11 April 2014

Mr Trevor Ruthenberg MP
The Chair
Health and Community Services Committee
Parliament House
George Street
BRISBANE QLD 4000

By post and email: hcsc@parliament.qld.gov.au

Dear Mr Ruthenberg

QUEENSLAND CATHOLIC EDUCATION COMMISSION (QCEC)
RESPONSE TO THE CHILD PROTECTION REFORM AMENDMENT BILL 2014

We refer to your committee's call for submissions on the *Child Protection Reform Amendment Bill 2014 (CPRA Bill 2014).*

The Queensland Catholic Education Commission (QCEC) is grateful for the opportunity to provide comment and recommendations on the Bill.

QCEC is the peak body at state level for twenty Catholic school employing authorities with 296 schools, 143,000 students and around 17,000 employees.

The response which is attached places a particular focus on the matters in the *CPRA Bill 2014* which will have an impact on all school communities including Catholic schools.

The QCEC response represents the views of the Commission which have been informed by consultation and advice from the QCEC Student Protection Subcommittee. The members of this subcommittee are senior practitioners from the Catholic school authorities and education officers within the QCEC Secretariat who have a very close working knowledge of the implementation of current legislative requirements in Catholic schools.

QCEC has a record of active participation over a many years in a number of parliamentary committees inquiring into legislation relating to child protection in the context of schooling.

Once again, the Commission wishes to reaffirm that Catholic school authorities are fully committed to ensuring the safety of children and young people in Catholic schools in Queensland. This means that Catholic school authorities are also committed to being fully compliant with all legislative requirements.

It should be noted, in particular, that by complying with the accreditation requirements under the *Education (Non-State Schools Accreditation) Act 2001 and the Education (Non-State Schools Accreditation) Regulation 2001,* Catholic schools in Queensland, together with other non-state school authorities, have extensive accountabilities which go beyond those of the state school sector.

QCEC
Queensland Catholic Education Commission
Level 1, 143 Edward Street, Brisbane Qld 4000. GPO Box 2441, Brisbane Qld 4001
Ph: + 61 7 3336 9306 Fax: +61 7 3229 0907 Email: enquiries@qcec.catholic.edu.au
www.qcec.catholic.edu.au ABN 57 525 935 419

We note that a public hearing on the Bill will be held 1.30pm-4.00pm on Tuesday 29 April 2014 in Committee Room 3 of the Parliamentary Annexe, Brisbane to hear from invited witnesses.

We wish to confirm that we have contacted the committee secretariat by telephone and registered our desire to give evidence at the public hearing.

We would welcome the opportunity to provide input to the hearing to support or clarify matters raised in this response.

I commend the attached response to the Committee.

Yours sincerely

Mike Byrne
Executive Director

Queensland Catholic Education Commission

Level 1, 143 Edward Street, Brisbane Qld 4000
GPO Box 2441, Brisbane Qld 4001
Ph +61 7 3336 9306 Fax +61 7 3229 0907
email: director@qcec.catholic.edu.au

www.qcec.catholic.edu.au
ABN: 57 525 935 419

Response to Health and Community Services Committee Inquiry into the Child Protection Reform Amendment Bill 2014.

14 April 2014

Introduction:

The Queensland Catholic Education Commission (QCEC) thanks the Chair of the Health and Community Services Committee for the opportunity to provide comment on the Inquiry into the *Child Protection Reform Amendment Bill 2014*.

QCEC is the peak body at state level for twenty Catholic school employing authorities with 296 schools, 143,000 students and 17,000 staff. QCEC notes that a number of aspects of the Bill impact directly on Catholic schools in Queensland.

QCEC supports the intent of the Bill to implement the recommendations of the Child Protection Reform Roadmap in relation to oversight of the child death review process, complaints about the child protection system, first step measures to reduce the current levels of unsustainable demand on the child protection system, including the consolidation of all mandatory reporting requirements into the Child Protection Act 1999 (CPA), changes to the administration of working with children checks (WWCC) and improvements to the administration of the Children's Court.

In this submission, QCEC provides specific comment on the first step measures to reduce the current levels of unsustainable demand on the child protection system, including the intended consolidation of all mandatory reporting requirements into the Child Protection Act 1999 (CPA).

Summary of issues of concern - *Child Protection Reform Amendment Bill 2014* (*CPRA Bill 2014*)

1. The proposed changes do not consolidate the fragmented, confusing and inconsistent reporting obligations for teachers and school staff in Queensland.

2. The expectation that teachers assess whether or not a parent is 'willing and able to act protectively' places teachers in a compromising situation which is not defensible or ethically compromises the relationship between teachers and their students.

3. There are a range of concerns about the proposal for mandatory reports to be made by the teacher directly to Child Safety Services.

4. The proposed amendment to section 186 (1) of *Child Protection Act* 1999 contained in Clause 25 of the *CPRA Bill 2014* regarding *Confidentiality of notifiers of harm or risk of harm*, do not include teachers.

5. If the proposed legislation is enacted and commences without simultaneous amendment to the *Education (Accreditation of Non-State Schools) Act and Regulations 2001* [E (ANSS)], it will not result in a reduction in the reporting to Department of Child Safety and Disability Services (DCSDS) from the Non State Schooling sector.

