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## ***EDUCATION, TOURISM, INNOVATION AND SMALL BUSINESS COMMITTEE***

### **Members present:**

Mr SJ Stewart MP (Chair)  
Miss VM Barton MP  
Mr MA Boothman MP  
Mr SL Dickson MP  
Mr BM Saunders MP  
Mr RA Williams MP

### **Staff present:**

Ms S Cawcutt (Research Director)  
Ms M Coorey (Principal Research Officer)

## **PUBLIC HEARING—EDUCATION AND OTHER LEGISLATION AMENDMENT BILL 2016**

### **TRANSCRIPT OF PROCEEDINGS**

**WEDNESDAY, 15 JUNE 2016**

**Brisbane**

## WEDNESDAY, 15 JUNE 2016

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### **Committee met at 9.42 am**

**CHAIR:** I declare open the committee's public hearing into the Education and Other Legislation Amendment Bill 2016. I would like to introduce the members of the Education, Tourism, Innovation and Small Business Committee. I am Scott Stewart, member for Townsville and chair of the committee. Other committee members are Miss Verity Barton, member for Broadwater and deputy chair; Mr Rick Williams, member for Pumicestone; Mr Mark Boothman, member for Albert; Mr Bruce Saunders, member for Maryborough; and Mr Steve Dickson, member for Buderim.

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On 24 May 2016 the Minister for Education and Minister for Tourism and Major Events introduced the Education and Other Legislation Amendment Bill 2016 into parliament. The bill was referred to this committee for detailed consideration. The committee is due to report on Tuesday, 2 August 2016. The committee invited expressions of interest to appear at this hearing which is being held before written submissions on the bill close. Only one organisation, the Queensland Teachers' Union, expressed interest in doing so. The purpose of this hearing is to hear from them about their views on the Education and Other Legislation Amendment Bill 2016. I remind our witnesses to please speak into the microphones.

### **BATES, Mr Kevin, President, Queensland Teachers' Union**

### **MERTENS, Ms Leah, Research Officer, Professional Issues, Queensland Teachers' Union**

**CHAIR:** Welcome. We have about 30 minutes to hear from you both this morning including questions from our members. Mr Bates, would you like to introduce yourself and make an opening statement?

**Mr Bates:** Thank you very much, Mr Stewart. It is a great pleasure to be here today to present to the committee on what I think is a very important piece of legislation. It is certainly important for our members in terms of the effect that the bill seeks to bring in the education system in Queensland. I do have a short opening statement. With your indulgence, I will begin with that.

The Queensland Teachers' Union represents some 43,000 teachers and principals in state schools and TAFE in Queensland, and it has been doing so for more than 127 years. I understand that members of this committee have been provided with a copy of the QTU submission and we propose no amendments to our written submission.

Over the last 29 years I have been a registered teacher, curriculum head of department and union officer working in state schools throughout Queensland. I was elected to my current position as President of the Queensland Teachers' Union in 2012 and again in 2015. In addition to this position, I am the President of the Australian Education Union Queensland branch and a member of the executive committees of both the Australian Education Union and the Queensland Council of Unions.

In the specific terms of this parliamentary inquiry, the QTU membership covers teachers and school leaders in primary schools including the preparatory year, prep year, secondary state schools and TAFE. I include TAFE very deliberately because many TAFE teachers are also registered teachers so are caught up in the processes of change for the College of Teachers.

The legislation under consideration by this committee covers three key outcomes—making the prep year compulsory as the first year of school education in Queensland; the regulation of the teaching profession; and non-state school administration and funding arrangements. I will deal briefly with each of these three areas.

In terms of prep, the introduction of the prep year in 2007 was in our view an exemplary model of change management in which key stakeholders, such as the QTU and the teachers and principals that we represent, were at the core of decision-making about the rollout of an additional year of schooling. Since that time, the provision of prep has been universal but not compulsory. While

research has been undertaken and a pilot program is underway to encourage schools to use age-appropriate pedagogies in prep, the value of the prep year is well established. Around 98 per cent—although I have also seen a figure of 99 per cent—of children are now enrolled in prep, and the QTU strongly supports the legislation's purpose in making prep the first compulsory year of schooling in Queensland. The QTU also strongly endorses the maintenance of the compulsory school starting age at six years and six months to enable parents to decide the most appropriate time for their child to begin school.

