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Industry, Education, Training and Industrial Relations Committee
Queensland Parliament
Parliament House
George Street
Brisbane
QLD 4000



**Re: Submission to the Inquiry into the Education and Training Legislation
Amendment Bill 2011**

Dear Committee Members

We are academics at Queensland University of Technology with extensive research expertise in the area of child sexual abuse, teachers and mandatory reporting laws. We endorse the legislative changes proposed to Queensland teachers' duties to report suspected child sexual abuse as set out in the *Education and Training Legislation Amendment Bill 2011* Part 3.

In our enclosed submission to the Inquiry, we provide further details of our endorsement. As well, we enclose a copy of a report prepared by us and our colleagues for the Queensland Government, which resulted from a multifaceted 3 year study of teachers and the reporting of child sexual abuse (B Mathews, K Walsh, D Butler & A Farrell, *Teachers reporting child sexual abuse: Towards evidence-based reform of law, policy and practice (Report for New South Wales, Queensland and Western Australia)*, Queensland University of Technology: Brisbane, 2010, ISBN 978-1-74107-308-9, 1-144). This study is the most comprehensive of its type conducted anywhere in the world, and was funded by the Australian Research Council.

If it would assist the Committee, we would be willing to appear in person at its hearing on 26 October 2011.

Yours sincerely

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Submission to the Inquiry into the Education and Training Legislation Amendment Bill 2011

1. Overview and endorsement of changes

The amendments to teachers' legislative duties to report suspected child sexual abuse proposed by the *Education and Training Legislation Amendment Bill 2011* (Qld) Part 3 are justified. As experienced researchers in this field, with national and international recognition of our research, we support the changes. The amendments largely adopt reform recommendations made by us in a major government report resulting from a multifaceted 3 year study of this field.¹ They will greatly enhance child protection from sexual abuse. We propose one slight modification to the proposed change to reporting procedures, which we believe will improve that aspect of the legislative and practical context (see 2.4).

The changes should receive bipartisan support. The original legislative provisions were enacted by the Labor government in 2004. The major changes proposed in this bill by the current Labor Minister for Education, the Hon Cameron Dick, achieve three significant and necessary reforms.

First, the duty is applied to **all cases of sexual abuse suspected to have been committed by any person** (new s 365(1)). This removes the current unjustifiable limit on the duty which only requires reports where the suspected perpetrator is a school staff member.

Second, the duty is applied also to cases of **suspected risk of future abuse** (new s 365A for State schools; new s 366A for non-State schools). This adds a duty which is not present in the current legislation. This duty applies to a relatively small subset of cases where a teacher may observe or become aware of a situation where a perpetrator is grooming a child for abuse, either in person or online; that is, situations where the abuse may not be suspected to have occurred yet, but where there are reasonable grounds to suspect that a person is grooming the child for abuse.

Third, the reporting procedures are streamlined to require **more direct and efficient forwarding of reports to police** and school authority personnel (for suspected past and present abuse, these new provisions are ss 365(2), 365(4) and 365(2A) for State schools, and ss 366(1), 366(4), 366(2A) and 366(2B) for non-State schools; and for suspected risk of future abuse, these new provisions are ss 365A(2), 365A(5), 365A(3) and 365A(7) for State schools, and ss 366A(2), 366A(6), 366A(3) and 366A(4)). Here, we have one suggestion for even more effective amendment of this aspect of the legislation (see below at Part 2.4).

2. Justifications for the amendments

The amendments are justified for numerous reasons including legal coherence and soundness, social justice and equality of treatment, protection of children and crime prevention, professionalisation and legal protection of teachers, and economics. We have articulated in detail the justifications for the changes in our government report and in the numerous scholarly journal articles we have published as a result of our report and connected with it.² A summary of the major justifications is presented here; further detail can be found in the government report and published articles.

¹ B Mathews, K Walsh, D Butler & A Farrell, *Teachers reporting child sexual abuse: Towards evidence-based reform of law, policy and practice (Report for New South Wales, Queensland and Western Australia)* Queensland University of Technology: Brisbane, 2010, ISBN 978-1-74107-308-9, 1-144. Funded by the Australian Research Council Discovery Projects Scheme, DP0664847.

² See for example: B Mathews, K Walsh, M Rassafiani, D Butler & A Farrell, 'Teachers reporting suspected child sexual abuse: results of a three-State study' (2009) 32(3) *University of New South Wales Law Journal* 772-813; D Butler, B

2.1 Legal justifications

2.1.1 The amendments make the Queensland legislation more harmonious with comparable legislation in all other Australian States and Territories

At present, Queensland's legislation applying to teachers is far more restrictive than the legislative duty in every other Australian State and Territory.³ Queensland's law is also an outlier compared with all 72 State and provincial laws in the USA and Canada.⁴ The proposed changes mean the Queensland Government can justifiably represent at State, national and international levels that it has enacted the soundest possible legislative approach, and that together with its model Departmental policy approach and training efforts for teachers, and other strategies in this field, it is making substantial and arguably optimal steps to detect cases of child sexual abuse.

