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 HEARING—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 9.04 am

CHAIR: Welcome. Before we begin this morning I ask everyone present to turn off their mobile phones or set them to silent. I also ask any media recording these proceedings to adhere to the committee's endorsed media guidelines. Copies of those guidelines will be 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 web page.

I would now like to 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 Mark Boothman MP, the member for Albert; Mr Neil Symes, the member for Lytton; Mr Michael Latter, the member for Waterford; Dr Anthony Lynham, the member for Stafford; and we will have Mr Ray Hopper, the member for Condamine and deputy chair, joining us shortly. Mr Steve Bennett MP, the member for Burnett, has sent his apology.

We will start off this morning with a public hearing to support our inquiry into the Education and Other Legislation Amendment Bill 2014. At 10.30 am the committee will take a short break, returning at 11 am for a second briefing on the Bill by the Department of Education, Training and Employment. This will allow us to ask any further questions we have since the initial briefing given shortly after the Bill was introduced.

The Education and Other Legislation Amendment Bill was introduced into parliament on 26 August and subsequently referred to the committee for consideration. The committee is to report its findings to parliament by 20 October this year. The Bill aims to support school autonomy by enhancing localised decision making, support school safety, improve educational outcomes and reduce red tape.

All witnesses we hear from today should know that as a proceeding of parliament the privilege and contempt provisions of the Parliament of Queensland Act 2001 apply to the hearing. Witnesses are, however, able to request that any material or information they provide be kept private and the committee will consider that request. Witnesses may also object to particular questions. These procedural considerations are outlined in schedule 3 of the Legislative Assembly of Queensland's standing orders which I believe have been provided to witnesses.

I now welcome Mr Andrew Pierpoint, who is the president of the Queensland Secondary Principals Association.

PIERPOINT, Mr Andrew, President, Queensland Secondary Principals Association

CHAIR: Mr Pierpoint, thank you for your written submission and for attending here today.

Mr Pierpoint: You are welcome.

CHAIR: Would you like to make a short opening statement before the committee asks some questions?

Mr Pierpoint: Very briefly, what you have just outlined we support. Basically, in broad terms, there is a reduction of red tape and there is an emphasis on school safety which empowers principals to run their school a little bit more efficiently, I believe. So in broad terms we support most of the changes in this Bill. That would be my brief opening statement.

CHAIR: Excellent. Your submission mentions that the enrolment of mature-age students can be problematic and that when these students are issued with a negative notice this can place the school and the school staff in a very difficult position. Are enrolments only problematic if the students are issued with a negative notice or are there other issues as well?

Mr Pierpoint: The prospective student would get a negative notice in the mail, and we get notified at the same time under the current procedures. The person then has one course of redress from the student's point of view and that is the school. The student often vents his or her feelings to the school, and the people who cop it first are the office staff. I am speaking from firsthand experience. So this proposed change would be very welcome.

The other issue that raises its head a lot more often than might be seen is that some mature-age students come back to education with a view to the curriculum program delivery being in a certain way. That is, they may have done a certain subject at school and they believe that they should be exempt from that when they come back. Certain protocols, particularly if they want to become OP eligible and whatnot, might dictate that they cannot become exempt from that and that also causes potential conflict between the school and the prospective student.

CHAIR: So if all the negotiation is with the principal it then alleviates a lot of the duress, shall we say?

Mr Pierpoint: It may, yes. A lot of the enrolment management procedures are not done by the principal in high schools; they are done by a deputy as a delegated responsibility, but usually they are very skilled in that area. There are odd occasions when there are issues, and this Bill will go some way, I think, to preventing that. Also I think, just while I am speaking about that, a lot of mature-age students come back to school with well-intended objectives about improving their education, but school might not be the right place for them to fulfil those objectives. TAFE might be a very good option, for example. It needs to be a much more fulsome conversation—rather than a person coming to school, filling out an application for enrolment, the application going through procedurally and then the person just becoming enrolled. There is a lot more to it than that.

Dr LYNHAM: I am interested in the criminal histories used to inform suspensions or exclusions. Would a principal automatically suspend or exclude a student from a school who had been charged with a serious offence? What criteria would that school principal use?

Mr Pierpoint: I speak from experience here. To answer your question, no, a principal should not just automatically jump to a suspension or an exclusion. There are many issues that need to be touched on with a student coming to enrol. Are we talking about enrolment or a student currently enrolled?

Dr LYNHAM: A student currently enrolled who gets convicted of a criminal offence.

Mr Pierpoint: Convicted?

Dr LYNHAM: Charged with a criminal offence.

Mr Pierpoint: The first issue that we in schools would have is that we might not know that. I do not want to be humble here, but principals are responsible for not only the student who may or may not have committed that offence but also the other 1,000, 1,200 or 1,500 students in the school, his or her staff and the visitors to the school—QBuild or whoever it might be. In my experience, the charges that cause people to think about suspension or exclusion are serious charges. They usually involve violence, so they are very thoughtfully considered. But, no, they do not automatically think that. They probably think, 'How do we best cater for this student's needs given this set of circumstances today as opposed to the set of circumstances that this student had last week, before he or she was charged?' and then, 'How do we put in place procedures so that he or she continues to learn, teachers continue to teach and other kids at the school continue to learn as well?'

Dr LYNHAM: You have a practical point: how would the principal naturally become aware of one of the children in the school being charged? It is not a common thing. It is not discussed with the school community that much.

