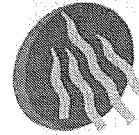


23 AUG 2011



Queensland  
Government

The Honourable Kerry Shine MP  
Chair  
Industry, Education, Training and Industrial Relations  
Committee  
Parliament House  
BRISBANE QLD 4000

Department of  
Education and Training

**RECEIVED**

**24 AUG 2011**

INDUSTRY, EDUCATION, TRAINING AND  
INDUSTRIAL RELATIONS COMMITTEE

Dear Mr Shine

Thank you for your letter dated 11 August 2011 regarding the Industry, Education, Training and Industrial Relations Committee's inquiry into the Education and Training Legislation Amendment Bill 2011.

Ms Melinda Rabbitt, Director, Ministerial and Executive Services is the departmental contact for this inquiry. Ms Rabbitt's contact details are as follows:

PO Box 15033  
CITY EAST QLD 4002  
Telephone: (07) 3237 1092  
Email: [melinda.rabbitt@deta.qld.gov.au](mailto:melinda.rabbitt@deta.qld.gov.au)

I will attend departmental and public briefings on the Bill to assist the Committee during the inquiry in relation to the Bill. I will be assisted by Ms Annette Whitehead, Acting Associate Director-General and Chief Officer, Office for Early Childhood Education and Care and Mr Stuart Busby, Director, Legislative Services Unit.

You have indicated that the Committee is seeking information about the following matters prior to the public hearing scheduled for 24 August 2011:

- stakeholders consulted
- the basis of the consultation, i.e. whether consultation was undertaken on an exposure draft or other version of the Bill, and whether that was substantially similar to the Bill introduced into Parliament
- when the consultation occurred
- how the consultation was conducted
- the outcomes of the consultation.

The enclosed attachment provides the Committee with the information sought.

I look forward to working with you and the Committee through this new and exciting process.

Yours sincerely

Julie Grantham  
Director-General

Ref: 11/218725

Enc

Office of the Director-General  
Floor 22 Education House  
30 Mary Street Brisbane 4000  
PO Box 15033 City East  
Queensland 4002 Australia  
Telephone +61 3237 0900  
Facsimile +61 3237 1369  
Website [www.deta.qld.gov.au](http://www.deta.qld.gov.au)  
ABN 76 337 613 647

## INDUSTRY, EDUCATION, TRAINING AND INDUSTRIAL RELATIONS COMMITTEE

### INQUIRY INTO THE

### EDUCATION AND TRAINING LEGISLATION AMENDMENT BILL 2011

#### INTRODUCTION

1. The Industry, Education, Training and Industrial Relations Committee (the Committee) has sought the following information about consultation undertaken in relation to the Education and Training Legislation Amendment Bill 2011 (the Bill):
  - stakeholders consulted;
  - the basis of the consultation, i.e. whether consultation was undertaken on an exposure draft or other version of the Bill, and whether that was substantially similar to the Bill introduced into Parliament;
  - when the consultation occurred;
  - how the consultation was conducted; and
  - the outcomes of the consultation.

#### ABBREVIATIONS

DET - Department of Education and Training

EGPA – *Education (General Provisions) Act 2006*

ISQ – Independent Schools Queensland

NSSAB – Non-State Schools Accreditation Board

QCEC – Queensland Catholic Education Commission

QTU – Queensland Teachers Union

QIEU – Queensland Independent Educators Union

QCAT – Queensland Civil and Administrative Tribunal

QCT – Queensland College of teachers

#### SUMMARY OF CONSULTATION

##### Non-government consultation

2. Significant targeted consultation was undertaken with non-government stakeholders during development of the Bill. A brief summary of the amendments and consultation undertaken is provided below.