In respect of teacher registration, the QTU has a long history of involvement in the regulation of the teaching profession. It was a QTU led campaign more than four decades ago that forced the government of the day to adopt a legislative regime for the registration and management of teachers in all Queensland schools—the first of its kind in Australia. The Queensland College of Teachers is fully funded by teacher registration fees. While the bill under consideration will reduce the size of the current board from 17 to 15, the majority of board members remain practising teachers from the three education sectors in Queensland. The QTU endorses the proposed change for this reason. It is our view that it is absolutely appropriate for a body that manages the registration of teachers to be run by and for teachers.

However, the representative nature of the board is paramount to the need for widespread consultation with the more than 105,000 registered teachers, education unions, three education sectors and the parents and community members who are key stakeholders in our education system. Further changes to the composition of the board should not be considered in the future unless the representative capacity is to be enhanced.

The QTU has always maintained a strong position on the need for teachers to act as the guardians of our profession. The proposed amendments to the disciplinary framework provide for a measured and appropriate additional capacity for the college to act against registered teachers who fail to behave or in a manner which does not satisfy the standard of behaviour expected of a teacher.

The QTU also notes without objection the lowering of the threshold for the suspension of a teacher's registration from a test of imminent risk of harm to a child to unacceptable risk of harm to a child. The provisions of the bill relating to the capacity of the college to enter into agreements to expedite outcomes in minor disciplinary matters at clause 60 will save time and resources while upholding the integrity of the system. These changes are also endorsed, and the QTU urges future consideration of an expansion of this facility to other appropriate disciplinary matters brought before the college.

In respect of non-state schools, I hasten to add that we do not cover teachers in non-state schools but there are some matters of principle here. In respect of arrangements for non-state schooling, while the QTU does not generally represent teachers and principals working in this sector, the general principles of governance and accountability encapsulated in the legislative amendments are appropriate. Fundamentally, the moneys allocated for the education of students must be assigned to that purpose. In a system where every single dollar is crucial, overpayments resulting from any cause must be recoverable to ensure that the system as a whole is not denied resources that should be allocated to the needs of students.

In closing, the QTU thanks the committee for the opportunity to make this submission. The QTU urges this committee to recommend to the parliament that the bill be passed.

**Mr BOOTHMAN:** Thank you, Mr Bates, for coming in today. My question is to do with the discipline of teachers. The bill talks about removing the 14 days where the disciplinary action has to be taken against a teacher. While the protection of a child out there is paramount, delaying these proceedings can cause an enormous amount of angst and fear for the teacher, especially if that teacher feels they are innocent of those potentially vexatious claims. What is your view on getting rid of that 14-day period? If you drag it out, would it not make your members very, very upset?

I was actually speaking to one of your members recently. She had a claim against her, and in all her years of teaching she felt she had never been in trouble. It was the hardest thing she had ever done in her entire life and it was very, very upsetting for her. I am curious about the 14 days and trying to get this over and done with quickly so they can go back to the normalities of their life.

**Mr Bates:** I will just seek some clarification of the part of the bill you are referring to. It was my understanding that the 14 days is preserved and in fact the college must respond within 14 days of a suspension being effected.

**Mr BOOTHMAN:** I am just reading from the explanatory notes. Page 2 says—

Under current procedures, the College must, within 14 days of the teacher's registration being suspended, consider what final disciplinary action should be taken against a teacher.

They have actually said that this is very difficult to achieve in this short time period. My question to you then is: can it be easily achieved in that time period?

**Mr Bates:** I think it is difficult but it is absolutely critical. Again, my understanding is the bill does not seek to remove the 14-day period. In fact, the college is still bound to deliver within that time. It is an observation that it might be difficult, but it is still required under law.

From our perspective, it is absolutely essential for the point that you raise. It should not be that people who are under suspension are left hanging, waiting for someone to investigate the matter and decide whether or not grounds exist. My understanding is that at the end of 14 days a decision must be taken whether or not grounds exist for an investigation to be undertaken or indeed whether grounds exist for disciplinary action to be taken. There is a requirement in legislation for the college to make a decision at the end of 14 days.

It is also at that stage a requirement in my understanding that the matter be reviewed by the civil and administrative review tribunal to ensure that in fact the decision of the college bears scrutiny by that external and independent judiciary body. Our understanding of the bill is that the 14 days is preserved so that would be a concern if it is not.

**CHAIR:** If I can just clarify there—the 14 days remains but it is around moving from imminent risk to unacceptable risk. The 14 days remains but it is imminent risk now changing to, as I said, unacceptable risk.

