



**Independent Schools Queensland Response to the**  
***Child Protection Reform Amendment Bill 2014***

**April 2014**



*Independent Schools Queensland (ISQ) appreciates the opportunity to provide feedback to the Queensland Government on the **Child Protection Reform Amendment Bill 2014**.*

*Independent Schools Queensland is the peak body representing and advocating on behalf of 190 independent schools across Queensland which educate over 115,000 students. Each independent school has its own governing body and is responsible for meeting government accountabilities and delivering educational programs to students.*

*Independent schools in Queensland are characterised by diversity. The sector includes large metropolitan single sex colleges as well as small rural co-educational primary schools. Some schools are based on particular religious, philosophical and / or pedagogical approaches while others cater for specific groups of students. Some independent schools in Queensland are primarily for Aboriginal and / or Torres Strait Islander children while others have Indigenous students from remote communities as boarders.*

## Introduction to the Child Protection Reform Amendment Bill 2014

Independent Schools Queensland (ISQ) supports the Queensland Government's commitment to supporting vulnerable families to take care of their children and reforming the child protection system in Queensland to better provide for the safety, wellbeing and best interests of our most at-risk children when they cannot be safely cared for at home.

Within this general support, ISQ raises a number of areas for consideration regarding the *Child Protection Reform Amendment Bill 2014's* ability to consolidate all mandatory reporting requirements for teachers into the *Child Protection Act 1999* and to reduce unsustainable demand on the child protection system.

ISQ appreciates the opportunity to provide feedback on the *Child Protection Reform Amendment Bill 2014* (the "*Bill*") and provides the following comments to the Committee to assist in its deliberations on the *Bill*.



## Bill Coverage and Structure

### Introduction

School staff members currently hold an obligation to report the following types of abuse under the following legislation:

Type of Abuse to be Reported	Report Provided to	Legislation
<ul style="list-style-type: none"> <li>Sexual abuse/likely to be sexually abused</li> </ul>	<ul style="list-style-type: none"> <li>Principal; or Governing Body; and</li> <li>Police</li> </ul>	<ul style="list-style-type: none"> <li><i>Education (General Provisions) Act 2006</i></li> <li><i>Education (Accreditation of Non-State Schools) Regulation 2001</i></li> </ul>
<ul style="list-style-type: none"> <li>Harm, including physical, psychological or emotional abuse or neglect, sexual abuse or exploitation</li> </ul>	<ul style="list-style-type: none"> <li>Principal; and</li> <li>Chief Executive of Child Safety; or</li> <li>Police</li> </ul>	<ul style="list-style-type: none"> <li><i>Education (Accreditation of Non-State Schools) Regulation 2001</i></li> </ul>

There is not currently a mandatory reporting requirement on school staff, including teachers, under the *Child Protection Act 1999 (CPA)*. Clause 6 (clause 13E) of the *Bill* makes the following changes to the *CPA* relating to teachers required to make mandatory reports:

Type of Abuse to be Reported	Report Provided to
<ul style="list-style-type: none"> <li>Has suffered, is suffering, or is at unacceptable risk of suffering, significant harm caused by physical or sexual abuse; and</li> <li>May not have a parent able and willing to protect the child from the harm.</li> </ul>	<ul style="list-style-type: none"> <li>Chief Executive of Child Safety</li> </ul>

ISQ also acknowledges the role of the overarching common law duty of care that school staff members hold to take all reasonable action to protect students in their care from harm.

ISQ requests the Committee give consideration to the following matters in relation to the *Bill*:

1. the introduction of the “parent test”, i.e. “may not have a parent able and willing to protect the child from harm”
2. the categories of harm used to form a reportable suspicion
3. the introduction of the “significant harm” test
4. the categories of people who will be mandatory reporters



5. the reporting line for submitting reportable suspicions
6. the increased liability for misreports
7. the lack of consistency and consolidation achieved by the *Bill* into the *CPA*

ISQ considers that the matters outlined below may benefit from potential amendments to the *Bill* to better assist it to achieve its stated aims to:

- better provide for the safety, wellbeing and best interests of our most at-risk children when they cannot be safely cared for at home
- provide a consolidated provision for all existing mandatory reporting obligations contained in legislation or government policy
- provide a single 'standard' to govern reporting obligations and determine what is a reportable suspicion

#### 1. **Parent Test**

ISQ notes the introduction of the new, lesser test for mandatorily reported harm in the form of the "parent test" (clause 6 (clause 13E)). Within this test, ISQ notes that the terms "able", "willing" and "protect" are not defined.

