INDUSTRY, EDUCATION, TRAINING AND INDUSTRIAL RELATIONS COMMITTEE

Members present:

Mr K.G. Shine MP (Chair)
Mr S.L. Dickson MP
Dr B. Flegg MP
Mr S.A. Kilburn MP
Mrs D.C. Scott MP
Mrs J.A. Stuckey MP

Staff present:

Ms B. Watson (Research Director)
Ms S. Gregory (Acting Principal Research Officer)

PUBLIC HEARING ON EDUCATION AND TRAINING LEGISLATION AMENDMENT BILL 2011

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 12 OCTOBER 2011

Brisbane

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Committee met at 9.02 am

CHAIR: Good morning. We are all ready, bar one. So when that member comes that will make the full complement, but we will start in the meantime. I declare this public hearing into the examination of the Education and Training Legislation Amendment Bill 2011 open. Thank you all very much for your attendance and for your interest in this area.

I am Kerry Shine, the member for Toowoomba North and chair of the committee. The Industry, Education, Training and Industrial Relations Committee is a statutory committee of the Queensland parliament and, as such, represents the parliament. Committee proceedings are in fact proceedings of parliament and I will explain the implications of that presently.

First, I would like to introduce the other members of the committee: Dr Bruce Flegg, the member for Moggill and deputy chair of the committee; Steve Dickson, the member for Buderim; Steve Kilburn, the member for Chatsworth, who is not here yet; Desley Scott, the member for Woodridge; and Jann Stuckey, the member for Currumbin.

The committee has advised the public of this inquiry by advertising in the print media and on the Queensland parliament's website and by writing directly to a number of individuals, organisations and government departments. On 2 August 2011 the parliament referred the bill to the committee for examination and report to the House.

If passed, the bill will amend the Education (General Provisions) Act 2006, the EGP Act, to expand the current requirements regarding the reporting of sexual abuse to all school staff and include reporting of suspected sexual abuse or a likely risk of sexual abuse by any person. It would also amend the Education (Queensland College of Teachers) Act 2005, the QCT Act, to provide for the automatic cancellation of teacher registration or permission to teach and impose a lifetime ban on teaching where a person is convicted of a serious offence. It would also enable a person who is prohibited from applying for registration to seek, in limited circumstances, an eligibility declaration which would enable them to apply for registration or permission to teach.

The bill would extend the powers of the Queensland Civil and Administrative Tribunal, QCAT, so that it can make disciplinary orders to prohibit a person from applying for registration or permission to teach for a stated period of time or for life. This would ensure that teachers not banned for serious offences—that is, under the Queensland College of Teachers process—could still be disciplined. The intent of these amendments is to protect Queensland children.

In addition to these child protection measures, the bill would reduce restrictions on Queensland universities regarding the leasing of land dedicated as reserve or granted in trust—trust land—and to provide clarity about the permitted use of certain trust land and make other minor amendments.

The committee is required to report to the House by 7 November 2011. In its inquiry into this bill, the task ahead of this committee is to consider the bill in terms of the policy intent to be achieved as well as fundamental legislative principles and lawfulness and to develop a report to parliament before the bill is debated in the House. To date, the committee has considered the 14 submissions received from a range of stakeholders in respect of the bill and has heard briefings from the Department of Education and Training. The purpose of today is to further inform the committee's consideration of the bill.

Although the committee is not swearing in witnesses, these hearings are a formal process of the parliament. As such, any person intentionally misleading the committee is committing a serious offence. By the same token, parliamentary privilege applies to evidence presented here today. Although this is a public hearing, you are able to request through me as chair that any material or information you provide be kept private, and you can object to particular questions. This information is contained in schedule 3 of the parliament's standing orders—instructions to committees regarding witnesses—with which each witness has been supplied.

I also remind witnesses that Hansard will be making a transcript of the proceedings. I therefore ask you to please identify yourself when you first speak and to speak clearly and at a reasonable pace.

Members of the public are reminded that they are here to observe the hearing and may not interrupt the hearing. In accordance with standing order 208, any person admitted to this hearing may be excluded at the discretion of the chair, to the extent that the chair may have any discretion, or by order of the committee.

Representatives of the media may attend and may record the hearing in line with the media broadcast rules set by the committee and available from the committee's staff. I ask all people present to turn off mobile phones or switch them to silent mode. I now welcome Steve Kilburn, the member for Chatsworth, to the committee.

MATHEWS, Associate Professor Ben, Associate Professor, School of Law, Faculty of Law, Queensland University of Technology

WALSH, Dr Kerryann, Senior Research Fellow, Faculty of Education, Queensland University of Technology

CHAIR: I now welcome our first witnesses: Associate Professor Ben Mathews and Dr Kerryann Walsh, researchers from the Queensland University of Technology. For the record, could you please state your name and the capacity in which you appear before the committee? Then I will invite you to make a brief opening statement before members of the committee ask questions.

Assoc. Prof. Mathews: I am an associate professor in the law school at Queensland University of Technology. I appear in the capacity of an academic who has done research in this field.

Dr Walsh: My name is Dr Kerryann Walsh. I am from QUT's Faculty of Education. I am a senior research fellow, and I am appearing in the capacity of a researcher who has done work in this field.

CHAIR: Professor, would you like to make some opening remarks?

Assoc. Prof. Mathews: Yes. Thank you. If it is acceptable to the committee, we would like to make an overall statement affirming our position and then to make some comments about three key issues arising out of the bill's provisions and submissions regarding them. We note at the outset that our comments are only about part 3 of the bill, which amends the Education (General Provisions) Act regarding teachers' duties to report sexual abuse. We feel that these amendments are significant advances in social policy in child protection in Queensland. We endorse them. We note at the outset though that we were not involved in consultations about drafting of the bill, so we feel that there are some comments that we could make regarding possible refinements to some of the provisions.

To first make an overall statement affirming our position, we support the broad goals and concepts behind these major amendments which apply the duty to report suspected child sexual abuse no matter who the perpetrator may be and which create a duty to report suspected risk of abuse. The amendments are legally sound, constitute good social policy and for the most part are practically sound. We think that these amendments generally should receive bipartisan support.

Legally they are sound because they harmonise or even strengthen Queensland legislation regarding teachers reporting child sexual abuse vis-a-vis legislation in other states and territories. They harmonise Queensland legislation for teachers reporting sexual abuse with that applied to doctors and nurses. It makes the legislation consistent with teachers' common law duty of care and it makes the legislation consistent with the reporting policy of the Queensland department of education and Cath Ed.

Practically, the legislation has the effect of enacting coherent, centralised reporting duties which apply to all teachers in the state which creates harmony across educational sectors. Applying these duties to all teachers should facilitate improved teacher training which in turn should enhance the quality of reports, which is very important.

In terms of social policy, there are broad justifications for these amendments. Teachers already make a substantial contribution to child sexual abuse detection. This can be maximised through a sound legislative duty and good training, which is essential. Most sexual abuse is not committed by school staff, so it makes no sense to restrict the duty to report abuse by school staff only, as the current legislation does. Child sexual abuse is unfortunately very common and causes profound personal, social and economic damage. Optimal early detection is good social policy for individuals and for the community.

There was only one submission which cast doubt on having reporting legislation at all. I will just make a couple of points about the social policy justifications regarding the effectiveness of reporting legislation. There is in fact very strong evidence from overseas and within Australia about the effect of reporting legislation and reports by mandated reporters. In the US, for example, mandated reporters make 74 per cent of all substantiated sexual abuse reports. In Canada, it is 62 per cent. Educational personnel are key reporters who contribute to those reports. So, in the US, they make 11 per cent of all substantiated sexual abuse reports. In Canada, they make 19 per cent. In the USA in fact there has been a 51 per cent decline in child sexual abuse from 1990 to 2005. Mandatory reporting has played a key role in that.

In Australia there is further evidence of the direct impact of a legislative reporting duty. We can see this in Lamond's study in New South Wales, which analysed reporting data from a three-month period before and after the introduction of a legislative duty and found that reports of substantiated cases tripled in that period. In Western Australia, which introduced reporting of child sexual abuse in 2009, identification of sexual abuse has increased significantly. We can see that from reports of the Australian Institute of Health and Welfare for the last four years.