**Mr Bates:** It is a lowering of the threshold.

**CHAIR:** Yes, it is—the lowering of the threshold but the 14 days remains.

**Miss BARTON:** One of the things that has been briefly talked about by committee members is vexatious complaints and how we can preserve the integrity of the disciplinary system and make sure the QTC are able to investigate complaints but also perhaps maintain some anonymity from the media to protect the reputation of the person about whom the complaint is made. Do you have any thoughts on how that may be done or whether that is something that would be appropriate?

**Mr Bates:** I think the issues here go to a complex range of responses to the scenarios that we are talking about. Fundamentally, while investigation often reveals that complaints are manufactured or vexatious—and the vast majority of complaints are in fact of that nature—the reality is that the protection of children is the No. 1 priority, so it is entirely appropriate that very significant action is taken. The point you make about confidentiality is critical. We would note that in fact it is often a very difficult circumstance for a person to find themselves in where they are issued with instructions that, for example, they are to have no contact with their colleagues in the school setting, no contact with parents or students, and no contact with anyone other than a designated officer in the department. We understand that the purpose of that is exactly what you have just said—that is, to maintain a sense of confidentiality so that a person's reputation can be protected, because when these things leak to the media then mud stinks. We absolutely understand that.

**Miss BARTON:** But then the no contact might also be a bit of a—

**Mr Bates:** I was about to go on and say that, fundamentally, absolute silence and a disappearance immediately elicits a response which is often 'there is something wrong here'. It is a balance between asking people to break that contact in order to preserve their confidentiality and hopefully protect their reputation, but fundamentally it is a process which unfortunately does almost invariably result in a person suffering that harm. It is one of those situations where, as a community, we have to weigh up the cost to the individual as a registered teacher and a member of the community against protecting children. I guess our view would be that the current processes maintain an appropriate balance—that is, there are protections in place to attempt to preserve a person's reputation and their position in the community but it is fundamentally about protecting children, and that is something that we would not back away from.

**Mr WILLIAMS:** I am concerned about the same thing—that is, vexatious claims. I know the decision has to be made within 14 days, but when do the police get engaged in any of these things?

**Mr Bates:** It varies enormously on the basis of the complaint that has been made. There are a whole range of potential processes that may kick in. If it is a very serious offence—assault, inappropriate contact or that sort of thing—then the police would be involved immediately and the suspension would occur without the person being advised of the reason for the suspension because the matter is subject to police investigation.

If the matter is of a lesser nature then the process that follows tends to be that the College of Teachers will work with the Department of Education and Training where that person is a state school employee—so obviously I am keeping my comments in that space, given that is who we represent—in terms of the investigation process. There is also that question of the efficient use of resources where you are not having two separate arms of government conducting an investigation into the same matter. There is a space here for ensuring that we have an efficient process which also cuts down on the time that it takes to do that.

I guess from our perspective, if the matter is serious then the police are immediately engaged in that process. In fact, most other investigations would be delayed pending the outcome of any police inquiries. Fundamentally, and this is perhaps a little off topic but it does go to this issue raised by Mr Boothman and Miss Barton, the reality is in some places these investigations can go on for as much as 18 months or two years. That is a destructive process, but it is not for want of trying in respect of what is a multilayered issue.

We often have a police investigation followed by a department of education investigation followed by a Queensland College of Teachers investigation, each of which is targeted at a different outcome. In the police matter it is a criminal matter. We know that the burden of proof is beyond reasonable doubt. In the department of education matter it is often a code of conduct related issue and the burden of proof is around the balance of probabilities. In the College of Teachers matter it is an issue about whether or not the person's registration should be continued. Fundamentally, that is a critical matter because in the state of Queensland—and, in fact, in all states in Australia now—unless you are a registered teacher you cannot work in schools. It is a decision about that person's potential earnings and future career. Again, given what is at stake—the safety of children—that has been accepted for a significant period of time as a cost of the process.

We always urge that the matter be dealt with as quickly as possible. Two years is unacceptable, to be honest. Often police matters are the ones that come first. They take an extraordinary amount of time in terms of dealing with both the police investigation and then any subsequent court proceedings. All of those other investigations can still follow, even though the person may be acquitted in a criminal matter before the courts, because of those differences in burden of proof.

**Mr DICKSON:** Thank you for coming along today. I actually have a problem with this, too. We discussed before you came into the room today where teachers can be impacted. We put the children up on a pedestal. They are the ones we are going to look after first—and I understand that. What about the children of the teacher who possibly commits suicide or loses his family because of this process? Is the union looking at any way there could be a middle ground that we build into this bill? I know I am grasping at straws, but there has to be something out there to protect the identity of the teacher as they go through this process, if it is a drawn-out process. There has to be something. The way it is at the moment is not good enough.