Mr Pierpoint: In the school community, no. The smaller the community, the more able schools are to become informed, just simply through the town networks. Sometimes schools have very productive relationships with a whole lot of the people in town who may also provide information to the school, but it is always a difficulty. And, of course, when the student presents for enrolment—which I know is not part of your question but is part of the answer—they are usually not forthcoming with any charges or any convictions they may have; nor are their parents or carers. That is very problematic. Does that answer your question, Dr Lynham?

Dr LYNHAM: It leaves a lot still to be answered. The main points are: if a kid is charged, will you know? Will the police tell you? Will your decision be whether you suspend that student based on the charge or not? What degree of criminal charge will you suspend a child on? Is there any criteria, apart from the subjective attitude of a principal?

Mr Pierpoint: The safety of the students and the safety of everyone at the school are the first orders of priority.

Dr LYNHAM: Naturally. Where would you take advice from regarding that? Who would be the first point of call regarding that?

Mr Pierpoint: Central office or the regional office for that school would be the first points of call. There would be an officer there who would be briefed in the legal aspects of all of that. There certainly is at central office.

Dr LYNHAM: Any natural engagement with the police by the school?

Mr Pierpoint: Not initially, I would not have thought.

Mr LATTER: Mr Pierpoint, further to Dr Lynham's line of inquiry, in terms of engaging with police through a process to help manage any potential risks that there might be for a student who identifies as having a serious criminal charge, is there any concern from your organisation or your association or any representations by the principals with regard to a preference for engaging with police to seek that sort of advice?

Mr Pierpoint: Is there a process? No. Would we like to have it? Yes.

Mr LATTER: Wonderful.

Mr Pierpoint: If a student is charged with a serious offence, I think the local police station would be very happy to inform the local school of those charges. Obviously not everybody at the school needs to know that. There would be a limited number of people who would need to know. Probably, off the top of my head, I think it would be the principal and the deputy principals, because the principal is often out of the school on school business, so someone else needs to know. If we could set up a dialogue between QPS and the department, that would be a very beneficial thing—in limited circumstances. We do not want to open the floodgates here for everything. It is just those serious things.

Mr LATTER: I ask that because recently we have become aware, through research undertaken by the committee research officers, that New South Wales similarly has a situation whereby its chief executive or principals can seek and obtain information regarding such charges. Also, they can liaise with police or seek advice from police as to how they might manage those situations in the school. That is why I ask you the question.

Incidentally, moving on to mature-age students and the proposal for principals of schools that will be able to take on mature-age students similarly getting access to the criminal history of potential students, I believe that it is the position of your association that this is a welcome initiative. Is there not a level of protection in keeping this delegation at the chief executive level, in terms of a principal subsequently making a decision based on any information that they may receive through those sorts of searches that would provide a negative response to the mature-age student's enrolment application? If that authority was to remain with the chief executive, would that not, in fact, provide a level of protection for principals? What are your thoughts on that?

Mr Pierpoint: At the moment, all mature-age students undergo a criminal history check. That is not new. If the director-general—and I assume that is your reference to the CEO—

Mr LATTER: Yes.

Mr Pierpoint:—maintains that, that would be acceptable. However, the people on the ground design the education program for the student given that student's circumstances. They may have been dabbling in the past in criminal activity; they may not have. There might be learning issues. There might be a whole range of issues that affect that student and why he or she left school early, which is the majority of the time why mature-age students want to come back to the school. The best person to make that decision is the principal and his or her staff. There is some merit in the director-general making the decision about coming back to school, but the putting together of the educational program must remain at the school level, I think. Does that address your question? You raised a couple of issues and I tried to touch on them all.

Mr LATTER: Let me try to bring it back down. My inquiry really is the situation where a principal undertakes a criminal history check, given that it would be delegated to their authority to do so, and subsequently the principal decides to refuse entry to that particular facility. Because the decision and the process lie with the principal, is it providing an unreasonable risk that the student may then try to take some recourse with the principal? Is that a decision that should be left with the director-general, in order to protect the principal?

Mr Pierpoint: Having been the recipient of a very angry person, I think I would go with leaving it with the director-general. However, that is not a common occurrence. The key part to your question, Mr Latter, is that if there is high communication between the director-general and his or her delegates and the school then that would be fine.

CHAIR: Mr Pierpoint, this question is probably a little hypothetical and certainly it is outside the bounds of this legislation. Do you think there could be an area where police perhaps should be empowered to actually alert a principal if there is a charge and they believe that that student could create a problem with other students?

Mr Pierpoint: Absolutely I do. Can I respond with an example?

CHAIR: Yes, please.

Mr Pierpoint: Recently I was the principal of a large school not too far from here. A couple of years ago I received a phone call and a series of emails from a detective in New South Wales which I promptly ignored. I deleted all of the emails because I did not know that this man was who he claimed to be. A whole lot of things went through. We had enrolled a student at school who had three charges in two states for armed robbery with violence—I think that was the actual term. That student was amongst us. That made me think very seriously then that if the police knew that that person was at school—if the student had committed the offence at night, let us say, and in the morning was able to be at school as he was not still in jail or the watch-house or whatever—it would be very important that we know that. If you take the position of 'Mr and Mrs Average Parent' of the school, I think they would expect the school to know that those students were in the general population at school. That would be my experience, to say that.

CHAIR: Thank you for that. Members, do we have any further questions?

Mr BOOTHMAN: I think we have pretty much covered it.

CHAIR: There was one query: why do you support the power to commence proceedings being given to the regional directors? Is there a reason that you do not think this should be delegated directly to principals?