Our study of teachers reporting in Queensland, New South Wales and Western Australia showed that, over a two-year period and taking into account population difference, teachers in a state without reporting legislation made three times fewer substantiated reports of sexual abuse than did teachers in two other states having the reporting duties. Obviously it is not just the reporting duties that operate here; it is teacher training as well, which is very important. They are our opening remarks. We will now address the three major issues that we are looking at today.

Dr Walsh: The first issue we would like to address is that regarding to whom the duty should apply. Should the duty apply to all school staff or should it apply to specific staff? This is not entirely clear as the term 'school staff' is not defined in the Act or in the Acts Interpretation Act. The use of the term 'school staff' seems to be a remnant of the original 2004 legislation, which was established to deal with that very small category of cases of sexual abuse by school staff.

We would like to suggest that the duty should not apply to all school staff or all paid members of school staff or all employees, but rather it should reflect an approach that embodies the original concepts behind the introduction of mandatory reporting laws—and that is that key groups of people who have training in relevant fields and whose occupation brings them into frequent close contact with children have the duty to report child sexual abuse which they become aware of in the course of their occupation. So, by virtue of their direct contact with children and their specialised training, people in these roles are in a position to receive disclosures from children, to identify warning signs and indicators, and to observe changes in behaviour that can lead them to form a reasonable suspicion. Teachers are clearly one key group of professionals.

We suggest, therefore, that the duty should apply to specific school staff as is commonly done in other legislation—those who have direct contact with children in the course of their daily work, for example, teachers, principals, school administrators, guidance counsellors, psychologists, teacher aides, to name a few—and not to those perhaps whose occupational duties do not involve direct responsibility for or supervision or education of children, such as cleaners or grounds staff, as important as those staff are.

Prof. Mathews: The next point we will address is the new duty to report a reasonable suspicion that a child 'is likely to be sexually abused'. This is all about the reporting of the suspected risk of future abuse. Several groups who made submissions to this inquiry expressed concern about this. We actually support the conceptual nature of this aspect of the reporting duty. It is essentially a duty to report a reasonable suspicion of the risk of future abuse. The aim of this kind of duty, which is widely adopted elsewhere in other countries and in Australia, is optimal child protection. It is to prevent the abuse happening even before it does. That is one step better than responding after it has happened.

The issue is how best to draft the provision. Should the term 'likely' be used or should another term such as 'risk of sexual abuse' be used? The term 'likely', although this is debatable, seems to connote a higher level of certainty than the term 'risk of being sexually abused', and it may be important to ensure the scope of this provision is not narrowed too much. We suggest the provision could perhaps be drafted in a way that reflects the best practice of other jurisdictions. This would better fit with the nature of this aspect of the duty and, in our view, may overcome potential problems used by the term 'likely', which is not generally used in other jurisdictions' laws. We acknowledge it is used in our Public Health Act, section 191, which applies to doctors and nurses. However, we feel the use of the term 'likely' might well cause a teacher to wonder what level of probability is required to trigger this reporting duty: is it 90 per cent, 75 per cent, the balance of probabilities or something less than that? Different individuals would understandably have different views.

We accept that such a judgement by the teacher would also be required if the term 'at risk of being sexually abused' is used. There is inevitably a degree of indeterminacy in this kind of reporting duty, but much of this can be addressed in effective teacher training about the intended scope of this kind of duty. In particular, certain scenarios could be used to tell the teachers what this kind of duty is aimed at. It is aimed at quite clear circumstances where a child might be being groomed for sexual abuse, for example. As always, the training of reporters is the key.

We should take care to reassure teachers and other stakeholders that they are not intended to be expert predictors about what is going to happen in a child's life. They are not meant to be crystal ball gazers. The provisions that are commonly used in other jurisdictions are simply meant to optimise child protection. We can note that many of the examples given by one of the stakeholders who made a submission to the inquiry are really about consensual or otherwise innocent child sexual activity or inappropriate staff conduct. Those kinds of cases are certainly not the target of this type of provision. We feel that appropriate teacher training should prevent inappropriate reporting and, as the director-general noted in briefing this inquiry, the omission of a penalty for failing to report under this provision should also prevent inappropriate reporting.

Finally, we address the mechanism of reporting and the delegation issue. The bill's provisions do, in our opinion, improve the current reporting mechanism, especially for state schools which previously had a three-stage reporting mechanism. However, the bill still retains a two-stage reporting process for state and non-state schools. As well, the bill introduces a new complication regarding the ability of non-state schools' directors of governing bodies to delegate their function in the reporting process to 'an appropriately qualified individual'. So this aspect of the bill raises two issues: the mechanism of reporting generally and this delegation issue.

Regarding the mechanism of reporting generally, in the course of our study we had extensive debates within the research team and with stakeholders at government and non-government level. Our approach and our final preference was that duties to report suspected child sexual abuse are aimed primarily at child protection rather than simply at school governance. Accordingly, as is the approach adopted elsewhere, we believe the best approach regarding how and to whom reports are made is to have the simplest, most streamlined and most efficient reporting procedure which will best protect children by

ensuring reports are forwarded speedily and are not impeded, delayed or lost. This is why we recommended direct reports by teachers to police or to the department. The goal of child protection can be achieved while still ensuring school principals and other administrators are informed of necessary events for school management purposes and so can support the child, the child's family and the teacher. We feel that the teacher should discuss their intention to report with the principal and the grounds for their suspicion and the principal can then be kept apprised of these events, and if the teacher is clearly not making a wise report the principal can have discussions with the teacher about that. If our recommendation regarding that is accepted, that overcomes problems regarding the delegation issue, because we do not feel that that would even be necessary at all.

The bill enables the director of a school governing body's reporting function to be delegated to an appropriately qualified individual. We feel that this has the potential for further fragmentation in practice and quality of procedure in this context. Our preferred approach to the reporting mechanism would not involve such a director and it would overcome the need to have any such provision. But we believe that, even if the reporting mechanism remains as it appears in the bill, there is no compelling justification for having this added complication about delegation. It seems to be recommended by one particular stakeholder whose administrative arrangements mean that there is one single director of the school's governing body and that that might cause problems for that particular individual. We are simply not sure this is a sufficiently compelling reason to add another level of complexity and bureaucracy which may compromise child protection. Overall, our view in that regard is that there should be no three-step or two-step chain of reporting; the teacher should simply report directly to police or the department while informing the principal of their intention. That ends our comments. If the committee has any questions?

CHAIR: Thank you, Professor. Just to start the ball rolling, a principal has mentioned to me that he is concerned that students do not have the ability to confer confidentially with anyone at the school, like a school councillor, say, about a problem in relation to sexual activity that they are experiencing themselves because that councillor, under this proposal—and perhaps even now—is required to report that. Do you have any comment or any concerns about that lack of students being able to confer confidentially with somebody at the school?

Dr Walsh: Do you mean a student who is making a complaint about a sexual activity—

CHAIR: No, just discussing their emotional problems dealing with another student.

Dr Walsh: And would the sexual activity be with an adult or with another child?

CHAIR: No, it might be with another student.

Dr Walsh: In our view, those student-to-student issues are beyond the scope of what we would be talking about here. So that requires a school response, but—

CHAIR: It depends on your definition of abuse, I suppose.

Dr Walsh: Yes, and this has been raised about the need for a definition of sexual abuse. Whilst our view is that it ought not to appear in the legislative provisions, it is essential in training that teachers are provided with definitions of acts that constitute contact abuse, non-contact abuse and all the different kinds of things that are along that continuum.

CHAIR: At one non-state school in my electorate, the principal has said that even now under current policies there is an enormous amount of time taken in filling out the reports. The extent of the reports that have to be done, both from the teacher's point of view and the principal's point of view, is very onerous as it is and will become more onerous into the future. His suggestion was that we look at a streamlined approach, more simple reporting—a one-page type of thing. How that impacts on police I do not know. Have you looked at that aspect of it?

