

## EDUCATION AND TRAINING LEGISLATION AMENDMENT BILL

The Industry, Education, Training and industrial Relations Committee (the Committee) has sought responses to a number of matters from the Department of Education and Training in relation to the Education and Training Legislation Amendment Bill.

The Committee's questions and the Department's responses to them are provided below.

Abbreviations used throughout this document:

DET – Department of Education and Training

EGPA – *Education (General Provisions) Act 2006*

QCAT - Queensland Civil and Administrative Tribunal

QCT – Queensland College of Teachers

QCT Act - *Education (Queensland College of Teachers) Act 2005*

### **Mandatory reporting**

Ms Grantham – *‘the Bill will also promote the timely reporting of allegations of sexual abuse by allowing the director of a non-state schools’ governing body to delegate their function to receive reports about alleged sexual abuse and report the allegation to police. It will also place obligations on principals to report directly to the police’.*

DET Briefing transcript (24/08/2011) at p. 2.

### **1. Is there evidence to suggest that directors are not realising their current reporting obligations?**

#### **DET Response**

No, DET has no evidence to suggest that directors of governing bodies of non-state schools are unaware of their current reporting obligations. However, the matter of *R v Hayes* (Toowoomba Magistrates Court 1 December 2009) highlighted some difficulties with the operation of the section.

**2. Have directors expressed a desire to delegate their reporting obligation?**

DET Response

As indicated in the submission made by the Queensland Catholic Education Commission to the Committee, the Archbishop of Brisbane wrote to the then Minister for Education and Training, the Honourable Geoff Wilson MP, asking consideration be given to amending the EGPA to enable the appropriate delegation of the function. The Archbishop is a director of a number of non-state schools.

The independent Non-State Schools Accreditation Board also wrote to Minister Wilson on 22 March 2010 asking that the Minister consider an amendment allowing for a director's functions to be delegated.

**3. If a principal receives a report from a teacher that he or she considers is unreasonable, is the principal still bound to report it to the police?**

DET Response

There is no discretion under the current provisions of the EGPA, nor the Bill - if a teacher or other staff member has a reasonable suspicion about alleged sexual abuse, and makes a report to the principal, the principal must immediately give a copy of the report to the police. There is no discretion.

Of course, teachers and other school staff may seek guidance with appropriate officers, such as guidance officers, and the principal about whether the facts give rise to a reasonable suspicion, upon which a report ought to be made.

ISQ and QCEC raised matters relating to implementation costs, the training of non-professional staff and the potential for over-reporting, particularly for reporting a likelihood of future sexual abuse.... It is acknowledged that training on the enhanced statutory requirements will benefit all sectors.

DET Briefing transcript (24/08/2011), at p. 2.

Mr O'Connor referred to an online student protection training package that all new employees undertake when they join the department.

DET Briefing (24/08/2011) at p. 5.

**4. What training (extent, frequency, etc) will be provided beyond the current online training package, and how will it be provided to eg gardeners or canteen staff as opposed to teachers? Have costs of this been considered?**

#### DET Response

Education Queensland staff, including non-teaching staff are required to complete Student Protection Training on commencing work in a state school. Teaching staff, principals and members of the administration team, specialist and support staff (e.g. Guidance Officers, Chaplains and Youth Support Coordinators) complete the online course and discussion module. All other school-based employees of Education Queensland complete either the online course and discussion module or school-based Student Protection training.

Resources to support the delivery of school-based training include a Student Protection Training PowerPoint presentation and Discussion Module Handout.

Fact sheets detailing the new legislative requirement will be produced and made available to all employees via the Department's website.

There will be no additional costs involved in implementing the expanded reporting obligation in state schools. The changes proposed in the Bill complement the current reporting requirements that already occur under current policy in state schools.

#### **5. Is funding being made available to the non-State school sector to ensure school communities (at a school and governance level) are made aware of these changes to reporting obligations?**

#### DET Response

As non-state schools are independent, the nature and extent of staff training is up to the individual governing bodies. Each school's student written protection processes need to be consistent with the legislation; and government's expectation is that staff training will be thorough and comprehensive.