Mr Pierpoint: When absenteeism is an issue, most or all of our education regions have thorough processes in place now for monitoring that. I think this only supports the existing protocols. I think absenteeism has always been linked to student performance and with a whole lot of societal issues that we will not go into. I think absenteeism is becoming more and more problematic, so the greater it stays at a regional level, as opposed to going outside a regional level, the better. May I make one other comment, before we get off the criminal part of things?

CHAIR: Please do.

Mr Pierpoint: On the other part to our submission—on page 3, if you have it in front of you—I would like to explain the second paragraph at the top. It seems like we want two bob each way here, so I wanted to explain that. We are principals—we are not lawyers—and we do not live in the world of law. We loyally go about our duty based on the rules of engagement, if I can say that. When a student is not of a mature age, which is where most of our conversation has been around, I am aware that there might be some civil liberty issues if we were to start asking and probing about criminal records. We raise that issue and acknowledge that that might become an issue. The legal people will sort all of that out and the due process will sort all of that out, we hope, and we will enact what we need to enact. I wanted to clarify that. We did not want two bob each way there; we actually were quite thoughtful.

CHAIR: We do understand that. Are there any more comments?

Mr Pierpoint: No. I think this is quite refreshing, actually.

CHAIR: We do appreciate the submission you sent in and certainly the issues that you have raised, because they have been very relevant, particularly bearing in mind that much of the legislation does impact on principals.

Mr Pierpoint: Certainly it does. It is day-to-day school life.

CHAIR: Absolutely. As there are no further questions, I thank you very much. We really do appreciate that and, as I said, your submissions are greatly appreciated as are your comments. Thank you very much.

Mr Pierpoint: Thank you very much.

BYRNE, Mr Mike, Executive Director, Queensland Catholic Education Commission

MacDERMOTT, Mr Patrick, Executive Officer, Research and Policy, Queensland Catholic Education Commission

CHAIR: Before we commence the proceedings, the Queensland Catholic Education Commission wishes to table a document. Do I have agreement from the committee that this document be tabled? All of the committee is agreed, thank you. We have resolved to table that.

We now welcome from the Queensland Catholic Education Committee Mr Mike Byrne, the executive director, and Mr Patrick MacDermott, the QCEC executive officer of research and policy. Mr Byrne, thank you for the written submission from the Queensland Catholic Education Commission and for being here today to expand upon it. Would you like to make a short opening statement and the committee will then ask you some questions?

Mr Byrne: Thank you very much for the opportunity to meet with you today. As the chair has said, we have given you a formal submission. What we saw us doing today is addressing the four points that I have noted in the brief summary. They are not hugely significant, but we still think that by making minor changes it will be better legislation. I can speak to those if you wish. Should I go through the four of them or go through them one at a time?

CHAIR: Perhaps go through all of them. Would you be happy if committee members interrupted to ask questions if it becomes relevant?

Mr Byrne: Very happy with that.

CHAIR: Thank you, Mr Byrne.

Mr Byrne: I note in doing this that Patrick, my colleague, has prepared the submission. In a previous life to the Catholic Education Commission, Patrick worked as a senior public servant and worked in the non-state-school office. He has a good understanding of the legislation. He is a valuable colleague in terms of the issues. If there are more technical issues then Patrick has a very good understanding of those.

In terms of the issues that we would like to bring to your attention, the first one relates to the letters patent legislation. This is very old legislation going back to the 1860s. What we find within our governing bodies are various ways in which the directors are appointed to these governing bodies. When NSSAB needs to deal with the governing bodies it is very important that they know exactly who the directors of the governing bodies are.

This first element of the legislation allows three diocese—Cairns, Rockhampton and Townsville—to appoint another person to the governing body. In some cases there is only one person who makes up the governing body—the bishop. In some cases there are more. For example, in Rockhampton there are seven people who make up the governing body within that diocese. This legislation makes it possible for the bishop to appoint another person to the governing body. Importantly, when they have appointed a new director they need to tell NSSAB that they have done that. The legislation requires them to tell NSSAB that they have done that—and we think it is perfectly reasonably that if they have changed their directors they inform NSSAB—and they have been given 14 days to do that.

We in our office and they in their office will try to make sure that that in fact happens. Sometimes in these circumstances—that is, when the bishop puts on another person—they forget to tell NSSAB. Part of our problem is that they will then get penalised 20 penalty points if they fail to tell NSSAB within 14 days. We think that is not consistent with the way other governing bodies across the state are treated. There are 150 different governing bodies governing all the different schools in Queensland. Only 11 of those 150 could have this penalty clause imposed on them. We think for consistency that that penalty should be taken off. It is not a huge issue. We will try to make sure that in fact our authorities do inform NSSAB. We think informing NSSAB is a perfectly reasonable request. Our question is whether the penalty should be there. Can I pause there on that one?

CHAIR: Thank you, Mr Byrne. It is quite specific that this will affect 11 out of the 150 governing bodies. Do you think 14 days is too tight a time frame, bearing in mind that under the Charitable Organisation Act it is 28 days? To you, is 14 days too tight?

Mr Byrne: It probably is tight. If they make that decision, letting NSSAB know is a very simple process. It is not an onerous process; it is just a matter of them thinking about doing it sometimes. Our issue is not so much whether it is 14 or 28 days, although I think 28 days would be helpful; it is more the consistency of the penalty. That is the point that we would like to bring to your attention.

CHAIR: Do you believe that there was some reason for putting this particular penalty into the legislation?

Mr Byrne: I might ask Patrick to respond to that.