Prof. Mathews: This is another justification for having the most streamlined reporting process possible. Having a simple one-step reporting procedure would be preferable for this logistical reason. In terms of whether it is one page or two pages, what is essential when a report is made is that there be as detailed as possible an explanation by the teacher of the grounds for their suspicion, because if they do not give those details it is very difficult for the department to assess that report and what level of response is needed. I would be wary of circumscribing the extent of detail required in a report but, certainly, the number of steps required in the reporting procedure I think and we feel can be improved by having a one-stage process, yes. In terms of the time taken, I am afraid that this is a very serious matter and it requires the time taken. Certainly, streamlining processes is a good thing and is possible.

Dr FLEGG: Thank you very much. It is very helpful to share the benefits of your research with us. I am perhaps unique in the committee in that as a medical practitioner I have had to make these reports. I have also worked almost exclusively in low socioeconomic, including Indigenous, areas. If you are in Kerry's electorate or mine it might be the odd occasion that something crops up, but in other places where I have worked, including Indigenous communities and some very low socioeconomic areas subject to significant social disruption, I am almost tempted to say it would be the norm, but perhaps I should put it that it would be extremely common for 14-year-old girls to be sleeping with their 18-year-old boyfriends. We are not talking about one or two per cent of the population; we are talking about 30 per cent of the population. I agree with all your remarks and I am very supportive of the intent of child protection, but I am a little worried when I look at the practical aspects in some of these areas. If you are sending a teacher into some of these communities, how would they actually deal with that? In a lot of cases, particularly in the

Facebook age, everyone in the school would know how old the girl's boyfriend is or who he is and that sort of thing. In theory, you could end up reporting half your class if you did it strictly. Is it feasible to get around that problem by some sort of a definition or would not that help?

Prof. Mathews: I think we need to draw a distinction, not necessarily in legislation but certainly in training, about what sexual abuse is and what it is not. From the tenor of your comments, that type of situation, assuming it is consensual, is not the target of mandatory reporting laws regarding child sexual abuse. If it is consensual activity, even involving a 14 year old, which technically might breach a criminal provision, nevertheless that is not the target of sexual abuse reporting laws. The target of sexual abuse reporting laws are cases—not always but generally—involving adult-to-child sexual abuse where the acts are not consensual, the child is not developmentally capable of consenting or of understanding the acts themselves and where there is an abuse of power. A lot of the characteristics of abuse cases are clearly distinct from consensual activity. I think that those fundamental distinctions need to be drawn in teacher training, about the nature and purpose and scope of these reporting laws.

CHAIR: That would be made explicit though in the legislation to protect the teacher—the Romeo and Juliet exceptions?

Dr FLEGG: It is bordering on a definition, is it not?

Prof. Mathews: I am just not sure that the legislation is the best place to do that. It could be. It would need to be very prudently drafted, though, and it would still need to be incorporated in teacher training, yes.

Dr Walsh: In terms of the practicalities of that, our comments are not to suggest that the sexual activity between a 14-year-old and an 18-year-old does not require some response at the school level. It is a risky sexual practice. The female 14-year-old is at risk of not completing her education through teen pregnancy and so on. For us I think that falls into the category of risky sexual practices. The Latrobe study that was released this year showed that, as much as we might like to think otherwise, around about 30 per cent of high school kids are sexually active. It is something we have to get our heads around. There are probably other things apart from teacher training in sexual abuse prevention that can happen in schools to address those things as well as part of a whole school health promoting approach that we have in our schools. Those things can be dealt with in other ways, but I do not think they can be framed or should be framed in terms of child sexual abuse—unless the 14-year-old is making a specific complaint that it is not consensual or that there was rape, for example, involved.

Dr FLEGG: What is your understanding in relation to the process—the actual practical thing that a teacher or other person would have to do; what paperwork they would do—because I think that is quite significant? I know from a medical practitioner point of view the obligation is to notify. The process is not that defined. It might generally deal with child safety so you would ring Child Safety and say, 'Look, I have just photographed a child with whatever.' Within the education system there is presumably a significant amount of paperwork, which is a sort of disincentive in itself to report, but what is your understanding of the actual process they have to go through?

Prof. Mathews: My understanding is that there is a particular form that must be completed that contains the particulars which must be included which are set out by the regulation. I am really not sure that there are compelling arguments that this is such an onerous practical part of a teacher's duty.

Dr FLEGG: That is what I am asking.

Prof. Matthews: I do not believe that to be the case.

Dr Walsh: Teachers keep observational records of children in their care. Particularly those in the primary school years would keep that as a matter of course and have different kinds of observations that they keep and store in different kinds of ways. I would imagine it is part of their daily practice. But when it comes to something as serious as this, of course, it needs to be well documented.

Mr DICKSON: The extra workload that this may impose upon teachers, do you think that will get more people to come into the industry or are we going to start to lose a few?

Prof. Mathews: I certainly do not think it would be a deterrent to people who want to be teachers. The fact is, and our study showed this, many teachers have never suspected child sexual abuse at all.

Dr Walsh: Three-quarters.

Prof. Mathews: Three-quarters. It is not like this is even happening to every single teacher and even for those who have suspected a case it is not as if they have suspected that many cases. So this is not a daily occurrence, a weekly occurrence or even a monthly or yearly occurrence for many, many teachers. Part of the reason for that is that, even though sexual abuse is so common, it is very difficult to detect. Many cases will remain undetected even with best practice in legislation, training and policy. That is its nature. Even doctors and medical practitioners who are able to conduct physical examinations still cannot be sure, even when conducting physical examinations, and that is because even with penetrative abuse in many, many cases there is not definitive evidence. To answer your question, no, I do not think this will be deterring people from entering the profession

Dr Walsh: I would just add that teachers face multiple pressures from all different kinds of areas, including national curriculum and demands of those kinds of things. Teachers are used to managing multiple demands on their time. They do express concern about that, but in many ways the introduction of this legislation fits well with the introduction of the national curriculum and changes to the health and physical education curriculum that these changes could dovetail with in terms of teacher training and things like that. There are ways of value-adding in some ways to their training by helping them see how this aspect of their work is linked to other aspects of their work.

Mrs STUCKEY: I was picking up on that effective teacher training. When I had the shadow portfolio of child safety a few years back I came across a US study that was recognising the behaviours and it had tiers of signs to look for. Is that the sort of training that you have in mind that you are talking about—to be able to look at the higher level where you can pick it up at an early stage—because by the time these certain behaviours are presenting that child is more than at risk; they are probably either acting out or whatever.

Dr Walsh: Definitely. The training needs to be a lot more detailed in terms of what behaviours to look for. In recent times, particularly here in Queensland, we have focused on training teachers in the procedural aspects of reporting, which is very important, and we probably need to return now to teachers also understanding the warning signs and indicators and particularly about grooming behaviour. Our knowledge about how people who would sexually abuse children recruit them and engage them and make them feel special and so on, the research into that has expanded exponentially in the last 10 years. Some of the findings of that research we can begin to put into teacher training as well as we come to know more.

Mrs STUCKEY: Would that be considered at all in this legislation—making recommendations such as that?

CHAIR: That is something that we can ask the department about. Any further questions? Unless there is something else that you want to tie up, we are very grateful, professor and doctor, for your attendance today and for your submission and the further explanations that you have given. Thank you very much for your attendance.

BROWNING, Mr John, Manager, Professional Standards and Student Protection, Brisbane Catholic Education, Queensland Catholic Education Commission

WILKINSON, Mr Michael, Executive Officer, Student Protection Subcommittee, Queensland Catholic Education Commission.

DIGGLES, Ms Sue, Senior Education Officer, Student Protection, Brisbane Catholic Education

GARVIN, Ms Justine, Legal Counsel, Employee Services, Brisbane Catholic Education

CHAIR: Welcome. I do not know whether you were here when I read my opening statement or not. If you do not mind, unless you require me to, I will not go over that yet again. You understand how we are governed and how this will operate. Is it the case that you would like to make a short opening statement just reviewing your submission, I suppose, or it might even be commenting on other things that you have heard today, for example?