Education Queensland will make available to the Queensland Catholic Education Commission and Independent Schools Queensland the fact sheets being developed for state schools.

Ms Grantham – in the statistics available from the Department of Communities for the year ending 31 March (for all forms of harm) there were 13,947 reports made by school staff across state and non-state schools. Of these 2,993 met the threshold for further investigation (21%) and assessment by Child Safety and 853 were assessed as substantial (6%).

DET Briefing (24/08/2011) at p. 7.

**6. Is DET working with the Department of Communities to address and refine the scope of harm being reported given that 79% of reports are not meeting the threshold?**

DET Response

Several Government agencies, including DET, are working together with the Department of Communities on a range of strategies to assist professional reporters to determine when to report matters concerning harm or risk of harm to a child, including harm caused by sexual abuse.

One strategy being developed is a reporting guide to provide additional assistance to all professional reporters about appropriate reporting and referral practices.

**7. What do the police say about the Bill in terms of their capacity to investigate reports?**

DET Response

The Queensland Police Service supported the proposed amendments.

**8. Has DET considered adopting the terms ‘harm’ and ‘future harm’ in the legislation, rather than abuse and likely abuse? The ‘harm’ term includes sexual abuse and is consistently defined in other Acts eg *Child Protection Act 1999*. Is there a reason why this was not adopted for the Bill?**

DET Response

It is not appropriate for departmental officers to respond to this question as it would canvass the merits of government policy or alternative policy options (paragraph 5 and 6 - Schedule 8 – *Code of Practice for Public Service Employees Assisting or Appearing Before Parliamentary Committees*).

The introduction and expansion of the statutory requirements for reporting allegations of sexual abuse under the EGPA acknowledges the profound damage caused to children and young people who are sexually abused. They reinforce the obligation on staff of schools in Queensland to be vigilant in protecting our children from harm caused by sexual abuse.

The amendments are supported by recommendations from the Queensland University of technology Report titled *Teachers reporting child sexual abuse: Towards evidence-based reform of law, policy and practice*.

Education Queensland policy requires reporting to child safety and/or the police about concerns regarding all forms of harm or risk of harm.

Section 10 of the Education (Accreditation of Non-State Schools) Regulation 2001 requires that non-state school must have policies regarding the health and safety of its students, including written processes covering the reporting of harm or a reasonable suspicion of harm. This provision does not include reporting the risk or likelihood of future harm.

The penalty for a principal or director who fails to report is 20 penalty units, \$2,000.

**9. Was revising this penalty considered when drafting the Bill? Have there been any penalties issued?**

DET Response

It is not appropriate for departmental officers to respond to this question as it would canvass the merits of government policy or alternative policy options (paragraph 5 and 6 - Schedule 8 – *Code of Practice for Public Service Employees Assisting or Appearing Before Parliamentary Committees*).

DET does not hold information about prosecutions under sections 365 and 366 of the EGPA and penalties imposed. Advice is being sought from the Queensland Police Service in this regard and will be forwarded to the Committee as soon as possible.

Clause 15 of the Bill, proposed section 12C states that 'this part applies despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

**10. Was there ever any consideration to not excluding the *Criminal Law (Rehabilitation of Offenders) Act 1986*?**

DET Response

It is not appropriate for departmental officers to respond to this question as it would canvass the merits of government policy or alternative policy options (paragraph 5 and 6 - Schedule 8 – *Code of Practice for Public Service Employees Assisting or Appearing Before Parliamentary Committees*).

Justification for enabling the QCT access to spent convictions is provided at page 16 of the Explanatory Notes.

The QCT Act enables the QCT to access information on spent convictions and charges when assessing a person's suitability to teach (see section 11 QCT Act). Given the ongoing interest in ensuring protection of children in Queensland schools, this is considered appropriate and necessary.

Likewise, in order to assess whether there are exceptional circumstances relating to the person applying for an eligibility declaration, it is imperative that the QCT be able to access the applicant's full criminal history (including information about spent convictions and charges).