Table 1: Presence and type of legislative duty for teachers to report child sexual abuse: State and Territory legislation at 6 September 2011

	Is there any legislative duty to report suspected child sexual abuse?	Is the duty limited to suspected abuse by a school staff member?	Does the duty also apply to suspected risk of future abuse?
New South Wales	Yes (since 1988)	No	Yes
Queensland	Yes (since 2004)	Yes*	No*
South Australia	Yes (since 1977)	No	Yes
Tasmania	Yes (since 2000)	No	Yes
Victoria	Yes (since 1993)	No	Yes
Western Australia	Yes (since 2009)	No	No
Australian Capital Territory	Yes (since 1997)	No	No
Northern Territory	Yes (since 1984)	No	Yes

* Both these limits are anticipated to be amended by the *Education and Training Legislation Amendment Bill 2011* Part 3.

Mathews, A Farrell & K Walsh, 'Teachers' duties to report suspected child abuse and tortious liability' (2009) 17 *Torts Law Journal* 1-23; K Walsh, M Rassafiani, B Mathews, A Farrell and D Butler, 'Exploratory factor analysis and psychometric evaluation of the Teachers Reporting Attitude Scale for Child Sexual Abuse' (in print, accepted 15 July 2011) *Journal of Child Sexual Abuse*; B Mathews, H Payne, C Bonnet and D Chadwick, 'A Way To Restore British Paediatricians' Engagement With Child Protection' (2009) 94(5) *Archives of Disease in Childhood* 329-332; B Mathews, J Cronan, K Walsh, D Butler & A Farrell, 'Teachers' Policy-Based Duties To Report Child Sexual Abuse: A Comparative Study' (2008) 13(2) *Australia & New Zealand Journal of Law & Education* 23-37; B Mathews & D Bross, 'Mandated reporting is still a policy with reason: empirical evidence and philosophical grounds' (2008) 32(5) *Child Abuse & Neglect* 511-516; B Mathews and M Kenny, 'Mandatory reporting legislation in the USA, Canada and Australia: a cross-jurisdictional review of key features, differences and issues' (2008) 13 *Child Maltreatment* 50-63; B Mathews, K Walsh, D Butler & A Farrell, 'Mandatory Reporting By Australian Teachers of Suspected Child Abuse and Neglect: Legislative Requirements and Questions for Future Direction' (2006) 11(2) *Australia & New Zealand Journal of Law & Education* 7-22; B Mathews and K Walsh, 'Issues in mandatory reporting of child sexual abuse by Australian teachers' (2004) 9(2) *Australia & New Zealand Journal of Law & Education* 3-17; B Mathews and K Walsh, 'Queensland Teachers' New Legal Obligation to Report Child Sexual Abuse' (2004) 9(1) *Australia & New Zealand Journal of Law & Education* 25-40.

³ *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 23, 27; *Children's Protection Act 1993* (SA) ss 6, 10, 11; *Children, Young Persons and Their Families Act 1997* (Tas) ss 3, 4, 14; *Children, Youth and Families Act 2005* (Vic) ss 162, 182, 184; *Children and Community Services Act 2004* (WA) s 124B; *Children and Young People Act 2008* (ACT) s 356; *Care And Protection Of Children Act 2007* (NT) ss 15, 16, 26. The South Australian and Tasmanian duty to report suspected future abuse applies to cases where the suspected abuser is someone who resides with the child.

⁴ Mathews and Kenny, above n 2.



2.1.2 The amendments make the Queensland legislation for teachers harmonious with the comparable legislation in Queensland applying to doctors and nurses

At present, Queensland’s legislation applying to teachers is far more restrictive than the legislative duty in Queensland for doctors and nurses. There is no sound reason for this. Harmonising the approach across these three professions will make the legislative approach more coherent and the entire child protection endeavour more unified.

Table 2: Presence and type of legislative duty for doctors, nurses and teachers to report child sexual abuse: Queensland legislation at 6 September 2011

Profession and legislation	Is there any legislative duty to report suspected child sexual abuse?	Is the duty limited by class of perpetrator?	Does the duty also apply to cases of suspected risk of future abuse?
Doctors and nurses (Public Health Act 2005 (Qld) ss 158, 191)	Yes (since 1980 for doctors; since 2005 for nurses)	No	Yes
Teachers (Education (General Provisions) Act 2006 (Qld) ss 365, 366)	Yes (since 2004)	Yes*	No*

* Both these limits are anticipated to be amended by the *Education and Training Legislation Amendment Bill 2011* Part 3.