Mr Wilkinson: We will make an opening statement.

CHAIR: Sure.

Mr Wilkinson: It might be useful if we introduce ourselves and the particular roles that we have first.

Mr Browning: My name is John Browning, Manager of Professional Standards and Student Protection in Brisbane Catholic Education, which is the largest Catholic employer in Queensland, and I am here as part of the Queensland Catholic Education Commission's response.

Mr Wilkinson: Mike Wilkinson. My usual title is Executive Secretary to the Queensland Catholic Education Commission, better known as QCEC. My particular role at the commission in regard to this hearing today is that I am executive officer of the commission's student protection subcommittee and as such I have carriage of those sorts of issues generally.

Ms Diggles: I am Sue Diggles, Senior Education Officer, Student Protection in Brisbane Catholic Education. John and I work together in that we have a student protection unit within Brisbane Catholic Education running a consultation service for all our schools and we are also responsible for training our staff in student protection. It is part of the QCEC student protection subcommittee as well. So we all come from the different employing authorities.

Ms Garvin: My name is Justine Garvin. I am the legal counsel for Brisbane Catholic Education. I share that role with Catherine Abercrombie. We are also members of the student protection subcommittee of QCEC. Part of our role involves working with Mr Browning and Ms Diggles in relation to student protection issues, the drafting of policy and the interpretation of legislation as it applies to employees within our system.

CHAIR: Just as a point of clarification, are you representing the Catholic sector throughout Queensland or just the Brisbane Archdiocese?

Mr Wilkinson: Throughout Queensland for the commission. I will make that a bit clearer in my opening statement.

CHAIR: Thank you, Michael.

Mr Wilkinson: QCEC values the opportunity for its representatives to appear before the committee today. To explain a little bit about QCEC, it is the peak body at state level for 23 Catholic school employing authorities which are quite autonomous. In 2011, 135,000—or almost one in five—Queensland students are educated in one of 290 Catholic schools that employ more than 16,000 staff.

QCEC regards sexual abuse as abhorrent and contrary to everything the Catholic Church and its schools stand for. The concerns expressed in our response do not question the need for rigorous legislation in the area of child protection, but seek to address a range of practical issues which have the potential to produce some unintended consequences should the Education and Training Legislation Amendment Bill 2011 be enacted in its present form.

The major points we provide in our submission to the committee can be summarised as follows: Catholic schools, like all non-government schools in Queensland, are subject to the stringent requirements of the Education (Accreditation of Non-State Schools) Act 2001 and the Education (Accreditation of Non-State Schools) Regulation 2001, which is not the case for government schools. We are subject to the requirements to have processes in place to ensure that all harm to students, including sexual abuse by employees, is reported to police and Child Safety. Reporting risk of harm is policy only at this stage.

We believe the proposed legislative changes go far beyond the recommendations of the QUT Mathews report. This report recommends that only teachers should have the mandate to report sexual abuse from any source and the likelihood of sexual abuse happening in the future. Many schools' staff who are not teachers do not have the professional training and experience that would justify an expectation on them to recognise sexual abuse of students from any source.

The second point is that the lack of definition of sexual abuse creates many difficulties as many types of sexual activity between young people are not sanctioned by the law and can therefore be expected to be reported as abuse. This lack of definition is likely to result in reporting that goes far beyond the intentions of those who framed the legislation. This difficulty could be addressed, at least in part, by defining sexual abuse involving two young people as an expression of an imbalance of power.

The requirement in law to report the likelihood of sexual abuse that has not happened yet appears to be an unfair and unreasonable imposition on school staff members. While the QCEC written submission did not raise the issue of making it an offence for an adult to groom a young person for the purpose of sexual abuse and requiring a reasonable suspicion of grooming to be reported, there are a number of practitioners within the Catholic schooling sector who would regard this as a more realistic approach. For the proposed legislation to proceed in this direction it would require a good definition of 'grooming' to assist school staff to establish the grounds on which they would decide to make a report.

Just touching on the section of the bill referring to the delegation of the function to receive a report by a director of the school's governing body, that delegation being made to a suitably qualified person, that, in fact, was an initiative of the Queensland Catholic Education Commission. I think it is fairly clear in the submission that we have a unique situation where in the archdiocese of Brisbane, as one example, the governing body is a corporation sole—that is, the Archbishop of Brisbane. So this is a very necessary provision in the bill and we obviously strongly support it.

At this stage I would like to say that here at this end of the table we have a variety of expertise. The people to my left and right are daily involved in this area and we would welcome your questions.

CHAIR: You would have heard me ask the previous witnesses their views on how onerous it is for principals and teachers to comply with existing requirements let alone with what might be proposed here. The principal who told me about his circumstances indicated that there would be two reports a week that they fill out and send in. That is a school of about 600 to 800 students. I am getting the impression that they are probably not, in my view, what amounts to abuse, but there is a reluctance on teachers to fall foul of the law and out of an abundance of caution they are probably reporting everything. That takes a great deal of their time, particularly the principal's time. Do you have a comment about that and how that could be more streamlined?

Ms Diggles: Yes, especially in relation another mandatory provision. We already have a mandatory provision. Under the existing legislation there is a designated form that we have to use. That is different from our harm form. So we have a mandatory form and then we have to have our harm form as well. I am not sure whether there will be a specific form for this mandatory reporting like there was for the previous mandatory provisions, but if there is that will create more paper. From our experience, it is not uncommon for schools to make at least two reports a week to either the police or Child Safety, especially taking into consideration the student-to-student issues around sexual activity or physical activity or the emotional and psychological things that go on on Facebook and with cyberbullying today.

I agree with Ben Mathews. Those reports are very important reports. You need time and consideration to get the appropriate information for the statutory agency to actually act. Is it not a simple thing to do. We are constantly trying to work with our staff to improve their report writing in this area, amongst all the other things they obviously have to do.

CHAIR: Is there anything you would like to see in the legislation that is different from what is proposed in that regard?

Ms Diggles: I do not think it actually defines in the legislation at this stage the kind of report it will be. I believe that the report is to be made immediately. It will be interesting how that is interpreted in practice—how will that look when someone reasonably suspects or raises a suspicion of the likelihood of sexual abuse happening in the future and then immediately has to report that in a certain format. I think the whole issue of immediately reporting can actually influence those reports and how they are made.

Ms Garvin: I think you mentioned earlier that the school you were referring to was a non-state school.

CHAIR: Yes.

Ms Garvin: Under regulation 10 of the Education (Accreditation of Non-State Schools) Regulation, non-state schools are required to have a process whereby students are able to report behaviour of staff members that they consider to be inappropriate. The principal you were talking about may have been saying that it is quite an onerous responsibility in terms of managing those investigations.

CHAIR: No, I do think so. The other point that I raised earlier was the absence of confidentiality in counselling students.

Ms Diggles: I would actually like to say something about that. I think this is always an issue and always a struggle for counsellors in relation to the therapeutic relationship they have with young people. There are fewer and fewer places for young people to go to seek help in a confidential manner. This is always a struggle with our counsellors. We train our counsellors. Obviously, we have our policies and they have legislative requirements that they have to report. How that is done immediately and how they might work with that young person over time to get to the point where they might want to actually disclose sexual abuse or something that might have been happening to them for a long period of time has to be considered. From our experience, we know that a lot of those disclosures take place around 12 or 13—that is, when young people start to make sense cognitively of what happened to them earlier in their lives.

Quite often it is a process for those disclosures to be made. Guidance councillors, in the best interests of the child, like to try to work with that young person, especially if they are 14 or 15, to get them to a point where they can accept in some way that these reports have to be made. It is a struggle for guidance counsellors. If they think there is the likelihood that sexual abuse has occurred or is likely to occur in the future they must immediately make that report. It can definitely influence the therapeutic relationship in the best interests of the child in the long term.

CHAIR: And possibly inhibit the child's willingness to confide.

Ms Diggles: Yes.