6. The *CPRA Bill 2014* defines a reportable suspicion as where a child has suffered, or is at risk of suffering, 'significant harm' as a result of physical or sexual abuse and where there may not be a parent willing and able to protect a child from the harm. Guidance offered to make this assessment is partial and insufficient to assist mandated reporters to determine whether the effect on the child is reportable.

7. The amendments as proposed necessitate extensive changes to current practices, procedures and training materials. This raises significant concern regarding the ability of school systems and mandatory reporters to make the necessary changes and deliver the appropriate training within the timeframes for implementation of the amendments to legislation.

8. The amendments to the Child Protection Act 1999 proposed in the *CPRA Bill 2014*, do not ensure the safety, wellbeing and best interest of children by the state's child protection system as it only requires a relevant person to report if they have a 'reportable suspicion' about a child. A reportable suspicion does not include knowledge or suspicion of harm caused by neglect and emotional abuse[1]. Currently Non-State Schools under regulatory requirements, and State schools under policy requirements report harm caused by a range of forms of abuse and neglect including psychological and emotional abuse. Failing to include significant harm caused by neglect and emotional abuse within the scope of a 'reportable suspicion' fails to recognise that neglect and emotional abuse can have a significant impact on a child's physical, emotional and psychological functioning; and gives an unintended message to the community that it is of less importance / not as serious as sexual and physical abuse. Without any clear message as to where schools should report this type of harm, it is likely that reports of this type of harm will continue to be made by schools to DCSDS. This appears to be contrary to the recommendations of the Carmody Inquiry.

[1] The CPRA Bill 2014, section 13E(2) *"Reportable suspicion is a reasonable suspicion that the child has suffered, is suffering or is at unacceptable risk of suffering significant harm caused by physical or sexual abuse; and (b)may not have a parent willing and able to protect the child from the harm"*

The Submission in Detail

It is our submission that the proposed legislation does not meet the broad intent of the current child protection reforms by the Queensland government which is, to address the "risk of systemic failure and make Queensland the safest place to raise children"[2], due to the following:

1. The proposed changes **do not address the issue of fragmented, confusing and inconsistent reporting obligations in Queensland**. Rather than consolidate the reporting requirements relating to child abuse and harm to a child, under the proposed amended Child Protection Act, non-state schools will now have reporting obligations under three pieces of Queensland legislation[3], each of which have different requirements. The inconsistencies in the three pieces of legislation are discussed below.

   - **Inconsistency in who is required to make a mandatory report**
     - under the *EGPA 2006* all staff members are required to make mandatory reports
     - under the *CPRA Bill 2014* only teachers are required to make mandatory reports
   - **Inconsistency in scope and type of abuse/harm a person is mandated/required to report**
     - *EGPA 2006* – mandates the reporting of sexual abuse / likely sexual abuse of a student by another person without regard to the parents' ability and willingness to act protectively
     - *CPRA Bill 2014* – mandates reporting of significant harm or risk of significant harm to a child caused by physical or sexual abuse and requires an assessment of a parent's ability and willingness to protect the child from the harm
     - *E(ANSS) Regulations* – requires all staff members to report harm to a student, immaterial of how the harm is caused, without regard to the parents ability and willingness to act protectively. This includes harm caused by all forms of abuse (physical, emotional, psychological, neglect and sexual).
   - **Inconsistency of category of persons about whom reports are required to be made**
     - *EGPA 2006* – requires reporting of sexual abuse/likely sexual abuse of a 'student under 18 years attending the school'.
     - *CPRA Bill 2014* – requires reporting of significant harm to 'a child' caused by physical or sexual abuse

[2] Child Protection Reform Amendment Bill 2014. Explanatory Notes page 1

[3] Education (General Provisions) Act 2006 – EGPA; Education (Accreditation of Non Sate Schools) Regulation 2001 E(ANSS) Regulations and Child Protection Reform Amendment Bill 2014 – CPRA Bill 2014

- **Different requirements in terms of reporting processes for staff in schools**

  - Under the *CPRA Bill 2014* - mandatory reports are to be made directly by the teacher to Child Safety Services.

  - Under the *EGPA 2006* - reports must be provided by the staff member to the principal or director of the governing body who then must provide the report to police.

- **Different requirements in required timeframes for reporting**

  - *EGPA 2006* – requires a staff member to immediately provide a report to the principal of director of the school's governing body and for the principal or director to immediately provide a report to police once a staff member becomes aware or reasonably suspects sexual abuse/likely sexual abuse

  - Under the *CPRA Bill 2014* – a relevant person is not required to make a report until the person has formed a reportable suspicion about a child.

    Consequently there may be considerable time-lapse from the point the person required to make the mandatory report becomes aware of the sexual abuse of the student and is required to report to police under the *EGPA 2006*, to when a report of significant harm is required to be made to Child Safety Services under the amendments to the Child Protection Act proposed by the Child Protection Reform Amendment Bill. This creates opportunity for confusion on part of reporters and the potential for the second report to DCSDS to be overlooked resulting in a delay or absence of intervention by DCSDS.

