest that the department would keep the criminal history indefinitely?

Ms Smith: There is no limit to when the student can make a submission around suspension. In terms of exclusion, as Stuart has said, until the end of the year in which the student turns 24 the student can make one submission per year.

Mr Busby: Of course there are limits placed on the time frames with most suspensions. The only one that is to a certain extent open-ended is the charge related suspension, which is open and remains on foot until such time as the charge is dealt with or the principal reverses the decision. The right to make a submission exists for the length of that period.

Dr LYNHAM: I have a question about mature-age enrolments. I am a little confused. You said earlier that to refuse a mature-age enrolment based on a criminal history is not the role of the school principal; it is the DG who actually makes that decision. But we are looking at legislation empowering principals to obtain that information. Why would they want that information if they have no responsibility for this matter?

Mr Busby: They do have a certain responsibility. The application for enrolment is made to the principal, as with any other student. The legislation is now saying that the principal is responsible to receive the application. They will make recommendations to the director-general based on the information they receive, part of which might include the criminal history information, if any.

Dr LYNHAM: But there are only four schools. Why could that not just be vested with the director-general? Does it not seem a superfluous issue to have four principals looking at this?

Mr Busby: It will not necessarily be limited to four schools. Schools will be able to tender to provide education to mature-age students and the department can consider that in time. At the time that we had our last hearing it was understood that there would be four. It could increase. In response to your question, the director-general is currently the only officer who can refuse enrolment based on concerns about the safety and wellbeing of other students. We are not changing that position.

Dr LYNHAM: I cannot understand why the information cannot be supplied directly to the director-general. I cannot see the purpose of that step by the school principals except for possibly a gain in the principle of principal autonomy.

Mr Busby: Yes, there is that. The mature-age student criminal history information, I would suggest, is a different kettle of fish to the information we were talking about before for disciplinary purposes. These are adults who may be attending a school which has minors. They consent to the request for the criminal history information. They have other opportunities and other avenues to

further their education to gain employment or to move on to tertiary education. The situation is that, as you say, for school autonomy reasons the applications are going to principals. They will get the criminal history information. Like they do with any other enrolment, they make an assessment about whether there are issues with the enrolment of that person and, if there are, refer them up to the DG.

Dr LYNHAM: You may be able to help me as well with a matter of personal education. I am having difficulty understanding the concept of why these people are not just asked to get a blue card, like a teacher. Their responsibility is to obtain a blue card and once they have that blue card they are all right and they are able to be enrolled. What is wrong with that philosophy?

Mr Busby: Currently there is a duplicative system where in fact the DG gives a positive or negative notice based on that kind of information. We are trying to reduce the red tape on principals. They can look at the criminal history and decide for themselves.

Dr LYNHAM: I am trying to reduce red tape like crazy. I am saying that if you are a mature-age student and you want to attend a school you go get a blue card. If you come with that blue card, you are in the school.

Mr Busby: There are other factors that principals may want to consider over and above blue cards, I would imagine. I understand also that the blue card system is currently under review, so we have to see what happens in relation to that review and where we end up with the system.

Mr Brennan: I believe one of the points of difference is that the principal is charged with the duty of care of all students and may benefit from knowing the criminal history of a mature-age student, even when the decision is made by the principal to enrol that student, because the principal can read the criminal history and make the determination 'yes, I will enrol this person and give this person this opportunity, but I also know that I need to put certain provisions in place for the day-to-day management within the school'. I think it is that fine decision by the principal that 'yes, I want to give this person this opportunity to improve their education, but I am also aware that I need to make sure that I have suitable provisions in the school'. That could be in relation to amenities or it could be in relation to the use of certain facilities within the school grounds and certain areas of delineation, particularly around instances where there may only be a small number of mature-age students in the school.

As Stuart suggested, we are about to run an expression of interest in all state secondary schools to determine whether there are other schools who have an interest in enrolling mature-age students in terms of giving adults the capacity and the opportunity to enrol in our schools. Therefore, it is quite possible that there will be mature-age students in quite a number of our schools. I think the precision of that information to principals will be crucial for principals to effectively manage having those mature-age students in their schools.

CHAIR: How long do students have to make a submission against a suspension for exclusion? If that is open-ended, does that suggest that the department would need to keep criminal history information indefinitely?

Mr Busby: It is not an open-ended arrangement. I will ask Jean to clarify again how the review process works.

CHAIR: That was a query that we did pick up.

Ms Smith: In terms of the student who has a suspension, obviously they have a one-off opportunity to make an appeal to the director-general around their suspension. Beyond that they also have an opportunity for judicial review for exclusions or suspensions, so there is a further opportunity afforded to them. In terms of exclusion, if they are excluded permanently they have one opportunity every year until the end of the year in which they turn 24. The proposal is that the sensitive information will be held in a secure part of our OneSchool student management system. The only people who will have access to that are the named people and only for the purpose they need it.

In terms of the exclusion, the principal needs that information in order to make the exclusion decision but does not need access to the information beyond that. The director-general or the regional director would need access to that information should they have to consider an exclusion appeal or a suspension appeal, so it will be very locked down and it will not be accessible beyond the purpose for which it is needed.

Mr Busby: There will be a finite period. Once you turn 24 your rights will cease, and that is only about exclusion decisions. As noted before in terms of suspension decisions, apart from the charge related ones suspensions are for set periods of up to 10 and 20 days, so they have a finite

period. In relation to charge related suspensions, they are on foot until the charge is dealt with, so up until that point the written submission could be made.