**11. Is this the consistent approach in child protection legislation?**

DET Response

Child protection legislation does not prescribe a professional registration scheme. A comparison with that scheme has not been undertaken by DET.

**12. Is there evidence to suggest that serious offenders are more likely to re-offend in this context?**

DET Response

DET does not have statistics in this regard.

**Teacher Registration**

In the initial briefing Mr Busby noted that an eligibility applicant would have to show exceptional circumstances through the eligibility declaration process, and again through their registration process.

DET Briefing transcript (24/08/2011) at p. 4.

**13. Will the onus to prove exceptional circumstances be on the applicant twice?**

DET Response

If a person applies for an eligibility declaration and subsequently for registration or permission to teach, the QCT will consider exceptional circumstances for both applications.

There is no time period prescribed within which a person issued an eligibility declaration must apply for registration. The QCT may and ought to be able to consider all current information about the applicant to determine their suitability to teach, including whether the QCT is satisfied it is an exceptional case in which it would not harm the best interests of children for the person to teach.

Queensland Council for Civil Liberties and QLS oppose the Bill including because it is an "unjust prevention of categories of offenders from rehabilitation by being banned from teaching. There has been no information provided about any person permitted to work as a teacher who subsequently committed another offence".

**14. Could DET advise whether there have been any previous offenders permitted to teach (whether or not the previous offending was known at the time of employment), who have subsequently committed another offence?**

DET Response

The QCT advises that none of the teachers currently holding registration, who have a conviction for a serious offence, have been charged with offences since registration.

The other major issue reason for opposing the Bill given in submissions is that there is no right of appeal or review throughout the proposed registration and eligibility declaration processes. Automatic revocation of an eligibility declaration on being charged with an offence is described as “unfair” and going against the presumption of innocence.

**15. Why does the Bill propose giving reasons for refusal, when there is no possibility of review or any right of reply to those reasons? Is this purely to inform any future possible judicial review?**

DET Response

For consistency across the criminal screening systems for working with children and people with a disability, the eligibility declaration process proposed in the Bill is modeled closely on the existing eligibility declaration processes prescribed in the *Commission for Children and Young People and Child Guardian Act 2000* and the *Disabilities Services Act 2006*.

Although there is no right of appeal from a decision of the QCT to refuse to grant an eligibility declaration, it is appropriate to provide written reasons for any administrative decision of government or statutory authorities.

**16. Is there any reason that access to judicial review is specifically referred to in respect of an eligibility declaration decision but not in respect of cancellation of registration or permission to teach (Clause 15, proposed section 12G(4) and Clause 21, proposed section 58A(7)). Presumably it is an option in both situations? Different wording implies otherwise (though the wording is the same in the Bill, if not in the explanatory notes). Does the QCAT Act need to be revised accordingly?**

DET Response

Judicial review is open to a person aggrieved by a decision concerning the granting of an eligibility declaration.

Judicial review is also available to a person whose registration is cancelled under section 56 in the existing Act, and section 58A as proposed in the Bill.

**17. How is suspension ended, when a person is charged and then not convicted? Is a QCAT decision required, and can DET give an example?**

DET Response

Suspensions are only ended by decisions of QCAT.

Currently, if an approved teacher is charged with a disqualifying offence, the QCT must suspend their registration or permission to teach under section 48 of the QCT Act. This provision will be amended by the Bill to provide for suspension upon a charge for a serious offence.

Section 49 of the QCT Act enables suspension of a person if the QCT reasonably believes the person poses an imminent risk of harm to children.

If a person's registration or permission to teach is suspended under section 48, the QCT must seek an order from QCAT about whether the suspension ought to be continued (chapter 2, part 6 division 2 QCT Act).

Suspensions under section 48, not ended by QCAT under chapter 2, part 6, division 2, and suspensions under section 49 are ended if:

- QCAT orders the suspension to be ended under sections 102, 152, 159, 160; or
- QCAT cancels the teacher's registration under section 160 (see section 52 QCT Act).