ISQ requests further consideration regarding the introduction of this test. ISQ notes that this provision asks teachers to make critical and important judgments to ensure the safety of children. Consideration should be given as to whether it is reasonable to expect teachers, as educators, to undertake a parental screening role to form an assessment of the capacity of a parent to protect their child from harm. ISQ wonders whether teachers, when trying to form an opinion as to a reportable suspicion, would need to explain to parents that they are required to assess their parental abilities to determine their ability to "abl(y) and willing(ly) protect".

ISQ requests further consideration of the reintroduction by this test of a discretionary component of reporting harm, in that it introduces a more subjective test that creates a justification for not reporting what would otherwise be reportable harm; it allows teachers to err on the side of discretion, for example, if the teacher knows the "protective parent" socially. ISQ is of the view that this would be a backwards step in terms of child safety, and comparable to the situation before the broadening of reporting measurers came in to effect in the 2012 amendments to the *Education (General Provisions) Act 2006 (EGPA)*.

Furthermore, as the tests for reporting harm under the *EGPA* and the *Education (Accreditation of Non-State Schools) Regulation 2001 (EANSSR)* will remain (without the requirement of the "parent test"), ISQ is of the view that the "parent test" included in clause 6 (clause 13E) of the



*Bill* adds to the inconsistency and lack of consolidation of reporting requirements for teachers, rather than addressing these issues.

ISQ requests that further consideration be given to the removal of the “parent test” as ISQ considers that doing so would better assist with the achievement of the aims of the *Bill* to protect children and to provide consistent and consolidated reporting requirements.

- Consideration be given to the removal from clause 6 (clause 13E) of the “parent test”

## 2. Harm Categories

As outlined in the tables above, all school staff (including teachers) are currently obliged to report all types of harm, including:

- sexual abuse
- likely to be sexually abused
- physical abuse
- psychological abuse or neglect
- emotional abuse or neglect
- sexual exploitation

However, under the *Bill*, teachers will be required to only report harm “caused by physical or sexual abuse”. This is a narrower reporting requirement than currently exists. In line with school community views, ISQ seeks further consideration of how requiring teachers to report fewer types of harm will better provide for the safety, wellbeing and best interests of our most at-risk children. As the requirements under the *EGPA* and *EANSSR* will remain, ISQ is of the view that the abuse identified in clause 6 (clause 13E) of the *Bill* adds to the inconsistency and lack of consolidation of reporting requirements, rather than addressing these issues.

ISQ seeks further consideration of broadening the definition in the *Bill* to explicitly require teachers as well as other school staff to report a reportable suspicion regarding children likely to be sexually abused, as well as psychological and emotional abuse and neglect, and sexual exploitation. ISQ is of the view that this amendment would assist with the achievement of the aims of the *Bill* to provide consistent and consolidated reporting requirements and to better protect children, and would be in line with community expectations.

In addition, ISQ highlights the issues of self-harm and peer-to-peer child abuse. These issues have historically been a problematic area for schools regarding reporting. ISQ is of the view that the *Bill* does not make these areas of concern any clearer.



- Consideration be given to broadening the reportable suspicion clause (clause 6 (clause 13E)) to explicitly require teachers and other school staff to report a reportable suspicion regarding children likely to be sexually abused, as well as psychological and emotional abuse and neglect, and sexual exploitation

### 3. Significant Harm Test

Under clause 6 (clause 13E) of the *Bill*, teachers will be required to only report “significant harm” caused by physical or sexual abuse. This introduces a subjective test of “significant harm”, the definition of which is currently not provided in the *Bill*. According to the Explanatory Notes, this has been included to clarify the threshold for intervention rather than to actually alter the threshold. ISQ seeks further consideration of whether the inclusion of this term will achieve its stated purpose or will rather serve to add confusion to an already complex legislative field.