Mr MacDermott: On inquiring of the department around that, they said that formally adding a director to the board is obviously an important thing. The board definitely needs to know. It is an important step to tell the board that there is a new director. I suppose the point is the consistency in terms of how governing bodies in non-state schools are treated across-the-board. Should there be a penalty for all governing bodies or just this select group? It seems to stand out a bit. It is important to tell the board. I am sure that could be managed.

CHAIR: Thank you for that.

Mr Byrne: The next item relates to special assistance schools. I will just take a minute to explain what special assistance schools are. Within the Catholic education system we have 11 of them out of our nearly 300 schools. That gives you an understanding of the proportion. They are relatively new types of schools. Typically they will have an enrolment of 50 to 70 students.

Edmund Rice Education is the group of schools that has really sponsored those. I see you nodding your heads. You must know of them. They are basically for children who have not coped in normal schools. They have fallen between the cracks for various reasons. They would generally not be attending school at all. The idea of these schools is that they shape the curriculum to suit. There are no bells and no uniforms in the traditional mode of school. They try to make the curriculum as meaningful and as relevant as they can for these students. They are different sorts of schools. They have different ways in which they operate.

The issue that NSSAB always struggles with in terms of this is dealing with and being faithful to the legislation. When a school is created, and suppose they have 50 to 60 students, they may become aware that in another place, relatively close—let us say 30 kilometres away—there is another cluster of students that has a similar need. It is not always easy to bring them from that remote cluster to the existing school. So what they do is have a troop carrier or a little bus that has eight or 10 seats in it and they go to a park and locate where these kids are. They find the kids. They try to establish some temporary way of caring for these students. For some of these schools it has almost been a garage or industrial shed type environment. Sometimes that is where the kids feel comfortable in terms of what they do.

They set up a branch of the school in this other location. That is called a flexible arrangement. With this flexible arrangement it is important that the various checks and balances are put in place. This is normally part of what NSSAB would do when it is creating either a new school or a new campus of an existing school. NSSAB, on behalf of the government, needs to ensure that it is a safe place, that there are appropriate toilets and those sorts of things in place and that the curriculum being offered is appropriate.

What this legislation now puts in place is a little bit more flexibility. It says, 'You can go to a remote spot and we will give you 95 days in which to work out whether a more permanent location needs to be located at that site.' Sometimes they find that it does and then they go through the processes with NSSAB of registering that site. NSSAB then goes through a series of bureaucratic processes to ensure that that site is checked out and then that gets accredited as an attribute of the original school. That is all a bit complicated. Does anyone want to ask any questions about that? Does that all make sense?

CHAIR: Yes. That is fine.

Mr Byrne: What the Bill has said is that that process should be in place but the number of days will not be in the Act but in the Regulation. Again, we think that is a wise thing. Because of the nature of these schools, even though 95 days seems to be a reasonable amount of time we suggest that there should be a safety net. If they need more than 95 days then there should be a way to come back to NSSAB and say, 'We are still working this out. We would like to have another 95 days to work it out in case we cannot do it in the first 95 days.' What we are asking for is for the Bill to be amended to give that extra dimension of flexibility should that be required. Patrick, do you want to add to that in any way?

Mr MacDermott: The 95 or 90 days that have been raised in consultation seem to be an indicative period that will be applied through the Regulation. Obviously, that is not in the Bill at the moment. In the Bill there is no formal process where the school can come back. It is really to cater for unexpected delays, particularly around getting building approvals from councils or various things that can occur. It would be a shame if the whole operation, which is helping those children, had to be closed down because there is no mechanism to extend the time in unforeseen circumstances.

In talking to the operators of these schools, it is often said that it takes about a year to get these schools up and running and get some connection with the community and the children. Then they are in a position to formalise a school more. We see that as a bit of a safeguard. It may not be required in every instance.

CHAIR: Do you think, given that the 90 or 95 days has only been raised in consultation, that it should perhaps be longer than 90 or 95 days? Would you have suggested a longer time than that? Is that schools days that is being discussed?

Mr Byrne: That would be. The idea of 90 or 95 is that that represents what is basically a half year or semester. It gives them a semester to get themselves organised and make a decision about making a more permanent arrangement. But then there is a whole series of steps that they need to go through before NSSAB can actually approve that new arrangement.

You could change it to a longer period—for example, a year. I think the benefit of doing it in two six-month blocks is that it gives the schools a time frame: 'You have six months. You have to make a decision.' If you get to 98 days or 102 days it seems to me that the whole thing, as Patrick has said, might fall over. They would then have to go back to NSSAB and say, 'We still need more time.' If we amend the legislation it would give NSSAB the capacity to give them more time if they need it. But at the end of that year they have to have made a firm decision. The benefit of having a firm decision is that it gives NSSAB the capacity to check out that school. If that new site is going to be a permanent school site then NSSAB needs to satisfy itself that it is an appropriate site.

Dr LYNHAM: What is the history with the 11 schools so far? Have they been set up under that 95-day criteria or not?

Mr Byrne: No.

Dr LYNHAM: What has been the time frame for those schools?

Mr MacDermott: They have developed in an ad hoc way. The number has grown due to the number of disengaged students. Typically, they would have a campus or a flexible arrangement for at least a year or over a year before they manage to build it up. They are often on sites that have been lent to them by the state education department or various others.

Mr Byrne: Local council sometimes makes them available.

Mr MacDermott: Because they do not have a lot of money to operate these schools, often they are relying on other community providers or state government departments.

Dr LYNHAM: How long has the approval process taken on average thus far?