## **Mandatory reporting – amendments to the EGPA**

### The amendments

3. Sections 365 and 366 of the EGPA currently place an obligation on staff in state and non-state schools to report suspected sexual abuse of certain classes of students when perpetrated by an employee of the school. The reporting obligations applies to suspicions relating to children in the preparatory year of schooling, students under 18 years of age and students with a disability who are being provided special education.
4. These statutory reporting requirements were first introduced in response to a report of a Board of Inquiry into the handling of complaints of sexual abuse in the Anglican Diocese of Brisbane. They aimed to strengthen procedures in schooling systems to respond to complaints of sexual abuse perpetrated in school settings.
5. The Bill will amend the EGPA to expand on the existing statutory reporting requirements to require reporting of suspected sexual abuse, or a likelihood of sexual abuse, of a student by any person, not just employees of the school. The amendments are supported by recommendations of a Queensland University of Technology (QUT) Report, *Teachers reporting child sexual abuse: Towards evidence-based reform of law, policy and practice* (the QUT Report). The Bill does not introduce a penalty for failing to report risk of future sexual abuse.
6. Under common law, all Queensland schools have a duty of care to protect students from risks of foreseeable harm. For state schools, the proposed amendments support what is already established in student protection policy – namely that staff members are obliged to report harm, or risk of harm, including sexual abuse, of any student by any person. Non-state schools are also required to have policies regarding student welfare to maintain accreditation, including policies for reporting of harm or suspicions of harm. This includes reporting harm, or suspected harm, caused by sexual abuse.
7. While there are strong policies in the state and non-state system for reporting all risks of harm to students, legislation is a powerful lever to influence behaviour in this area. Schools should be safe and supportive learning environments in which the welfare and best interests of students are paramount. The introduction of the Bill highlights an expectation that school staff must remain vigilant in protecting students from harm caused by sexual abuse.
8. The proposed amendments will ensure that Queensland's statutory reporting requirements are at least equivalent to or stronger than, the reporting requirements of other Australian jurisdictions. Most Australian jurisdictions require mandatory reporting of harm and risk of harm which includes sexual abuse – only Western Australia and the Australian Capital Territory do not. The Queensland *Public Health Act 2005* also places a specific obligations on medical practitioners to report about harm, or a likelihood of harm to a child patient.

### Consultation

9. Consultation on the recommendations of the QUT Report was undertaken in 2010 with ISQ, QCEC, QUT, Queensland State Schools Principals Association; Queensland Association State Primary Principals and Australian Special Education Principal's Association.

10. Consultation was also conducted during development of the proposed Bill with: ISQ, QCEC, QTU, QIEU and NSSAB. In April 2011, these stakeholders were provided an extract of a draft Bill and a covering explanatory paper. This draft of the Bill proposed the expansion of the reporting requirement to include allegations against of sexual abuse perpetrated by any person not just employees of the school.
11. ISQ and QCEC were provided a verbal update on the policy position for mandatory reporting that is reflected in the Bill introduced into Parliament in the Bill.
12. ISQ and QCEC indicated support for the expansion of the reporting requirement to report sexual abuse, or a suspicion of sexual abuse, by any person. Both stakeholders indicated that the omission of the penalty for reporting a risk of future sexual abuse would allay some concerns about teachers reporting inappropriate matters, or low level suspicions or concerns for fear of attracting a criminal sanction. Both stakeholders acknowledged that the majority of Australian jurisdictions required reporting of risk of future sexual abuse.
13. Both stakeholders raised matters relating to implementation costs, training of non-professional staff and the potential for over-reporting.
14. Training of the enhanced statutory requirements would be required in all sectors and that training may need to be targeted towards the staff members having regard to the level of contact relevant staff may have with children and the opportunity to observe behaviour giving rise to suspicions of abuse.
15. DET works closely with organisations like Family Planning Queensland who have developed useful resources and training for staff, such as the 'Traffic Lights' framework publication which assists staff to identify and respond to sexual behaviours in children and adolescents.
16. Also, government agencies, including DET and the Department of Communities are working on a range of strategies to assist teachers to determine when to report matters concerning risk of harm to a child, including an online tool.
17. The QCEC raised concern about the scope of the term 'sexual abuse'. Defining 'sexual abuse' could inadvertently limit the scope of the reporting requirement. It would not allow flexibility to cater for additional matters not anticipated in drafting of the Bill.
18. During consultation on the QUT Report, the QTU and QIEU suggested the scope of matters to be reported should be limited, so that reporting of sexual activity between students and children under 18 years should be excluded. Defining the term to exclude such matters could result in instances of sexual abuse perpetrated by a young person not being reported.
19. Recent correspondence from the unions, made through their lawyers, indicates that the unions are opposed to amendments aimed at introducing a requirement to report risk of future sexual abuse. The unions propose that if amendments are progressed in this regard, the test of when a report is required should be where there is *'highly likely to be a risk of future sexual abuse'*.
20. In relation to risk of future sexual abuse, the Bill proposes that staff members be required to report where they reasonably suspect a student is *'likely to be*