As the requirements under the *EGPA* and *EANSSR* will remain, ISQ requests further consideration be given to whether the “significant harm” test included in clause 6 (clause 13E) of the *Bill* adds to the inconsistency and lack of consolidation of reporting requirements, rather than addressing these issues.

ISQ requests consideration of the removal of the “significant harm” test from the *Bill* and consideration of whether this amendment would better assist with the achievement of the aims of the *Bill* to provide consistent and consolidated reporting requirements and to protect children.

- Consideration be given to the removal of the word “significant” from clause 6 (clause 13E) of the added threshold test of “significant” harm

### 4. People Required to Report

Under the *EGPA* and the *EANSSR*, “staff members” are obliged to report harm. However, under clause 6 (clause 13E) of the *Bill*, the narrower term of “teacher” is used. In line with school community views, ISQ seeks further consideration of how requiring fewer school staff members to report harm will better provide for the safety, wellbeing and best interests of our most at-risk children. As the requirements under the *EGPA* and *EANSSR* will remain, ISQ suggests that the use of the term “teacher” in the *Bill* also causes greater complexity and confusion, adding to the inconsistency and lack of consolidation of reporting requirements, rather than addressing these issues.

ISQ requests consideration of extending the mandatory reporting requirement in the *Bill* to include all school staff members and whether this broader terminology would better assist with



the achievement of the aims of the *Bill* to provide consistent and consolidated reporting requirements and to protect children.

- Consideration be given to broadening the definition of people who are required to mandatorily report under clause 6 (clause 13E) to be “all staff members of a school”

## 5. Reporting Line

As outlined in the tables above, school staff are currently required to report harm to their Principal or a director of the school’s governing body in the first instance, who must then report to a police officer and/or the Chief Executive of Child Safety, according to the specific requirements of the legislation. Under clause 6 (clause 13E) of the *Bill*, teachers must report directly to the Chief Executive of Child Safety. In the case of harm covered under the *Bill*, teachers would therefore have dual reporting lines for sexual and physical abuse; to their Principal and also to the chief executive of Child Safety.

ISQ requests further consideration be given to whether this dual reporting requirement is complex and confusing for teachers, and might result in an increased number of reports to Child Safety.

The stated aims of the *Bill* are to achieve a consistent and consolidated approach to reporting requirements and to also reduce unsustainable demand on the child protection system. As the requirements under the *EGPA* and *EANSSR* will remain, ISQ queries how this aim will be achieved when, under the *Bill*, the reporting lines would be more convoluted and exist under three instead of two pieces of legislation, potentially requiring two reports to be made regarding the same harm.

ISQ considers the arrangement of teachers first reporting through to Principals to be a good model to enable all relevant information to be gathered into one report from a school, after determining whether the report meets the Child Safety threshold for risk assessment and harm substantiation, and so reducing misreports. ISQ seeks consideration of the introduction of a clause to the *Bill* to require teachers to submit reportable suspicions directly to Principals or to a director of the school governing body (as per s366 (2) of the *EGPA*), and for Principals to be required to forward these reports to Child Safety and/or Police. ISQ suggests that these amendments would assist with the achievement of the aims of the *Bill* to provide consistent and consolidated reporting requirements.

- Consideration be given to amending clause 6 (clause 13E) to introduce a requirement for teachers to submit reportable suspicions directly to Principals or to a director of the school governing body (as per s366(2) of the *EGPA*), and a requirement for Principals or directors to forward these reports to Child Safety and/or Police



## 6. Liability for Misreports

ISQ notes that the introduction of a higher standard to be met in order to provide protection from liability for a misreport (clause 8) means that teachers now face an increased risk of liability, including civil liability, criminal or under an administrative process, for reporting what is considered to be harm.