Mr Browning: There is just one other point I would make about paperwork. If it is deemed appropriate, which I think it is, to have certain classes of employees report their suspicions of sexual abuse, that is great, but those employees will not necessarily have access to the kind of personalised information about students which the statutory authorities are going to require. So inevitably there is going to be a duplication—firstly, where the individual employee is going to report and, secondly, where the school is going to have to devote time and resources to making sure the statutory authorities have the necessary personal information about students which they have access to but which individual employees may not have access to.

Dr FLEGG: There are a two things. What classes of employees need to report? I think that is quite difficult because quite often non-professional staff—for example, in a boarding school the kitchen staff, the houseparents, groundsmen, cleaners—are often in a school for a long period of time. Sometimes children will strike up friendships with those people and, in some cases, they might get more information than teachers get because the children at risk are more likely to be the ones chatting to those people.

You have expressed the concern, which I think probably everyone is going to, about how high the bar is. Is it a reasonable suspicion that they might be at risk? I think there are several levels at which you could set the bar.

The other issue I have grappled with mentally without being able to come up with much of a solution is this. If we are going to include all staff in that way, is giving them some guidance by way of a definition, which may not necessarily have to be in an act but could be in subordinate legislation, an idea? I think, particularly for lesser trained categories of staff, it would be quite stressful for them. I obviously support a broad coverage of the legislation, but I am not quite sure how you get around that issue of definition. There are a probably communities in Queensland where the simple presence of a child in the community would put them at risk. If you look at some of the statistics out of certain communities that is the case. There is an issue about how high you set the bar.

Mr Browning: I will comment on that. Under the existing rules that we operate under from the Non-State Schools Accreditation Board, any employee who has any concerns of the kinds that we are discussing today is obligated to report them to the principal. Then through the work of people like Sue Diggles that employee is worked through, with other people responsible in the school, an assessment and evaluation of the information that is available and therefore a decision about lodging a report of harm. That is what exists at the moment. It has a regulatory or a policy employment type of compulsion tied in with it, not a statutory compulsion.

If we take up the point that you are canvassing there, Dr Flegg, I suppose, as the chair has already stated, the concern that we might have for some employees who maybe lack education or any routine contact with students in a professional sense is that out of a abundance of caution they may feel obligated to report things. Clearly, for any individual put in that situation it is stressful. Again, it is the dilemma which you have stated which I agree with.

Mr Wilkinson: Can I make a comment there. You mentioned training very briefly. By definition they go hand in hand. One of the ideas that we have discussed with our colleagues in other sectors—certainly within the department of education—is the notion that the training for staff that goes on across Queensland ought to be very consistent. The movement of staff across sectors these days is fairly fluid. So that is a critical issue.

CHAIR: That is a good point. Is there anything else that you would like to expand on?

Mr Wilkinson: We would just like to comment on the fact that in Queensland, certainly in the non-state sector, we draw on legislation that comes from a variety of places. In other states where student protection legislation is fairly well consolidated that is not necessarily the case. It is rather confusing for people in our sector when they are engaged in training and we are quoting various pieces of legislation for them to put all that together. The simplification of the legislation in Queensland would be a big asset.

CHAIR: That is not achieving in this?

Mr Wilkinson: To some extent. I think amendments to existing legislation is not quite what we are talking about. It is really having a good hard look at all the legislation to see how it fits together.

CHAIR: It would be good to have harmonisation of legislation throughout Australia, I suppose. The difficulty is that we have a Criminal Code and others do not and other difficulties like that. Thank you very much for your attendance today and for your contribution as well. It is greatly appreciated.

ROBERTSON, Mr David, Executive Director, Independent Schools Queensland

ARMISTEAD, Ms Shari, Principal Adviser, Strategic Relations, Independent Schools Queensland

CHAIR: I welcome you here and thank you for your attendance. As you may be aware, I have asked previous witnesses to, if they wish, give an instruction as to where they stand and their view of the world so far as this bill is concerned.

Mr Robertson: Thank you, Mr Chair, for the opportunity to appear. Obviously, this is an important issue and we welcome the opportunity to be able to speak to the committee on it. Independent Schools Queensland is a representative body for some 200 independent schools throughout Queensland, educating 110,000 students. Unlike our colleagues who previously appeared, we are not a system authority; we are a representative body. Independent schools are autonomous in their own right as independent entities, and I am sure you are aware of this. There is a slightly different relationship in that our organisation represents and provides services to schools.

On the issue of the legislation, let me just briefly say that I do not think there is any school or any educator in Queensland or Australia who does not take child safety and care very, very seriously. It is obviously a very important issue. Again, independent schools, like I am sure all schools, very much pride themselves on pastoral care and safe environments for their students. Generally, independent schools, along with other schools, focus very much on this issue because they want to do the right thing by students. As our colleagues from QCEC have just outlined, there are certain legislative provisions that apply to non-government schools—and I will not repeat those—but there is a legislative framework already there. This particular bill obviously seeks to amend some of that legislation. I will summarise our issues into four areas.

The legislation is extending the reporting of mandatory sexual abuse by any person of a schoolchild as opposed to the current GP legislation which says by a school employee. Clearly, that is very common sense and very rational and we totally support that. We should not be concerned about where the reports of sexual abuses are coming from; we should be concerned about the sexual abuse as it is wrong. The second part of that amendment is to extend reporting to require schools to report likely suspicions of future sexual abuse. We do find this to be problematic. Whilst we understand the intent, we are not convinced that it will actually be an effective way of addressing this issue, and I am happy to expand a bit more on that.

The amendment that is probably of most interest to us is the delegation of duty for board members to report sexual abuse. As we said in our statement, we actually do not support that amendment as it currently stands. Whilst we can understand the reasons for the amendment, in the case of independent schools we do not think it is good public policy. Basically, as people would be aware, in an autonomous independent school any board who has the power to delegate will delegate to the principal. That would be a natural governance arrangement in an independent school. But we also know already that the principal is covered by this legislation. So it seems a fairly meaningless delegation.

The fourth area of the amendments relates to teacher registration, and we support those amendments. I think that is the summary of our position on what I would see as the four major amendments relating to schools. I am happy to expand or take any questions.

CHAIR: I will just explain that the deputy chair, Dr Flegg, has had to attend to another duty and he apologises to you. He assures you that he will read your contribution in the *Hansard* record. He wants me to apologise on his behalf to you personally as well. He will return, but I do not know when. You mentioned before that you were happy to expand on the issue of the likely future abuse and that you had some concerns in that area. Would you like to do that now?

Mr Robertson: Sure. This is a very difficult area, obviously, and, again, colleagues from QCEC outlined some of the significant issues. In the context of a school of 600 or 800 students, which you also referred to, there are a lot of things happening each day. Whilst, again, we appreciate the intent and in the context that we do need to be very mindful to protect children, we are not convinced that teachers will have the ability or the skills to necessarily cover off on all cases. My other concern would be clogging the reporting system, quite frankly. I have an experience out of Victoria where similar legislation has applied, and the number of reports going to the relevant child safety organisation is just overwhelming. From my understanding and feedback from schools, the departments and organisations involved in these issues are having enough trouble coping with the current reporting. This would result in a significant increase in reporting I think.

CHAIR: One assumes that, with modern society, breakdown of marriage, merged families and incidents, it would be more likely, I would have thought, that suspected abuse would arise outside the school rather than inside. I might be wrong about that. You might like to make a comment about that.

Mr Robertson: Without being able to quote official statistics, I think that is probably a quite correct statement. However, we have to recognise that schools are a place that are part of a community and, therefore, I do not think we should use that as a reason to say, 'Schools should turn a blind eye to something that they think is happening outside of their particular school.'

CHAIR: Certainly not turn a blind eye, but to expect teachers to have the expertise that you referred to before to identify sexual abuse that is not even occurring in the school—and there may not be any physical manifestation; it may well be an emotional or psychological indicia—one assumes that it would be very difficult for a lot of teachers to have those skills or to ever have those skills. One assumes, therefore, in terms of the criminal offence of the teacher committing, they would be judged accordingly. They are not expected to be trained psychologists or psychiatrists and the reasonable teacher test would no doubt apply. I am not aware of what body of law there is in existence at the moment in terms of the responsibility of teachers. Have you gone into that research?