*sexually abused*'. This sets a high test that would require more than a concern that there is a risk. While it is important that school staff remain vigilant in reporting risk of future sexual abuse, the reporting needs to be sensible and appropriate. Staff should not be reporting low level concerns for fear of attracting a criminal sanction. This is why the Bill does not introduce a penalty for failing to report risk of future sexual abuse.

21. Principals associations were supportive of current reporting policies as appropriate measures to protect vulnerable children.
22. NSSAB supported the amendments to remove the current limitation of the provisions to sexual abuse perpetrated by an 'employee' and to require principals to report directly to the police if they are the first person to suspect sexual abuse.

### **Delegation of reporting obligations – amendments to the EGPA**

#### The amendments

23. Section 366 of the EGPA places as an obligation on directors of non-state school governing bodies to receive reports from school staff members about alleged sexual abuse and to report the allegations to the police.
24. During consultation with the Non-state sector on the QUT Report recommendations, the QCEC suggested that in the Catholic Education system, directors of non-state schools may require more administrative flexibility to be able to meet their obligation to receive and make reports about sexual abuse in a timely manner. The QCEC's particular concern was for sole directors, such as the Archbishop of the Catholic Archdiocese of Brisbane, who may have responsibility for a range of duties within the church, as well as for a number of non-state schools.
25. The Bill proposes to enable the director of a non-state school governing body to delegate their duty to receive and make reports about the suspected sexual abuse of a student under section 366 to an appropriately qualified individual.

#### Consultation

26. ISQ, QCEC and NSSAB were consulted during development of the Bill and were provided an exposure draft of the Bill containing the proposed amendments to directors' duties. The amendments were supported, although, ISQ was not convinced of the need for the amendments for directors of non-state schools within the independent schooling system. It is not mandatory to put delegations in place. If schooling systems are satisfied with existing procedures, there is no need for them to change.
27. ISQ raised concerns about allowing delegations to be made to the principal of a school. Their concern is how reports would be made when the allegation may be against the principal. The current reporting provisions and the proposed amendments do not prevent staff, students or parents from making a report of alleged sexual behaviour to the director of the governing body of a non-state school instead of the delegate, where a principal may be the subject to the allegations.

## **Teacher registration - amendments to the *Education (Queensland College of Teachers) Act 2005***

### *The amendments*

28. The *Education (Queensland College of Teachers) Act 2005* (the QCT Act), provides for the cancellation of teacher registration or permission to teach where a teacher has been convicted of a disqualifying offence and the person is sentenced to imprisonment. However, if the person is not sentenced to imprisonment, the QCT must seek a disciplinary order of QCAT to cancel their registration or permission to teach. QCAT currently has discretion to cancel registration and to prevent a teacher or former teacher from applying for registration for a period of up to five years.
29. The Bill will amend the QCT Act to provide for the automatic cancellation of teacher registration when a teacher is, from the date of commencement, convicted of a serious offence, irrespective of whether the person was sentenced to imprisonment. Further, the Bill will prohibit any person who, from commencement, has been convicted of a serious offence, from applying for teacher registration in Queensland.
30. The Bill also introduces an eligibility declaration process. This process will give the QCT the capacity, in limited instances, to consider whether there are exceptional circumstances in which it would not harm the best interests of children or the profession to consider an application for registration from a person with a conviction for a serious offence.
31. The amendments aim to uphold the high standard of, and maintain public confidence in, Queensland's teaching profession.
32. Unlike other professionals, like doctors and lawyers, teachers predominantly work with children. Appropriate safeguards need to be implemented to ensure the best interests of children are protected. The protection of children from the risk posed by teachers who have committed serious offences outweighs the negative impacts on individuals whose registration will be cancelled under the new provisions.