ISQ requests further consideration be given to whether the increased risk of liability forms a disincentive to report harm, and thereby increases the risk that teachers will be more unable or unwilling under this *Bill* to make reports that will potentially help protect children from harm. Clearly, such a result would be contrary to the intention of the Bill to better provide for the safety, well-being and best interests of children. ISQ seeks consideration of the removal of the term “reasonably” from clause 8 and whether this would better assist the *Bill* to meet its aims regarding child safety.

- Consideration be given to the removal from clause 8 of the term “reasonably”

## 7. Consolidation of Reporting Requirements

ISQ notes comment from the Child Safety Policy and Programs unit with the Department of Communities, Child Safety and Disability Services at the recent Public Briefing regarding the *Bill* on 26 March 2014. The Child Safety Policy and Programs unit acknowledged that the provisions under the *EGPA* and the *EANSSR* requiring teachers and other school staff members to report sexual abuse will be retained in their current form.

As the Explanatory Notes to the *Bill* state, the *Bill* aims to provide a “consolidated provision for all existing mandatory reporting obligations contained in legislation or government policy” and to provide “a single ‘standard’ to govern reporting obligations and determine what is a reportable suspicion”. At the Public Briefing, it was stated that the *Bill* is addressing the recommendations of the *Queensland Child Protection Commission of Inquiry* to achieve “a consistent approach to reporting child protection concerns to Child Safety and to consolidate reporting requirements in to the *Child Protection Act*”.

ISQ queries how the aims of the *Bill* will be achieved when the Department of Communities, Child Safety and Disability Services itself acknowledges that that obligations on teachers to report will now exist under three instead of two pieces of legislation.

In accordance with legal precedent, the legislation with the highest standard shall prevail. As outlined above, ISQ is of the view that the highest standards regarding reporting are, and after





the passing of the *Bill* will remain, under the *EGPA* and the *EANSSR*. As outlined above, these are the:

- threshold for reporting abuse;
- harm categories; and
- people required to report harm.

Therefore, ISQ requests further consideration be given to the structure of the *Bill* which does not change the threshold for reporting abuse, the types of harm reported and who has a responsibility to report them. In some cases, it could be argued that the *Bill* has a higher or equal standard compared to the *EGPA* and the *EANSSR* regarding to whom harm should be reported, in the form of the Chief Executive of Child Safety rather than to the Police. In that case, ISQ suggests that teachers would most likely choose to be conservative and make reports to both entities, thus actually serving to increase the number of reports made to Child Safety.

Furthermore, ISQ notes clauses 102 and 104 of the *Bill*, which serves to repeal the current mandatory reporting provisions for doctors and nurses contained in the *Public Health Act 2005* and the *Commission for Children and Young People and Child Guardian Act 2000*. It would appear to be contradictory to repeal these provisions whilst leaving those in the *EGPA* and *EANSSR* intact.

Accordingly, ISQ seeks consideration be given to amending the *EGPA* and *EANSSR* through the *Bill* to consolidate the highest standard of reporting requirements into the *CPA*.

- Consideration be given to amending the *EGPA* and *EANSSR* through the *Bill* to consolidate and make consistent reporting requirements in the *CPA*, including the threshold for reporting abuse, harm categories, the people required the report harm and to whom harm is reported

## Issues for Clarification

ISQ considers that the issues highlighted below may benefit from additional clarity in the *Bill* or future associated *Regulations*.

### Form of Reports

ISQ notes that the *Bill* does not prescribe the form that reports of reportable suspicions to the chief executive should take. ISQ further notes that the *Bill* does provide a regulation making power to prescribe the way a report is given and that comment from the Child Safety Policy and Programs unit at



the recent Public Briefing regarding the *Bill* on 26 March 2014 indicated that a regulation will set out the type of information to be included in a report. Clause 68 of the *Education (General Provisions) Regulation 2006* does provide such a prescription for reports of sexual abuse made under the associated *Act*. ISQ would be supportive of such a prescription being made in regulation in the future, and would support a similar format to the one provided for under the *Education (General Provisions) Regulation 2006*.