2. The expectation that teachers assess whether or not a parent is willing and able to act protectively **places teachers in a compromising situation which is not defensible or ethically compromises the relationship between teachers and their students.**

   - In the *CPRA Bill 2014* there is an assumption that teachers are best placed to make an assessment around whether there is a "parent willing and able" to act to protect the child. This is not correct. It is our submission that this assumption is inherently flawed and places an obligation on teachers which is above and beyond reasonable in the circumstances.

   - In our view, the addition of the element of assessing whether or not there is a parent willing and able to act protectively suggests that the teacher can and should make enquiries to enable them to make a determination in this regard. It is our opinion that, in making such inquiries, there is the potential to place the child at further risk of harm by alerting a parent to the staff member's knowledge of the harm or abuse, which also will have the unintended consequence of contaminating a subsequent police or DCSDS investigation.

   - Assessing if a parent is willing and able to protect is a complex and dynamic process, traditionally performed by staff from DCSDS with an appropriate level of training and support materials.

   E.g. Student's parents are separated and there are family court orders, there are reasonable grounds to suspect the student is being abused while in the care of the one parent. The protective parent may be willing to protect the child, but may not be able to do so because of an order requiring the child to live, or have contact, with the non-protective parent. Teachers do not

have the knowledge or ability to 'unpack' the impact of family court orders on a parent's ability to protect.

There is the insurmountable issue of the interplay of this legislation with privacy legislation.

3. There are a range of **concerns about the proposal for mandatory reports to be made directly by the teacher to Child Safety Services**.

   - This conflicts with the EGPA 2006 where reports are provided to the principal who then MUST provide the report to police.

   - Under this proposed method of reporting, principals particularly in large schools, would not necessarily have visibility of reports. This impacts on the broader duty of care to the students and the practical complexity of responding to queries from Child Safety Services/interview requests, when they are not aware of the report.

   - Teachers are often not privy to information a principal may have about a student and his/her family (addresses, current orders, previous concerns, other children in the household, safety issues for staff etc.) hence critical information may not be included in a report made by a teacher to DCSDS, thus potentially compromising the agency's ability to accurately assess the immediate and ongoing safety of children in the family household.

   - Practical quality assurance process is omitted. For example if the information within the first person's report is unclear or incomplete, then having school principal input can improve the quality of information received by the state authorities and therefore reduce the workload of these services.

4. The **proposed amendment to section 186 (1) of the Child Protection Act contained in Clause 25 of the CPRA Bill 2014 regarding Confidentiality of notifiers of harm or risk of harm, do not include teachers.** It is our view that teachers should be afforded the same level of confidentiality as other mandatory notifiers.

5. If the proposed legislation is enacted and commences without simultaneous amendment to the Education (Accreditation of Non-State Schools) Act and Regulations 2001 [E(ANSS)], it **will not result in a reduction in the reporting to Department of Child Safety and Disability Services** (DCSDS) from the Non-State School sector. Under E(ANSS) Act and Regulations, staff members of non-state schools will still be required to report to DCSDS or police <u>all harm</u> to a student at the school, immaterial of how the harm is caused. It is understood that the majority of these reports do not meet the DCSDS threshold.

6. It is understood that a key intent of the *CPRA Bill 2014* is to increase the threshold for statutory investigation and intervention by DCSDS from where children have suffered, or are at risk of suffering 'harm' and do not have a parent willing and able to protect the child from the harm, to where children have suffered, or are at risk of suffering '**significant** harm' (and do not have a parent willing and able to protect the child from the harm). Consequently, the proposed mandatory reporting requirements for a relevant person reflect suspicions of 'significant harm'. **Guidance is**

offered within the *CPRA Bill 2014* as to how 'significant' harm will be assessed. This takes no account of the definition of harm at section 9 of the CPA 1999 which remains un-amended. Section 9 still defines harm as 'any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing'. No guidance is offered as to how 'harm' is assessed, and without clarification around the intended difference between current assessments of 'harm', and new assessments of 'significant harm', is it unlikely that the level of reported concerns will change from current practice by agencies who already have processes for reporting 'harm'.

7. The amendments as proposed necessitate significant changes to current practices, procedures and training material including the development of additional reporting forms. They would also require amendment of the *EGPA and E(NSSA) Regulations.* The **timeframes around implementation raise significant concern** around the capacity of schools and school systems to carefully consider, develop and implement quality processes and guidelines to ensure that mandatory reporters are fully aware of their reporting obligations, and that there is sufficient resourcing through training and procedures to ensure the obligations are met.

Consultations:

QCEC has appreciated the opportunity to provide comment to the *Child Protection Education Implementation Committee* through officers of the Department of Education, Training and Employment during the preparation of the Bill.

Conclusion:

QCEC partially supports the thrust of the CPRA Bill 2014 and is committed to working collaboratively with the government to achieve its commitment to deliver a reformed child protection system in Queensland that better provides for the safety, wellbeing and best interests of our most at risk children.

[redacted]

Mike Byrne
Executive Director