Mr LATTER: I would ask you to explain to me some of the processes around student education through international education institutions. Are students who may elect to get an education through an international education institution—and I appreciate that we do not have any in Queensland at present, but ultimately the Bill will allow for a situation that potentially makes it easier for this to become a situation in Queensland—exempt from meeting the national standards of our education system?

Mr Busby: No.

Mr LATTER: Just for the sake of clarity, undertaking primary or secondary education through an international provider would be in addition to maintaining a minimum standard of our curriculum; is that right?

Mr Busby: That is right. If you are a person who meets the requirements for compulsory participation schooling under our legislation, attending an international education institution is not an option, so you must still be attending a state or non-state school. In the compulsory participation phase, the 16-plus years, you are attending an approved provider, which can be a TAFE or a school, or you are in employment. You are not excused from those requirements. For international students who come out here on visas, these institutions are not registered under CRICOS, the Commonwealth Register of Institutions and Courses for Overseas Students.

So our international students coming out on visas are not attending these. Their visas are not allowing them to attend these colleges. They are going to approved providers under the CRICOS legislation. So really, for those students it might be something that they do in addition. Perhaps there are people who come out on other visa arrangements—tourist visas or whatever—who may choose to study at one of these institutions, but they are providing the curriculum of another country. So we are not regulating that. Is there anything that you want to add to that, Pat? Did I get that right?

Dr Parsons: That is right.

Mr LATTER: Thank you.

Dr LYNHAM: I could not see why this was in the legislation.

Mr Busby: Why it was there in the first place or why we are removing it?

Dr LYNHAM: Why it is being removed—why the regulation is being removed, why you are removing any regulation over these international institutions. When I am reading legislation, there is usually a point to it. There are none of these. There are none proposed in the future. There never has been any. Why are we looking at it?

Mr Busby: I cannot say that there are none proposed for the future. In fact, there have been conversations with the department over the last couple years with at least one entity that was looking to set one up. So it is something that entities may wish to pursue. We are removing the red tape around this because we do not regulate these entities. We have arrangements that regulate our state schooling and non-state schooling system. We have CRICOS—the Commonwealth and state based collaborative approach to dealing with international students who are coming out here doing the Australian Curriculum—but we do not regulate these entities providing a curriculum of another country. In terms of safety, there are other provisions in place—the children's commission, the working with children legislation—that require certainly a blue card and so forth around that.

Dr LYNHAM: So an overseas educational institution will come to Queensland, set up a school, have people from overseas attend that school with no regulation from the Queensland government whatsoever?

Mr Busby: There would be regulation around other things. Fair trading legislation would apply to them. As I said, the working with children legislation would apply to them. But we are not ensuring the quality of the education that these entities are providing. They are providing an overseas curriculum generally for overseas students. So we are not trying to regulate that. I think that is the decision that has been made here: that we do not need to be in this space of regulating the quality of education of these entities. That is a matter for them.

Dr LYNHAM: Would it be reasonable that a student who performs five years of education in Queensland could seek some qualification from Queensland—having been educated here for five years?

Mr Busby: If a student is living here—this is all intertwined with visa arrangements as well, which, of course, are complicated and I am not suggesting that I am an expert around those—but people out here, living here for five years, are out here on a certain arrangement. If they are out here on a student visa arrangement, they need to be studying with a provider that is registered by CRICOS and these entities are not.

Dr LYNHAM: So where do you think the demand for these entities would come? Where would they fit? What niche would they fit in in Queensland?

Mr Busby: I do not have the answer to that. Pat, would you have any insights?

Dr Parsons: They might fit in terms of students from overseas who wish to travel to Queensland to undertake the curriculum of an overseas country and who wish to do so for short periods of time—up to three months. I think it is up to three months that they can do that on a travel or a tourist visa. After that, it is on a student visa and the entity would need to be registered by both Queensland and the Commonwealth for CRICOS to bring in overseas students on student visas. At the moment, international education would be, it is envisaged, for short periods of time. Beyond that, the entity—the state or the non-state school or an RTO, a registered training organisation—would need to be registered for CRICOS and go through that process.

Dr LYNHAM: Thank you.

Mr LATTER: Is it the case, then, that this decision really is a commercial decision for the provider, given that provision of the education curriculum that they ultimately will be providing has no accreditation here in Queensland or in this country, ergo the department is stepping away from this? Because there is no relevance to our system, there is no jurisdiction for us to monitor it. It really is a commercial decision for the provider to want to provide that, I dare say, at a fee to someone who meets those short-term circumstances; is that right?

Mr Busby: That sounds like a fair statement to me, yes.

Mr LATTER: Thank you.

CHAIR: A chief executive can delegate his or her function in respect of a student's criminal history. Is the Police Commissioner also able to delegate his or her information provision function?

Mr Busby: We have not provided for that in our legislation, but I might have to take that one on notice.

CHAIR: So it really is—

Mr Busby: I imagine that there is provision under the police administration legislation about how the Police Commissioner can delegate their functions and powers.

CHAIR: So it really is outside this legislation.

Mr Busby: We would not provide for it under our Act, but I would be happy to provide advice back to your secretariat on that matter.

CHAIR: Thank you. Any other questions? Thank you very much for your participation and also thank you for attending the previous hearings, Dr Parsons. Mr Busby, as you said, you were also tuned in and listening. We really do appreciate that.

That brings us to the end of the briefing. I thank you all for coming along. We appreciate the time that you have given us today. It has been very helpful, particularly this final briefing which has been to answer quite a few questions and ensure that our understanding of the legislation is a lot more complete.

Anybody who is interested in receiving updates about our work, including our report on the Bill, which is to be tabled on 20 October, should subscribe to the committee's email subscription list via the Queensland parliament's website. I now declare this briefing closed.

Committee adjourned at 11.21 am