Mr Byrne: For NSSAB actually to process it, it probably takes about three months usually. So what a school needs to do is apply to NSSAB for a site to be accredited. So they have to think about where they are going to create one. Usually it is according to the socioeconomic needs. There is one that they have just established, for example, at Noosa. They say, 'We used to have one that operated from Gympie and then we had one of these temporary arrangements—kids on the bus. We found that there were so many kids at Noosa that we decided to build at Noosa.' Then they go to council and then they try to get a premises they can lease.

They have to have all of those things in place and when all of those things are in place then they start the school. So they have to make sure that all of those things are ticked off by NSSAB before the school can be up and operating. That also gives them the tick for funding from both the state government and the federal government. So the NSSAB tick is an important safety arrangement. It is a quality tool arrangement for government in terms of ensuring that the children are getting an appropriate education. But it is also an important financial consideration because it allows the schools to be financial in terms of their operating costs. So to answer your question they have to apply for that beforehand.

What this flexible arrangement allows them to do is set up a temporary flexible arrangement on a new site. There was one way of doing that but it was very cumbersome. It meant that when you went to the new site the original education program could not be delivered at the new site; it had to be delivered by a third party. To give you an example, if they wanted to create a new site somewhere else then they would have to get the Red Cross or the Salvation Army or someone else to run it. It could not be the same legal entity that would run this new entity. That was just the way the legislation was set up at the time.

We have been very supportive of—there is a man behind us who has been very helpful in terms of making that happen—being able to set that up so this gives them more flexibility. They might run it for three months and find that it is not a goer. They might run it for three months—and

this is generally what happens: they start with 10 or 15 and within three months they have 50 or 60—and say, 'We need to create a new site here.' This gives them the capacity to do that and then check it out. What we are asking for is a further 95 days, just in case they got it wrong or they need more time. It means that when you are setting up the legislation it gives NSSAB the flexibility to be able to do that if they make a judgement that that is appropriate.

Dr LYNHAM: Do you think special assistance schools are increasing in number or will be increasing in number in the future?

Mr Byrne: Yes. Sadly, I think they are going to increase. One of the other things that we are finding is that they are actually going down to a lower age group. Where once it was seen to be lower secondary where kids disengaged, there is now a fair amount of evidence that it is even at years 6 and 7 in existing primary schools where they are showing a need for that.

Dr LYNHAM: Is there any history of successful reintegration from special assistance schools to mainstream?

Mr Byrne: That was always the hope that these students would go into these schools for a six-month period and then they would be able to migrate back into traditional schools. The reality is that very few of them actually do. They tend to stay in those schools because of the nature of their problems. Patrick, would that be the case?

Mr MacDermott: Yes. There is little integration back into mainstream schools from those schools.

Dr LYNHAM: What is the outcome at the end of special assistance schools?

Mr Byrne: One of the things that NSSAB is trying to work on with these schools is that they do not just become child-minding places. They have to be schools. They have to be educational environments. There is strong evidence within the Christian Brothers schools one, the EREA schools, that there are two things happening: one is more a matter of personal self-esteem. The kids start to almost believe in themselves. They start to interact in a more humane way with each other, with their parents and with their carers, so they become more responsible adults. As well as that, they then take on some learning. It can vary enormously. There have been cases—if you ever have a chance to visit one, there is one at Albert Park just near the football stadium. I was there mid last year. There were two girls there who were preparing to do their senior studies and they were going to go on to university. They had become dysfunctional for various reasons but they were actually two quite intelligent girls. But they tend to be in the minority. Most of them will go into trades or into some learning environment. What these schools try to do is set up relationships with trainee organisations, whether it is TAFE or whether it is a workplace environment, where these students can graduate to.

CHAIR: And there has been some success in that?

Mr Byrne: Yes.

CHAIR: That is a really positive outcome.

Mr Byrne: Yes. At one stage in my career I was at Townsville and we were doing some work with both local government and the people who were running the Cleveland detention centre. What we were saying to them was that, if the students end up in the Cleveland detention centre, the cost will be somewhere between $70,000 and $90,000 per student. If we can, in a sense, work with them before they end up there, the cost per student will be somewhere around $15,000 per student and they will have a greater quality of life in terms of what they do. But it is more expensive than normal schooling.

CHAIR: Are there any further questions in that particular area? I have a comment. Your submission refers to a requirement that a temporary site for a special assistance school be 20 kilometres or more from a special assistance school. We could not find any reference to that in the Bill. Could you direct me to the source of that reference or would that have been a discussion point?

Mr MacDermott: I suppose that was raised in consultation. That is why we did not put it in this summary sheet in that it appears it is not in the Bill as drafted. But that had been discussed during consultation.

CHAIR: Do you have any issue with that?

Mr MacDermott: The setting of absolute limits raises a question of things on the borderline. The catchment area for normal schools is so that they do not negatively impact on other schools. Special assistance schools seem to be a special case where people are not in this to grab students

from other schools. They are really flat out coping with the demand already. So that placement does not seem as important. Where the need is for the children who are not attending schools, that is probably where the centre should be.

CHAIR: In central metropolitan areas where there is a heavy population, maybe this would create difficulties.

Mr MacDermott: You could have one in Fortitude Valley and one in Spring Hill and that would be too close, but there may be a lot of young people not attending school in those areas.

CHAIR: There would be needs there and they certainly would not travel that distance. They would not be bothered.

Mr MacDermott: And you are not really taking students from other schools.

CHAIR: No. I understand that. Mr Byrne, do you have further points?