Mr Robertson: No, I am not a lawyer. I think there is another overlay, which is important to recognise, particularly for independent schools. It is called duty of care and it is under common law. So that is also a driving factor for non-state schools. I imagine it is for all schools, but it particularly focuses the mind in independent schools because schools have a duty of care for the children who attend.

My only other comment on that would be that, given the community knowledge and focus on these issues, it would be very unlikely that a child who is a subject of sexual abuse would not come to the notice of someone somewhere, including through a school. I am not saying that does not absolve schools of any responsibility, but there is a very strong focus on these issues, as you would be aware, out in communities. I would think it would be terrible to feel that students fall through any cracks, and certainly schools have to play a role there. But sometimes I wonder whether we put too much prescription on schools and too many demands on them.

CHAIR: Do you have any concerns on behalf of teachers in terms of the registration issues and their lack of appeal rights and the retrospectivity of what is being proposed by way of amendment in the legislation?

Mr Robertson: As we stated in our submission, we generally support the amendments. We would recognise the arguments—and I have read other submissions which argue about the civil liberties and penalising a person for life. I think, however, again in the context of the role of schools and the role of teachers, there is a strong case to ensure that our teaching workforce is very professional and does not have any risk factors associated with it.

CHAIR: Any questions?

Mrs STUCKEY: I have. I have just found that report that I was alluding to earlier. We heard from an earlier presenter that the majority of teachers do not have much experience in the reporting or looking for child abuse. I mentioned those studies in the US about effective teacher training to be able to look at those behaviours that would perhaps raise suspicions in children. What do you have in process in independent schools or what would you make a recommendation for today?

Mr Robertson: I am not sure about the fact that teachers do not have the necessary skills. I think the teachers probably do have the skills. However, in the context of their daily operation in a school, obviously they deal with a whole range of issues et cetera. From a training point of view, certainly, our organisation does provide training as requested by schools. When previous amendments went through about mandatory reporting we certainly ensured that every school had the opportunity to attend training sessions but, as a sector, each school will undertake its own training mechanisms.

My knowledge and experience with our schools is that it would be very common for this sort of issue to be on an annual professional development day at the school as an update, as a reminder. So there is a lot of focus on it. If this legislation goes through, clearly there will need to be significant retraining and updating.

Mrs STUCKEY: Further to that, would you like to see a recommendation made to the minister perhaps to have that included in this legislation—some form of recognised training?

Mr Robertson: Yes. I am not sure whether that is a legislative issue, but there certainly needs to be a recognition. As Mike Wilkinson previously indicated, we have had initial discussions with the department to sharing resources in particular. Yes, there would need to be some recognition that we can make these legislative changes, but to make them effective we do need training in the school context.

CHAIR: Would that form part of the qualification of a teacher at university—that type of level? Perhaps we should have asked QUT about that.

Mr Robertson: Again, that would be an ideal situation and they may well cover some of that sort of stuff. But it seems to me that we are placing more and more demands upon universities about the training of teachers across a whole range of areas.

CHAIR: There is a lot of demands on teachers, too.

Mr Robertson:. Sure.

Mr KILBURN: You mentioned that you did not support the delegation of the board members. Could you just go into a bit more detail? Is it that you are opposed to the concept, or are you just saying that the way that the independent school system is set up it does not really apply? You are not necessarily opposed to the concept, or you are?

Mr Robertson: Certainly the second point, the way the independent sector is structured, is problematic from a public policy point of view. On the issue where we stand on it as a general principle, as I say, we understand the intent, but we would also say that when a school board member takes on their position they take on certain responsibilities. We would say that this is not an onerous responsibility for a board member of a school and it is an important responsibility. Board members should recognise that they have certain responsibilities, and we would see this as not a particularly onerous one.

CHAIR: Unless there is anything else that you would like to raise—

Mr Robertson: Could I make one final comment on that same issue? I think we could make improvements to the bill by doing some work around allowing for a delegation but perhaps being more specific as to who those delegations might apply to. From a policy point of view, if it is accepted that for the assistance of schools where there is a central office and it is appropriate to delegate to, say, a chief executive in that central office, that is fine. However, I think we need to protect all schools in this area and perhaps, through some work on putting some limitations or some criteria around the delegation process, that may be a way to move forward.

CHAIR: Thank you very much for that, Mr Robertson. We are grateful for your attendance today.

Mr Robertson: Thank you.

Proceedings suspended from 10.15 am to 10.23 am

DUNN, Mr Matt, Principal Policy Solicitor, Queensland Law Society

D'CRUZ, Ms Raylene, Policy Solicitor, Queensland Law Society

MACKENZIE, Mr Kenneth, Member, Criminal Law Committee, Queensland Law Society

CHAIR: Our next witnesses are from the Queensland Law Society. One of you may have heard my opening remarks. If not, you may have heard the opening remarks of a chair at another committee, in which case you may not require me to read them again. If you do, I will.

Mr Mackenzie: I do not require them to be read again.

Mr Dunn: No.

CHAIR: Thank you very much. I welcome Mr Matt Dunn, Principal Policy Solicitor, QLS; Mr Ken Mackenzie, a member of the Criminal Law Committee of the QLS and principal of Mackenzie Mitchell Solicitors; and Ms Raylene D'Cruz, Policy Solicitor, Queensland Law Society. Thank you for your submission first of all and for your attendance here today. I invite you to make an opening statement, if you wish.

Mr Dunn: Thank you very much, Chair. I would like to express the thanks of the Queensland Law Society for giving us the opportunity to come and present to you today on this important piece of legislation. We will be splitting it into two parts. So Ken will be dealing with criminal law aspects and I will be dealing with administrative law aspects of amendments to the Queensland College of Teachers act. I also apologise for our lateness. We ran from one committee hearing to this one. I would like to introduce Ken Mackenzie, a member of the Queensland Law Society Criminal Law Committee, to speak about criminal law aspects.

Mr Mackenzie: The society's submission notes a number of concerns about the width of the sexual abuse reporting proposals, particularly in the absence of any definition of sexual abuse in the bill or the act which the bill amends. Under the act as it stands, that perhaps was not a significant problem because the act as it stands required the mandatory reporting of abuse within the school by members of staff at the school. One could almost assume per se in every case that any sort of sexual contact between a staff member and a student was likely to have some element of an abusive relationship to it. But the amendments go much further and would require staff at the school to report sexual abuse outside the school, and that then creates uncertainty, it would seem, for those members of staff as to what is abusive sexual behaviour.

If one took as a minimum the view that it was sexual behaviour that would be illegal, then that would include a great deal perhaps of consensual sexual activity between people who were under the age of consent or between people who are just under the age of consent and people who were just over the age of consent. That then, it seems to the society, would put school staff in a position of having to police the forming of boyfriend-girlfriend and perhaps even same-sex relationships between students at their school, and that is a matter which one might expect would have practical concerns for the good order and running of schools and the relationship between teachers and their students. One of the examples that the society points to in its submission is the example of perhaps a 15-year-old student who might otherwise have turned to members of staff for some support and advice in relation to their relationships who might now be deterred from doing so if they face the prospect of a police investigation and perhaps even a police investigation into their sexual partner.

The bill goes further than just an obligation to report sexual abuse that is reasonably suspected by the staff and extends the obligation to report sexual abuse that is likely, and it seems that that refers to sexual abuse that is likely to occur in the future. So a member of staff is put in the position of being asked to assess, firstly, what they reasonably suspect and whether what they reasonably suspect is going to be likely to occur. That would seem to cover the situation where perhaps a student has formed a friendship with an older man. The teacher might not know anything about that friendship other than it appears to be affectionate, but in those circumstances the teacher might, for their own protection, have to ask themselves, 'Could it be said that I reasonably suspected something was likely to occur here and therefore be in a position to make the report?'