- ISQ would support the prescription of a Reportable Suspicions form for use in reporting to the Chief Executive

### Service providers

Clauses 6 (clause 13B) and 22 refer to “service providers” as being an option for Principals to give information to if they believe a child is likely to become in need of protection if no preventative support is given. ISQ understands this to be a reference to the community-based intake gateways referred to under recommendations 4.5 and 4.6 of the *Queensland Child Protection Commission of Inquiry* report. In this case, ISQ sees that significant further guidance in time for the commencement of the *Bill* on the process and format for giving information to service providers would be valuable for teachers and Principals.

- Consideration be given to the provision of significant further guidance in time for the commencement of the *Bill* on the process and format for giving information to service providers

### Definitional Issues

ISQ considers that the issues highlighted below may benefit from definition in the *Bill*.

#### Appropriate action

Both Clause 6 (clause 13B) and clause 6 (clause 13H) allow teachers to take “appropriate action” when a child is considered to be at risk of harm but a reportable suspicion is not formed. However, the *Bill* does not define “appropriate action”. ISQ seeks consideration of a definition of this term to be included in the *Bill* to provide further guidance to teachers on what form appropriate action may take.

- Consideration be given to the inclusion of a definition of the term “appropriate action” in clause 6 (clause 13B) and clause 6 (clause 13H)



### Reasonably supposes

Clause 6 (clause 13G) states that a person is not required to give a report about a matter if the person “reasonably supposes” that the Chief Executive is aware of the matter. The *Bill* does not define “reasonably supposes”. This may impose a particularly difficult burden of proof on teachers, as they may be required to provide evidence of why they reasonably supposed the Chief Executive was aware of a matter and why they therefore did not report a reportable suspicion. ISQ seeks further consideration of whether it may be potentially hazardous for teachers to rely on this provision when deciding not to make a report. ISQ requests consideration of an amendment to the *Bill* to clarify when a teacher may rely on the justification of “reasonably supposes”, and believes this will assist teachers to reduce the number of misreports to Child Safety.

- Consideration be given to the inclusion of a definition of the term “reasonably supposes” in clause 6 (clause 13G)

### Conclusion

In summary, ISQ recommends consideration be given to the following possible amendments to the *Bill*:

- The removal from clause 6 (clause 13E) of the “parent test”
- Broadening the reportable suspicion clause (clause 6 (clause 13E)) to explicitly require teachers and other school staff to report a reportable suspicion regarding children likely to be sexually abused, as well as psychological and emotional abuse and neglect, and sexual exploitation
- The removal from clause 6 (clause 13E) of the test of “significant” harm
- Broadening the definition of people who are required to mandatorily report (clause 6 (clause 13E)) to be “all staff members of a school”
- Amend clause 6 (clause 13E) to introduce a requirement for teachers to submit reportable suspicions directly to Principals or a director of the school governing body, and a requirement for Principals and directors to forward these reports to Child Safety and/or Police
- The removal from clause 8 of the term “reasonably”
- Through the *Child Protection Reform Amendment Bill 2014*, amend the *Education (General Provisions) Act 2006* and *Education (Accreditation of Non-State Schools) Regulation 2001* to consolidate and make consistent reporting requirements in the *Child Protection Act 1999*, including the threshold for reporting abuse, harm categories, the people required the report harm and to whom harm is reported
- The prescription of a Reportable Suspicions form for use in reporting to the Chief Executive
- The provision of significant further guidance in time for the commencement of the *Bill* on the process and format for giving information to service providers



- The inclusion of definitions of the following terms:
  - “Appropriate action” (clause 6 (clauses 13B and 13H))
  - “Reasonably supposes” (clause 6 (clause 13G))

ISQ believes that the above amendments would significantly strengthen the capacity of the *Child Protection Reform Amendment Bill 2014* to consolidate and make consistent all mandatory reporting requirements in the *Child Protection Act 1999* and would better protect our most at-risk children.

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