### *Consultation*

33. The QCT, ISQ, QCEC, QTU, QIEU and NSSAB have been consulted during development of the Bill. All stakeholders were provided a draft Bill in April 2011. This Bill proposed the automatic cancellation of registration or permission to teach where a teacher has been convicted of a disqualifying offence, regardless of whether the person was sentenced to a term of imprisonment. The person was to be prohibited from re-applying for registration for a period of five years.
34. Apart from NSSAB, the QTU and QIEU, stakeholders supported the amendments as proposed in the draft Bill. NSSAB offered no position on the amendments.
35. ISQ and QCEC were provided a verbal update on the policy position for teacher registration represented in the Bill introduced into Parliament. The amendments were not opposed.
36. The teachers unions have subsequently written to re-iterate their opposition to the automatic cancellation provisions because a person falling subject to the

provisions is not afforded the opportunity to have the circumstances of their matter taken into account, in order to determine whether cancellation of registration is an appropriate outcome and if so, the length of the cancellation. The teachers unions proposed the cancellation should be subject to the person seeking an order of QCAT that the matter is an exceptional one where the best interests of children would not be harmed.

### **Disciplinary orders of the QCAT - amendments to the EGPA**

#### *The amendments*

37. The Bill amends the QCT Act to enable QCAT to make disciplinary orders to prohibit a person from applying for registration or permission to teach for a stated period or for life. QCAT is currently limited to orders of five years.

#### *Consultation*

38. No external consultation was undertaken on these amendments.

### **University trust land – amendments the university Acts**

#### *The amendments*

39. Public universities in Queensland hold land under various tenures, including freehold land and trust land under the *Land Act 1994*. Under university legislation, a university may grant an interest in trust land only by way of lease and the terms of each lease must not be for more than 25 years. This restriction reduces opportunities for universities to enter into joint ventures with external entities as the private sector may not consider a lease of 25 years to be commercially viable for some ventures.
40. Some universities have also noted that the sometimes narrow interpretation of the scope of the purpose for which trust land may be used has hampered their ability appropriately use trust land for university purposes. For example, to provide facilities for ancillary student services (such as banking services), or to take advantage of joint ventures with external entities for commercial purposes that would provide benefit to the university (such as development collaborative research facilities).
41. The Bill will amend relevant university Acts to permit the lease of trust land held under an operational reserve or deed of grant treat for a period of up to 100 years and to clarify the purpose for which trust land may be used.

#### *Consultation*

42. Central University of Queensland, James Cook University, Griffith University, Queensland University of Technology, University of Queensland and the University of Southern Queensland were consulted on a draft of the Bill. The Universities supported the amendments and acknowledged the Bill should support the more flexible use of the trust land.

## **Recognised Schools –amendments to the EGPA**

### *The amendments*

43. Under the EGPA, students in overseas schools that are approved as a 'recognised school' are able to obtain Queensland senior school qualifications. Applications for recognised school status are assessed against the minimum eligibility requirements prescribed in the EGPA.
44. The Bill will amend the EGPA to enable the Minister to consider a broader range of factors when deciding whether to approve an overseas school as a recognised school. This will include the school's educational program, financial viability, facilities and student welfare structures.

### *Consultation*

45. No external consultation was undertaken on these amendments.

## **Statutory TAFE institutes – amendments to the *Vocational Education, Training and Employment Act 2000***

### *The amendments*

46. The *Vocational Education Training and Employment Act 2000* (VETE Act) provides for the establishment of statutory TAFE institutes. The Bill will make minor technical amendments to the VETE Act to clarify that statutory TAFE institutes are intended to operate as not-for-profit entities by replacing terms which are often associated with for profit activities.

### *Consultation*

47. No external consultation was undertaken on these technical amendments.

### **Government Consultation**

48. Consultation has taken place through development of the Bill with all relevant government agencies.