It is important to remember that these duties that are being placed upon the teachers and staff are duties which create criminal penalties: if they get it wrong, they are likely to be charged or face the risk of being charged with a criminal offence themselves and having a criminal record—which in some ways chimes in with the later provisions that my colleague Mr Dunn will speak on about the effect of a criminal record on somebody's teaching career. But any teacher or member of staff who is concerned about their career is likely to adopt a 'better safe than sorry' approach to reporting these reasonable suspicions of things that might be likely to occur in the future.

I heard some earlier submissions to the committee today about overreporting and there being a flood of reporting to the authorities which may overwhelm the ability of the responsible authorities to investigate complaints properly because they are dealing with a whole lot of precautionary reports. That seems to be a very real risk and danger of the amendments as they are proposed. I think that adequately summarises my part of the submission in relation to sexual reporting.

CHAIR: Thank you. Mr Dunn?

Mr Dunn: Thank you very much. I would like to deal with some of the administrative law issues under the proposed amendments to the Education (Queensland College of Teachers) Act 2005. Firstly, I would like to start out by saying that the Queensland Law Society has no objection to the concept of an eligibility declaration to allow teachers to be able to be assessed to return to teaching and to take back their profession. That is certainly not our issue. Our issue is very much with the mechanism and the decision-making system that is being proposed to give effect to the eligibility declarations in relation to the Queensland College of Teachers.

I would like to mention three major concerns in relation to the decision-making system under the act. The first one is in relation to the actual test for the Queensland College of Teachers to consider when making a declaration under section 12F(1). That particular test says that the college must refuse to grant the eligibility application unless the college is satisfied that it is an exceptional case and it would not harm the best interests of children to issue the declaration. The concern that we have with that is that the actual legislation is enshrining an institutional bias in the decision-making process against the applicant. This is a serious issue from the point of view of according natural justice to an applicant. It is a serious issue from the point of view of breach of fundamental legislative principles, and it flows on. There is no need necessarily for the application test to say that the college must refuse unless it deems it to be an exceptional case. Reasonably, the test could be just turned into a positive test; that the college may approve an eligibility application if it is satisfied of a number of things. The number of things would certainly base themselves around the best interests of children. You achieve the same result, but you do not have the institutional bias against applications being refused, which is the commencing position in the current draft.

That is probably our first particular concern with this. The second particular concern relates to there being no right of review or appeal from a Queensland College of Teachers' decision in relation to an eligibility application. As a matter of principle, the society has some concerns about there being administrative decisions and discretions of any body that is unreviewable because the ability to review an administrative decision is a very good thing from the point of view of promoting good decision-making practices and the consideration of only relevant considerations and not the consideration of irrelevant considerations in the decision-making process. The ability not to seek review of those decisions is quite anomalous. Also, too, it is out of step with the other legislation that deals with other professional registration which generally has rights of review to these types of decisions to the Queensland Civil and Administrative Tribunal for various decisions of a regulating body. Indeed, decisions of the Queensland Law Society in relation to practising certificates of its members are reviewable to the Supreme Court or the Queensland Civil and Administrative Tribunal in that similar kind of way.

The third point I would like to raise is about section 12M, where there is an automatic revocation of an eligibility declaration upon the charge of a person of a serious offence and not conviction. I would like to mention that there is still a presumption that a person is innocent until they are proven guilty in Queensland. The charging of a person represents a very serious matter and probably a matter that then should give rise to either a suspension of the application or a show cause event for the person to show why it should not be suspended. But the actual cancellation of the eligibility declaration should occur on the conviction, not on the charging because it is just not quite the right trigger point in the process. It certainly is a serious event but it should suspend or delay or put the declaration perhaps into stasis rather than actual cancellation on charge.

That can relate to a number of factors. The serious offences that can give rise to triggering that offence can include matters that reasonably are not related to teaching at all. A serious assault can give rise to that. If a teacher is out on a Saturday night in a pub, is approached, assaulted, gets into a fight, the person that they get into the fight with falls over and cracks their head open on a table, they then get charged with grievous bodily harm. That is then enough to cause the process to start. This system would never have been intended to operate in those circumstances, but yet that is how it works.

They are the three major issues that I wanted to highlight. There are a number of other systemic and administrative law decision-making proposals in our submission that interrelate to each other, but I will not go through all of those in detail.

Mr Mackenzie: Just one final point, Mr Chair: you raised a question to one of the earlier witnesses about the body of law on the reporting decisions. There was a Magistrates Court decision published very recently, which I have been trying to find while my friend Mr Dunn has been speaking, which I just happened to read a week or so again where a principal was prosecuted for failing to make a report to the police after a disclosure had been made by a student at his school. I have to apologise, I cannot find the reference to it. I have just been searching for it. But it was interesting because the principal was acquitted on the basis that he had made a report to his superiors. It was an independent school. I cannot remember the exact details.

CHAIR: It was that Toowoomba matter, I think.

Mr Mackenzie: It was held that he had complied with his statutory duty by making the report and if an offence had been committed it had been committed by somebody else. That may then have some impact upon the committee's consideration of the delegation powers issue.

CHAIR: Thank you. I will perhaps throw it over to other members at this stage.

Mrs STUCKEY: I was just looking at some of the points that you have listed in the summary in relation to research from jurisdictions with mandatory reporting which shows that mandatory reporting does not work to protect children. I think it is part of your submission. Do you have any examples of jurisdictions where it is indicated that the mandatory reporting does not have that effect?

Mr Mackenzie: I am just looking for that section in our submission. There was a footnote to a report. I think that that is the report that the society was relying upon as an example.

Mr Dunn: Page 3 of our submission talks about a study conducted into the Victorian mandatory reporting system. It was conducted by the University of Wollongong. That is where we took the quote from.

Mrs STUCKEY: The reason I asked that was that earlier today—I am not sure if you were here—we had a presenter quoting some fairly high statistics of what they considered successful reporting where that mandatory reporting was in place. The figure of around 74 per cent, I think, was reported. I was just wondering if there was a body that actually strongly did say that the mandatory reporting did nothing to protect.

Mr Mackenzie: I do not think the concern is so much that it does nothing to protect; it is that it produces a flood of information, a lot of which is of very low value—and this is a little bit outside the society's field because it is the investigators' difficulty. But it is then a resource issue for the investigators in trying to weed out those reports that are substantial and significant from those that lead nowhere.

Mrs STUCKEY: If you were here earlier, I have been talking about the need to effectively train teachers to be able to better recognise suspected abuse or symptoms or behaviours that indicate that. Would the Law Society support better education or better effective training of teachers to be able to identify this so that perhaps you do not have that huge body of reporting?

Mr Mackenzie: I do not think better training solves the problem. In fact, I think it probably increases the risk of overreporting. I would not say that the Law Society is against better training of teachers. At the moment a teacher can say, 'I am not a psychologist. I am not expert in observing the signs in children which might tell a psychologist or someone who is more expert that there is a problem.' If you give teachers training which says that they have or ought to have that level of expertise—to not only suspect abuse in circumstances where disclosures are made to them but from changes in behaviour of children or perhaps sexualised behaviour in the school ground—you are really raising the bar at which teachers ought reasonably to suspect. So they are going to have to report more not less, I would have thought, in order to protect themselves.

Mrs STUCKEY: Thank you for those comments. There is a very interesting study in British Columbia that has the tiers of reporting, the lowest to the higher levels by the time children are exhibiting specific behaviours. I guess it is a lot more about the early intervention side of it, too, with younger children in particular. We are debating whether we recommend to the minister to consider more effective training of teachers. I am sure a lot of them get some form of child psychology in their teacher training, depending on whether they are going to elementary, primary or senior schools. Thank you.

Mr DICKSON: Mr Mackenzie, do you know of any other areas in working society here in Queensland where you do not have a right of appeal? I am playing this into your court so that you can explain.

Mr Mackenzie: I think that is a better question for Mr Dunn.

Mr DICKSON: I do not mind who answers the question.

Mr Dunn: In terms of right of appeal to a decision relating to a professional registration?

Mr DICKSON: I understand where you guys are coming from, but I just want to know where else in Queensland, and I am sure you have looked into this already, you do not have a right of appeal.