Mr Byrne: The next two points on the summary sheet—items 3 and 4—are just points for us to endorse rather than change. In terms of directions to hostile people, we think that is a relatively small but still very important power to give to the principals, and we are pleased that that applies to Catholic school principals as well. So thank you for that. The same thing applies to the schooling exemptions. Again, it does not happen a lot, but it is just I think a case of giving principals more authority and more power to make those judgements. Again, we support that. Patrick, is there anything further to add to that?

Mr MacDermott: No.

CHAIR: Members of the committee, are there any further questions?

Dr LYNHAM: If I may, Madam Chair. I noticed that you raised no objection to the issue of the exclusion of students with criminal charges.

Mr MacDermott: We had not looked at that in detail. During the consultation it tended to be focused on these areas. Maybe they were seen as specific for non-state schools. We were more up on the areas where we had been consulted directly. We have not had a lot of dealing on that issue, so we really did not put in anything around it.

Mr Byrne: But we will look at that and check on that.

CHAIR: Thank you.

Mr Byrne: Thank you very much for the opportunity and best wishes for your work.

CHAIR: We really do appreciate it. Thank you both for appearing this morning. The information you have provided, as well as your submission, has been very helpful to the inquiry. We really do appreciate your input.

BARTHOLOMEW, Mr Damian, Deputy Chair, Children's Law Committee, Queensland Law Society

FITZGERALD, Mr Michael, Deputy President, Queensland Law Society

PAXTON-HALL, Mr Paul, Member, Not-for-profit Law Committee, Queensland Law Society

CHAIR: I welcome representatives from the Queensland Law Society: Mr Michael Fitzgerald, the Deputy President of the Queensland Law Society; Mr Damian Bartholomew from the Children's Law Committee of the Queensland Law Society; and Mr Paul Paxton-Hall from the Not-for-profit Law Committee of the Queensland Law Society. I would like to thank the Law Society for the written submission and thank you for attending today. We do appreciate that. I note that there are some aspects of your written submission that you want to bring up and certainly we welcome you bringing those up.

Mr Fitzgerald: Thank you, Chair. The Law Society thanks the committee for the opportunity to provide some observations on the Bill. The Bill contains a number of amendments in various areas of law. The Law Society has serious concerns about a number of aspects of the Bill as drafted. We will highlight two issues from our submissions; namely, the definition of office of 'director' under proposed section 7AA and the power of a principal to make suspension and exclusion decisions. I now refer you to Paul Paxton-Hall, who is a member of our Not-for-profit Law Committee, and Damian Bartholomew, who is the chair of our Children's Law Committee, who will discuss these concerns in more detail.

CHAIR: Thank you, Mr Fitzgerald.

Mr Paxton-Hall: Good morning, Madam Chair, and members of the committee. It is a relatively small point that the Not-for-profit Law Committee would like to make in relation to a small amendment to the Act, and it goes to the question, as Michael said, of the definition of 'director'. To put the clause in perspective, it is necessary to understand the broad range of school types or school entities that we have in the state. The Bill addresses well the issues around separately incorporated schools where there are companies limited by guarantee or incorporated associations. It also addresses well the issue of those schools that have corporate status pursuant to the grant of letters patent which had been quite a problem with the Non-State Schools Accreditation Board. Those two aspects of the Bill are good and address the primary problem.

It is the last aspect of the amendment that we wanted to bring some focus to and that is in relation to either those schools that are not incorporated—so they are unincorporated associations in the true legal sense of the word—or those schools that generally are owned or run by one of the major churches. That is where it tends to be. Anglican, Catholic and Uniting churches do have their own schools. They see them, if you like, as diocesan owned schools. Sometimes the governing body will be the church body itself—the diocese or the diocesan council—but sometimes they will depute responsibility for the management of the school to a local school council or board of trustees. So we have that sort of variation.

The point that my committee is making is that we think the third limb in that definition, paragraph (c), in a sense perpetuates the traditional problem that we have had around letters patent entities. It is a subtle legal argument, but what we are suggesting the Bill reflect is that the sense of control be focused around the school as opposed to the governing body. If the focus is the school, the managing body could well be the school council or it could be the diocesan council or the synod or the church structure. But it allows for the possibility of those two alternatives rather than talking about, as it currently does, defining everything back to the governing body. It is too broad a terminology, I think. It is a subtle difference. We have endeavoured to give some suggested wording to that, and I think that is all that I can say at this stage.

CHAIR: Thank you, Mr Paxton-Hall.

Mr Bartholomew: I wanted to address the point of view of the Children's Law Committee of the Law Society. The amendments as proposed empower a principal to make suspension and exclusion decisions based on behaviour that occurs beyond the school gates which may be entirely unrelated to conduct affecting the school. The Law Society is particularly concerned that these powers can be used when a student is charged with an offence rather than on the basis of a conviction for an offence. This is inconsistent with the presumption of innocence, and very often the student will be advised by his or her lawyer if they are charged with an offence not to comment on those matters that are before the court. That then takes away the ability of that child or young

person to respond to the allegations that are raised by the principal. A suspension or exclusion can adversely affect the student, especially if the charge is later dropped and they are not convicted for it.

CHAIR: Are we taking into consideration the responsibility the principal has for not just that student but also the body of other students within that school?