Section 92 QCT Act prescribes grounds for disciplinary action against a teacher, including that the teacher is not suitable to teach (section 92(1)(h)). It is a ground for a disciplinary action based on suitability if a person's registration is suspended under section 49. It is also a ground for a disciplinary action based on suitability if a person's registration is suspended under section 48 upon a charge for a disqualifying offence and:

- the matter has been dealt with (eg. the person has been acquitted or the charges are withdrawn);
- the person has been convicted of an offence other than an indictable offence; or
- the person becomes subject to a temporary prohibition order or interim sexual offender order (see section 92(2) QCT Act).

The QCT must refer a matter to the appropriate disciplinary body if it reasonably believes a ground for disciplinary action exists (see section 97 QCT Act). QCAT is the appropriate body for show cause and general matters, which includes issues of suitability in the circumstances listed above.

QCAT can make a range of decisions (refer to chapters 5 and 6 QCT Act).



An example of this process can be accessed in the matter of *Queensland College of Teachers v A Teacher* [2010] QCAT 225.

**18.If an eligibility declaration is revoked under 12M, on what basis can a person re-apply? There is nothing preventing re-application within a two year period. Does the two year limit only apply where the application is refused, under 12 G?**

DET Response

If a person's eligibility declaration is revoked under the proposed section 12M, the person may re-apply at any time for another eligibility declaration, provided the person meets the definition of an 'eligibility applicant' (see proposed new section 12D).

The two year limitation only applies when a person has made a previous eligibility application that has been refused under section 12G (see proposed new section 12E(2)).

**19.In respect of cancellation of registration or permission to teach on conviction of a teacher for a serious offence (Clause 21, proposed S58A), can DET confirm that the teacher can never be granted registration or permission to teach unless the conviction is cancelled or overturned on appeal (as stated in S58 (4) (ii)). Does this clause need to be revised to cover the retrospectivity of the Act, and the possibility of "romeo and juliet" situations in the past resulting in a cancellation of registration for a teacher who has been teaching for many years?**

DET Response

A person whose registration or permission to teach is cancelled under the proposed new section 58A becomes an excluded person. The person would therefore be prevented from applying again for registration or permission to teach, except if:

- the person's conviction is overturned on appeal (new section 58B); or
- the person is issued an eligibility declaration (new part 1A).

Only persons convicted of a serious offence but not sentenced to imprisonment or subject to sexual offender reporting obligations may apply for an eligibility declaration.

The proposed section 58A of the Bill only applies to a person convicted after commencement of part 4 of the Bill. As the Minister has informed the Committee, it is proposed that amendments be moved during consideration in detail to apply the cancellation provisions to a person convicted of a serious offence, irrespective of when the person was convicted. The provision will

therefore apply to persons convicted of serious offences prior to commencement of part 4 of the Bill.

There are a number of existing teachers whose registration will be cancelled as a result of this amendment. Those who were not sentenced to imprisonment will be able to seek an eligibility declaration under the proposed new part 1A.

**20. Currently, references to 'serious offences' under the QCT Act are qualified by the phrase 'involving a child' (eg. s58 (1)(b) of the Act). However, under the Bill, the term 'serious offence' is not so qualified. 'Serious offences' under the Bill includes offences committed in relation to a child or an adult. Is broadening the scope to offences not involving children, consistent with the policy objective of the Bill being to protect children?'**

DET Response

The amendments do not broaden the list of serious offences beyond those already prescribed in the *Commission for Children and young People and Child Guardian Act 2000*.

The Bill is consistent with the Government's policy intention of providing strong measures to protect the best interests of children in Queensland schools and to maintain public confidence in Queensland's teaching profession.