We have to feel for the teacher as well—be they a woman or man who is placed in a position where you find out that they are not guilty, but they are guilty through the mud that has been thrown. Their lives are destroyed, their family could be lost, they could put a gun under their chin. What about them?

**Mr Bates:** The answer to your question is that we have been in this space for several decades. I go back to a case that occurred on the Sunshine Coast many decades ago. We really brought this matter to a head as a consequence of a scenario where a false and vexatious allegation resulted in a man losing his marriage, his family, his home. He was reduced to effectively homelessness and begging on the streets in order to try to make a way for himself.

At that time we campaigned to achieve an outcome that resulted in teachers being able to be suspended with pay while these matters were being investigated. That potential still exists. It is the first port of call, it is the first action, in these matters wherever there is a question of the nature of the claim. If there is an admission then the suspension immediately moves to suspension without salary on the basis that there is a level of satisfaction that the claim is in fact verified. Wherever there is a doubt, then the employee is maintained on the payroll in order to ensure that they do not suffer that additional burden of economic hardship that will obviously potentially significantly impact mental health and other relations.

The answer to your question is that we work continuously to try to improve these processes. One of the challenges is that when work is being undertaken it is prioritised and the most serious cases come first. Often less serious matters—indeed matters where there may be some doubt about the veracity of the claim—are deferred in order to put the resources towards dealing with those very serious matters.

You get this unfortunate and slightly ridiculous process where matters that could be dealt with quickly and probably should be, because there is some doubt from the investigators—and sadly those people are year in, year out engaged in investigating dozens of matters and get a feel for just how real the circumstances are—are put to the back of the queue. They can tend to take a lot longer to dismiss. We have in recent times begun processes to ensure that we place pressure around those scenarios where on the evidence—and certainly with legal advice from our own lawyers—it would seem that the matter should be dismissed. We have gone into the process of making submissions on behalf of our members to ensure that the department in fact looks very seriously at the veracity of the claim where there is some evidence to suggest that that might be a case.

One of the very obvious issues here is the danger around that sort of scenario unfolding only to find that unfortunately there was in fact some veracity to the claim. We all know how the court of public opinion would find us in that scenario. It is not that we are afraid, but rather that we are cautious on the basis that we have to continue to balance the very important interests of our members and the community as a whole who need confidence that the system can in fact stop people who are doing the wrong thing with the fact that even resources will not necessarily resolve some of those issues in terms of the timing of investigations and so on.

It is an unacceptable situation. I do not want to back away from that. It is one that we try to manage within the context of the circumstances that we are presented with. We continue to advocate for improvements in processes that will shorten those time lines.

**Mr DICKSON:** I thank you for a very wholesome answer. I think we need to continue to struggle to find that middle ground.

**Miss BARTON:** I have a question about the returning-to-teach changes. I think I know what your answer will be. I have had a quick look at your submission but I do not know that you have necessarily addressed it directly. I wanted to clarify that you had no objection to giving the QTC a bit more flexibility rather than providing a very structured, rigid returning-to-teach framework?

**Mr Bates:** Thank you for that question. The reality is that I am one of the people who is subject to a returning-to-teach condition because I have been out of the classroom for a significant period of time. What the changes do not do is say that there cannot be returning-to-teach condition applied. It simply removes the mandation—that is, the college is left with no option under the current situation than to apply a returning-to-teach condition.

What this says is that there are other relevant provisions in the act that allow the college to apply conditions to any registration. One of those conditions may well be that in returning to employment you must complete a course of study to improve your understanding of the system and curriculum and so on that has changed since you were out of the system.

It is very much about removing that issue of mandation and providing some flexibility. To be frank, there are people out there who can demonstrate a detailed and intricate knowledge of the changes in the education system but have not actually been in the classroom over that period of time. There has to be some flexibility for the college to consider each case on its merits. Where they are not satisfied, I am 100 per cent sure they will apply a returning-to-teach condition to a person's registration.

They also then have the flexibility to say, 'This person has been working in another space that we should recognise for its importance in contributing to the education system and their currency.' They are in a position to be able to do that. From our perspective, the 'no comment' was simply that we accepted that this was a perfectly reasonable proposition.

**Miss BARTON:** Thank you.

**CHAIR:** As there are no further questions, we thank the officials from the Queensland Teachers' Union for coming along and briefing us this morning. It was very comprehensive and thorough. Thank you to Hansard for your work this morning. A transcript of this hearing will be published on the committee's web page in due course. I declare this hearing closed.

**Committee adjourned at 10.08 am**