Mr Bartholomew: Yes, that is obviously something that is in the mind of the principal, but we are very aware, of course, that for all young people who are charged with offences there is a decision made by both the police at the time they are charged and then the magistrate or the judge when they are brought before the court whether or not they will be granted bail, and that is of course a consideration about how that young person will live in the community. Judges, magistrates and police are very aware that young people in the community are largely attending school. In fact, on the whole, what we know is that young people who are engaged in education are least likely to offend and are least likely to reoffend in the event that an offence is alleged to have occurred. So the consideration in relation to risk to the community is something that is already considered both by the police and by the judicial officer in terms of that young person being allowed into the community.

CHAIR: Do we have any further comments or questions from the committee on this area?

Mr BOOTHMAN: You talked about the judicial system and the police doing the checks and balances. But would it not be prudent to have the principal, ensuring that the safety of his students is paramount, as a third layer of check and balance?

Mr Bartholomew: The concern is about the young person and the risk they may pose in the community, and that is something that is required to be considered by the police and by a judicial officer, who are obviously very experienced and trained to turn their minds to those issues. That is something that is obviously at the forefront of a judicial officer's mind at the time consideration is being made in relation to bail. The idea that this matter needs to be reconsidered by a principal for an incident that happened outside the school is unnecessary. Indeed, the possibility that the young person is actually being suspended or excluded from school is likely to increase their risk of reoffending rather than decrease it, because what we do know is that young people who are not engaged in education or training are those young people who are more likely to be coming into contact with the justice system.

CHAIR: What makes you say that the chief executive of the department may have to investigate the matter of a student being charged or convicted of a serious offence if they reasonably suspect this to be the case?

Mr Bartholomew: That is what the legislation says. If a principal believes or reasonably suspects that a young person is involved in an offence, they are required to investigate that in terms of making the decision whether to suspend them or exclude them. As part of that investigation it is obviously the right of a young person usually to be able to respond to that matter, but because the matter is already before the court in relation to a criminal matter they are possibly receiving advice from their lawyers not to speak, understandably, to anybody about the matter so the young person is not able to effectively respond to those allegations.

CHAIR: Are you aware of any examples since the law was implemented on suspensions or charges or outcomes? Are there any examples that you are aware of?

Mr Bartholomew: Am I aware of instances in terms of the current law?

CHAIR: Yes.

Mr Bartholomew: I am aware of instances where young people have been informally suspended or encouraged by schools not to attend school as a result of allegations that have been made, and that has resulted in young people not being able to engage in school, which has made it very difficult for them to re-engage in the community. One of the principles of the Youth Justice Act is that young people are best served by being able to reintegrate and remain in the community. It is a vital part of them being part of the community that they are undertaking training and education, because obviously that is going to assist them to rehabilitate in terms of whatever their offending is. It is noted within this legislation there is no new definition around the types of offences, for instance, that the police may bring to the attention of the principal, either.

CHAIR: Do you think there should be a broader description of what types of offences should be brought out in the open?

Mr Bartholomew: When you say 'brought out in the open'—

CHAIR: Well, not necessarily into the open—that is the wrong wording; I apologise for that—but that a principal could be made aware of?

Mr Bartholomew: I am aware, since changes have been made to the Youth Justice Act in the last 12 months, that any young person who is appearing on their second offence would be appearing in an open court unless the court has made an order otherwise. Indeed, unless the court has made a specific order suppressing the publication of that, it can be published in the media. So the notion that that information is perhaps not known is historic and is not exactly how things are now.

In terms of the types of offences, I think the view of the committee would be: if the offence occurred outside of the school and a judicial officer and a police officer believe it is appropriate for that young person to remain in the community and therefore be able to participate in all aspects of community life in terms of attending at the beach, local swimming pools and all sorts of other local sporting and recreation clubs, is there a suggestion that there is a greater risk being posed by a young person remaining in a school community where they are under the supervision of trained teachers, trained professionals and where young people are being watched than being in the community generally? My personal thoughts would be that that is unlikely. In fact, young people are probably less at risk if they are maintaining in a school community where they are being supervised by teachers who are very aware of behavioural issues and monitoring that in any event.

CHAIR: Although their behaviour may be a disadvantage to the other students.

Mr Bartholomew: If their behaviour in the school community is a disadvantage to the other students then that is something that principals are already empowered to be able to respond to. That is already covered within the provisions of the Education Act. What this legislation is talking about is behaviour that occurs outside the school community.

Mr LATTER: We are, though, talking about behaviour that ultimately relates in a criminal charge being levelled against this person. I note your comments about a judicial officer and the police having the ability to make a decision as to whether or not this person is appropriate to receive bail and subsequently continue to engage with the community, but incidentally the police and the judicial officer do not always agree on that point and subsequently the judicial officer does not always get it right, though, do they?

Mr Bartholomew: Well the Law Society has some faith in our judicial system and in judicial officers. They are the people who are assigned by the state to look at those issues and to look at the risk to the community. They are decisions that have been made and they are obviously able on occasions to be appealed in the event that someone believes that decision is incorrect, and on occasions that does happen. Certainly the Attorney has made some applications in relation to instances where he feels that bail has been inappropriate, but on the whole certainly in my experience I have never seen a situation where it has been believed that bail for a young person was inappropriately granted and revoked on appeal.

Mr LATTER: I take on board what you are saying, Mr Bartholomew, with regard to those officers that you mentioned having a responsibility for not only a level of care to the person in question but also broader care for the community. But is it not fair to say that the same is the situation for a principal who is being entrusted with the care of the students who are there as well as the potential offender or person charged? Subsequently, should they not also be given the opportunity to be made aware of a situation or circumstances that might put at risk those people who are within the mandate of their duty of care?