Mr Dunn: There are not many areas where there are no rights of appeal for a decision made in relation to that. My understanding is that there are still some of those areas in relation to decisions under the Education (General Provisions) Act where the chief executive of the department can make decisions that effectively get reviewed internally by the chief executive, but then there is no further review after that. There is in this case the argument about whether there is a judicial review under the Judicial Review Act to the Supreme Court. It is not clear cut about whether it is or is not, in effect. But in any event, it is not a stated mechanism.

The more current practice, I guess, in terms of administrative decision making and a good system is probably embodied in the changes that came in in the Land Valuation Act where there was an internal review mechanism to an administrative decision about a valuation that then moves to a tribunal review that can then go up to a court based legal review. We are not aware of there being a significant body or many areas where there are decisions that cannot be taken to review.

Mr DICKSON: I will hone that question down a bit. Let us talk about the firies or any other institution where we have 50,000 teachers or 50,000 firies or whatever the case may be throughout Queensland. Are there any other instances you can give me in the workforce? I understand with CEOs in personal contracts or with the CMC there could be reasons where you could lay people off without appeal, but in those institutions are there any others you know of?

Mr Dunn: I am not aware of any.

CHAIR: What would you propose? What type of appeal and to whom would you recommend teachers be able to appeal—what body or tribunal?

Mr Dunn: The Queensland College of Teachers as the initial decision-making body is probably quite similar in effect to the way the legal profession regulation system is set up. The Queensland Law Society council makes a decision. That decision is then appealable to either the judicial arm of QCAT or the Supreme Court. Probably the internal review mechanism is not quite effective when the peak decision-making body is already the one making the decision. Certainly, the external review options to the tribunal are quite a convenient mechanism and work quite well in the legal profession regulation area, as they do in the regulation areas for veterinary surgeons, for surveyors, for architects and for a whole host of other professions which all run to the Queensland Civil and Administrative Tribunal or to the Supreme Court.

CHAIR: I thought the Supreme Court might have an interest in lawyers as opposed to vets. In the situation where a person is subject to the automatic revocation of their ability to teach, you can understand the public's reasonable demand to separate the teacher from students until the hearing. So what would you suggest happens in the interim to that teacher? What status does that teacher have? Is the teacher suspended on full pay until the hearing?

Mr Dunn: Looking at the systems that apply and the decision-making opportunities, there would be one of two options. The charging of the offence is a serious matter, so the suspension is probably the appropriate way to go. Alternatively, there is a system whereby the teacher is given a notice to show cause why their registration should not be suspended. There may be extraneous facts in the circumstances that mitigate against a suspension. It may well be that the charge is unfounded, the charge is spurious, the charge is motivated by some other factors or there may be some information that was not available to the prosecuting authority at the time that might be relevant in the consideration of someone's livelihood in those sorts of circumstances. The society is not saying that the charge is not a serious issue; it is simply that linking the cancellation with the charging is just bringing forward to a point before the determination of the charge the actual reasonable consequences of the charge. It is probably more a matter of the trigger point rather than the actual outcome.

CHAIR: I understand that that show-cause process takes time as well. In the interim you have to do something with the teacher, I suppose. Suspension may not be the word, but it is the reality.

Mrs SCOTT: When you are looking at the risk of a child facing abuse, I think you mentioned that you could be charged if you get it wrong. I wonder whether you would go further with that comment and maybe flesh it out a little bit with regard to the risks in reporting?

Mr Mackenzie: I think that comment is intended to sum up the society's concerns about that part of the amendment in general. Perhaps as a criminal defence lawyer I come looking at the unintended consequences and the unintended harm that the legislation might do rather than only the very worthy policy, which is to protect children. I am looking at it from the perspective of a teacher who is faced with the prospect of a criminal charge and possibly a criminal conviction for not making a report if it is held by somebody else that they should have reasonably suspected that sexual abuse was occurring.

The difficulty as we see it is the uncertain position of a teacher in many instances when deciding whether or not to make a report. Some of them will be clear cut. If a child comes to a teacher and says, 'My father has been sexually interfering with me,' then that is a clear-cut case. But the difficulty is in the cases that are less clear cut—where there is some sexual activity which may or may not be illegal activity. It may fall short of sexual intercourse. It might be some form of touching between people who are under-age. It is still a criminal offence. It might be entirely consensual, but is that something that would be regarded as abuse under the act and something that needs to be reported to the police.

If a teacher came to me as their solicitor and said, 'Should I report this?' I would say, 'To protect yourself you should.' The act does not say what abuse is. The act does not give any guidance beyond reasonable suspicion that something might be likely to occur in the future. So, yes, make the report. If you do not make the report and something comes to light later and the police take the view that it ought to have been reported then, like the principal I mentioned earlier, you could be prosecuted.

Mrs SCOTT: What about the other case of putting in a report that turns out to be totally wrong and maybe a step-parent or someone like that then comes back at a teacher for making allegations that are wrong?

Mr Mackenzie: Those are probably not legal consequences, because the teacher would be protected by their legal obligation under the act unless it was found that they did not hold the reasonable suspicion or they ought not to have reasonably suspected and then perhaps they could be accused of going beyond what was authorised under the act. I suppose there are consequences for the school community and social consequences when that happens.

One of the points made in the society's submission is that when a report is made under the Child Protection Act the person making that report is protected by some confidentiality. That is not the case under this bill. So it is very likely that a person against whom a report was made would know and might know fairly quickly that the teacher was involved in making that report.

Mr KILBURN: I just wanted to follow up on that. For example, if a primary teacher is in a classroom with a child all year and at the end of that year someone else reports that there is a suggestion that there is some sort of abuse taking place, is there any way that anything can come back on that teacher and people could come back and say, 'You have been with that child all year and you did not report it'?

Mr Mackenzie: I do not think that simply having taught the child for a year would be sufficient. Suppose the teacher had had some training in identifying signs of sexual abuse, as has been suggested, or suppose the teacher had seen things that had concerned them about changes in mood, changes in behaviour, maybe some sexualised behaviour in the playground—perhaps had even reported that to a welfare officer or another teacher so there was some record that these concerns had been observed—but either the point had not been reached where the teacher linked it to sexual abuse or the teacher was not fully aware of their reporting obligations or the teacher was not quite sure who the abuse might have come from. It is in that sort of grey area that a teacher would be at risk of prosecution for having failed to report something which they ought reasonably to have suspected.

Mr KILBURN: When we are talking about 'ought reasonably to have suspected', there is no obligation on the teacher to say, 'I think person A is sexually assaulting student such and such'? It is just, 'I think something is going on,' and up the line it goes. They do not have to go forensically digging around; they just have to make the report and that is their part played. Other people then take the ball and run with it. What is the potential penalty for failing to report?

Mr Mackenzie: It is a fine. I cannot say how much the fine is. It is not punishable by imprisonment. It is a simple offence. It could only be tried in the Magistrates Court.

Mr KILBURN: So that would not then impact on the other part of the bill about being charged with a serious crime and your teacher registration—

Mr Mackenzie: It would not be regarded as a serious offence, but when a person applies for registration as a teacher their entire criminal history is relevant. A few months ago I was approached by a woman who was registered to teach in two other states. In the late 1970s she had been convicted of two public order type offences for having participated in demonstrations. One was a sit-in and one was a demonstration. She had received very nominal penalties as a result. As part of the process for applying to be registered in Queensland she had to disclose those and she was then sent a show-cause letter as to why she should be allowed to be registered in Queensland given that she had those criminal convictions. I was not involved afterwards, but I am quite sure that, having shown cause, she probably was allowed to register. A criminal conviction even for a simple offence, even for a non-imprisonable offence, is something which causes grief and anxiety to people and can have detrimental effects on their career for years to come.

CHAIR: Unless there is something further that you gentlemen would like to say, I thank you very much for your contribution and submission. It has been extremely valuable. The hearing in relation to this bill has concluded. I thank everyone who has given evidence today for their attendance. I would like to formally place on record the committee's appreciation of the assistance of all those involved in the inquiry.

Committee adjourned at 10.59 am