**21. Is broadening the scope of 'serious offences' beyond those involving children intended to cover situations like the McNeil case? While the proposed new scope wouldn't cover that situation as it still isn't a 'serious offence', the extension of QCAT powers would. Is this taking a very broadbrush approach in order to address a quite specific issue (ie covering all bases), which could catch more people in the net than intended? Is this warranted, given there are no rights of appeal?**

DET Response

DET provided the following clarifying remarks about the McNeil matter to the Committee in early September after reviewing the draft transcript of the DG's initial statement to the Committee:

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*Chair: "What you are saying is that that has been tightened up and it is putting the onus on him to show exceptional circumstances as to why he should be re-engaged; is that right?"*

*Clarification – MacNeil v Queensland College of Teachers*

*The Committee raised a number of questions in relation to the matter of MacNeil v Queensland College of Teachers [2011] QCAT 260. This matter concerned a teacher, Mr MacNeil who was not convicted of a disqualifying or serious offence but was convicted and sentenced to imprisonment for 8 years for other offences.*

*Serious and disqualifying offences are prescribed in the Commission for Children and Young People and Child Guardian Act 2000 (CCYPCGA). Mr MacNeil's offences are not prescribed as serious or disqualifying in the CCYPCGA.*

*The Queensland Civil and Administrative Tribunal (QCAT) prohibited Mr MacNeil from applying for registration for 5 years. In this matter QCAT raised concerns about the limitations on its ability to prohibit a teacher or former teacher for a maximum of 5 years.*

*Currently in the Education (Queensland College of Teachers) Act 2005 (Act), there is a presumption against the registration of persons convicted of serious offences. The Queensland College of Teachers (QCT) must not register persons convicted of serious offences unless it is an exceptional case in which it would not harm the best interests of children for the person to teach. Under the Act, should Mr MacNeil apply for registration, there is no presumption against his registration, and the exceptional case discretion would not be relevant.*

#### *Clarification of the proposed amendments – Mr MacNeil*

*The Bill addresses the issue raised by QCAT in the matter of Mr MacNeil by enabling QCAT to prohibit a teacher for a stated period of time or for life.*

#### *Clarification of the proposed amendments regarding exceptional circumstances*

*Under the proposed amendments persons convicted of serious offences will not be able to apply for teacher registration. They will be able to apply for a declaration that they are eligible to apply for registration (eligibility declaration). Exceptional circumstances will be considered as part of the eligibility declaration process.*

*If Mr MacNeil decides after the 5 year prohibition has ended to re-apply for registration, the QCT must determine whether he is suitable to teach, considering all criminal history relating to him, and probity issues. Mr MacNeil will not be affected by the proposed amendments regarding the eligibility declaration process and exceptional circumstances as he did not commit a serious offence as prescribed in the CCYPCGA."*

In addition, DET notes the following.

The proposed amendments to expand QCAT's powers will enable QCAT to make disciplinary orders prohibiting a person from applying for registration for a stated period or for life. QCAT is currently limited to making orders for a maximum of five years.

The amendments do not broaden the list of serious offences beyond those already prescribed in the *Commission for Children and young People and Child Guardian Act 2000*.

QCAT prohibited Mr MacNeil from applying for registration for the maximum five years, and commented that given the gravity of his offences, a longer prohibition period would have been imposed if possible.

Expanding QCAT's powers aims to cater for situations in the future where in QCAT's view, the gravity of a person's conduct indicates that the person would pose a risk of harm to children, and warrants exclusion from teaching beyond the current 5 year maximum.

A person aggrieved by a disciplinary order of QCAT may appeal the decision. The right of appeal is prescribed in the *Queensland Civil and Administrative Tribunal Act 2009*.

**22. Some terminology seems to be used interchangeably in the Bill and Explanatory Notes – appeal, review, harm, abuse.....and inconsistently (eligibility application, eligibility declaration). Does one 'grant an application' or grant the declaration (Clauses 12 F, 12 G). Wouldn't the College approve an eligibility application, and consequently grant an eligibility declaration?**

#### DET Response

For consistency across the criminal screening systems for working with children and people with a disability, the eligibility declaration process proposed in the Bill is modeled closely on the existing eligibility declaration processes prescribed in the *Commission for Children and Young People and Child Guardian Act 2000* and the *Disabilities Services Act 2006*. The language is consistent with those Acts in relation to granting an application and issuing a declaration.