Mr Bartholomew: I think there are two aspects of the Bill. One is about a disclosure of information and the other is the ability of the principal to act on that information to suspend or exclude a young person from school. There are some concerns around the disclosure of that information, but given that many of these matters are heard in open court perhaps some of the concerns about that have been reduced because perhaps it is known to the public in any event.

It is one thing for the principal to be aware of that and to be able to respond to that; it is another thing for them to be able to suspend or exclude that young person so they are no longer able to participate in education or training. They are two quite different issues. One is about a principal perhaps being aware of that and therefore ensuring there is appropriate supervision and appropriate safeguards that they may want to put in place—but to be able to respond and then exclude or suspend that young person from school is something quite different.

Mr LATTER: I draw your attention to a jurisdiction which has a similar sort of principle in this space: New South Wales. It appears to me that there is a requirement for such considerations to be a consultation with police to determine an appropriate level of risk management, I dare say. Would

your argument in this space be somewhat lessened or reduced if there was a requirement for the principals to consult or engage with police around how they might manage a situation that poses some level of risk for their students?

Mr Bartholomew: It is an interesting notion that you would consult with police, who of course are the prosecutorial authority in relation to this matter. That is their role: to prosecute a matter. They may not be the best people to be able to respond to the independence of those allegations because they have a particular view that they have adopted; hence, they have brought the prosecution. As I said, my concern is not necessarily about the information being disclosed to the principal—and perhaps the principal can then, if they choose, speak with who they think about an appropriate response. However, I would think the concern of the society is about that response being a suspension or exclusion.

Mr LATTER: But if you are saying, Mr Bartholomew, that there are these two levels of protection—one being in the police and one being in the judicial officer—to determine whether or not that person poses a significant risk to the broader community, then is it not appropriate by that very argument that there be some consideration for the school to have some discussion with the police—that layer of protection that you mentioned before—around what might be an appropriate way to manage the situation? Now, it may not be that the student is excluded and it may not necessarily be that the student is suspended from the school; it may be that the student's contact with their peers might be limited in some way, if that professional advice from police is that there really should be some level of safeguard there.

Mr Bartholomew: I would think it is often difficult for police to really be able to assess appropriate behavioural restraints in terms of how young people should be constrained or otherwise. They are decisions that perhaps are best made by judicial officers. Indeed, in terms of the bail process, when you say that there are two people making this decision—and I might have misguided the committee on this—the police make an initial decision but that is always reviewed by a judicial officer. So it is not so much that there are two people making a concurrent decision; a decision is made by the police, which is then affirmed or at least reconsidered by a judicial officer. The role of the principal is not to review either of those two decisions; that is a completely separate matter.

In terms of the society's views in terms of extra supports being provided to young people during a process in which they may have been charged, certainly I do not see that that is a difficulty. The difficulty is around an option being open to principals to suspend or exclude young people on the basis of their behaviour outside of the school when a decision is being made by a judicial officer or by a police officer that they are able to live within the community. I certainly do not have concerns around who the principal may wish to consult with in terms of making those decisions. It may actually be that they would want to consult with their local youth justice service around what they think might be appropriate supports and safeguards. However, the concern of the society would be about there being an ability to suspend or exclude young people from school on that basis.

CHAIR: Mr Bartholomew, I guess the focus of this Bill is really about the sharing of information; the suspension and exclusion are already in place. In your submission you say that the sharing of information should only occur in the context of an assessment with an external adviser. Would you like to expand a little more on that? I know that you have made some references there.

Mr Bartholomew: There are options in terms of who the school might wish to consult with. It may be that they want to speak with their local youth justice service centre, and it may be appropriate that that is something that is considered. There are obviously a range of behavioural experts that could be considered, depending upon the nature of the offence. One of the issues, of course, in terms of this legislation is that it has a very broad mandate in terms of the types of offences of which a principal may be informed. So it could be a drug offence, it could be a property related offence, it could be an offence of violence or it could be a sexual offence. Obviously, that is a very broad range of behaviour that you are talking about. So as to the type of person with whom a principal might consult, I do not want to be restrictive in terms of who that may be. That is an assessment that the principal would have to make.

CHAIR: Bearing in mind that confidentiality is also a very important issue here, isn't this almost a suggestion of opening the floodgates with taking that information elsewhere?

Mr Bartholomew: Obviously, that is a consideration and it may be appropriate for schools to consult with young people around supports that they may wish to put in place. I think if families were confident that the motivation of the school in consulting with those external providers was to provide extra support and extra security for a young person, then they would obviously be far more willing to

permit a disclosure of that information. Obviously, there are going to be concerns from families and indeed from legal representatives who are advising young people around how to proceed in relation to the matters if the consequences of that consent for a disclosure about this information may result in the young person being suspended or excluded from school.

CHAIR: Are there any further questions from the committee? If not, do you have any further comments that you wish to make, Mr Fitzgerald?

Mr Fitzgerald: No.

CHAIR: Thank you very much. You have raised some very specific and relevant issues today. The Law Society has always been very helpful in all of the legislation that we have reviewed, and I certainly thank you for that. I particularly thank you as well for your time this morning.

That brings this hearing to an end. I thank you all for the efforts that you have put in with your submissions and also for your very willing answers to our questions this morning. The committee will now take a short break, returning at 10.45 am for a public briefing by the Department of Education, Training and Employment. Anybody interested in receiving updates about our work, including our report on the Bill, which is due on 20 October, should subscribe to the committee's email subscription list via the Queensland parliament's website. I now declare this hearing closed.

Committee adjourned at 10.22 am