2.1.3 The amendments will make the legislation consistent with teachers’ common law duty of care in this context.

At present, Queensland’s legislation applying to teachers is more restrictive than the common law duty to report known or suspected sexual abuse that exists in the law of negligence.⁵ This inconsistency needs to be remedied.

2.1.4 The amendments will make the legislation congruent with Departmental policy-based reporting obligations, and with policy-based reporting duties existing in most non-State educational institutions.

At present, Queensland’s legislation applying to teachers is more restrictive than the industry policy-based duties to report known or suspected sexual abuse. This applies to the situation for government school teachers, and for teachers in the Catholic sector.⁶ It will also apply to any other independent schools which have policy-based duties broader than the legislative duty. This inconsistency needs to be remedied.

An additional benefit is that a sound legislative duty of the type proposed will apply to all teachers in Queensland, meaning that any independent school not having sound policy-based duties will be automatically embraced by the legislative duty.

⁵ *Civil Liability Act 2003* (Qld) Part 1; see also *Richards v Victoria* [1969] VR 136, 138; *Geyer v Downs* (1977) 138 CLR 90, 93; *Horne v State of Queensland* (1995) Aust Torts Reports ¶81-343; *Mason v Mason* [1997] 1 VR 325; *Wilson v Horne* (1999) 8 Tas R 363; D Butler and B Mathews, *Schools and the Law*, Federation Press, Sydney, 2007.

⁶ Mathews, Cronan et al, above n 2.



2.2 Social policy justifications

2.2.1 The amendments recognise and further facilitate teachers' capacity to act as detectors and reporters of child sexual abuse

Because of their training, skills and daily contact with children (hence being able to observe and monitor changes in a child's behaviour, and observe the child's interactions with caregivers and other adults), teachers are uniquely placed to detect and report sexual abuse. In addition, while sexual abuse is often not disclosed by the child, when disclosures are made they are often made to teachers.

Sexual abuse is difficult to detect, with indicators often being consistent with other forms of maltreatment or conflict. Even in cases of penetrative abuse, there is often no sign of it, even for medical professionals who are able to conduct physical examinations.⁷ Despite this, our analysis of government incidence data collected annually from State and Territory child protection authorities showed that teachers make a substantial contribution to detecting cases of sexual abuse (around 16% of all detected cases annually). This demonstrates teachers' extremely important role in detecting and reporting cases of child sexual abuse. Some of the more common indicators of sexual abuse are most likely to be detected or observed by teachers, but not by others.⁸

The current restriction of the reporting duty to cases where the suspected perpetrator is a school staff member is not justified. School staff members are a very small subset of the offender population.⁹ The additional requirement to report suspected risk of abuse is also a substantial advance in child protection. The most optimal manifestation of child protection is to prevent abuse before it happens. In this context of child sexual abuse, there is a subset of cases involving clearly discernible grooming behaviour where a report of such behaviour can facilitate prevention of the abuse.

2.2.2 Improving child protection

The recognition and further facilitation of teachers' capacity to detect and report child sexual abuse is particularly important because of its high incidence and serious consequences. It is known that many cases go undetected; this means that children's and society's interests need the use of the best strategies available to detect cases to interrupt and prevent abuse.

⁷ R Gilbert, A Kemp, J Thoburn, P Sidebotham, L Radford, D Glaser & H MacMillan, 'Recognising and responding to child maltreatment' (2009) 373(9658) *Lancet* 167-180; A Heger, L Ticson, O Velasquez & R Bernier, 'Children referred for possible sexual abuse: medical findings in 2384 children' (2002) 26 *Child Abuse & Neglect* 645-659.

⁸ Indicators include the child reporting sexual abuse; the presence of a sexually transmitted infection; injury to or itching in the genital area, difficulty walking or sitting; bloodstained underwear; drawings or writing describing or alluding to sexual abuse; bizarre or sophisticated sexual knowledge or behaviour; seductive interest in, or fearful avoidance of close contact with others; expressions of affection in inappropriate ways for the child's age and maturity; sleeping problems, nightmares, bed-wetting or soiling; fear of going home or running away from home; self harm; and attempted suicide.

⁹ Evidence shows that the offender is known to the victim in approximately 85% of cases (approximately 25% of cases involving a family member and a further 60% involving an acquaintance): H Snyder, 'Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics', Washington: Bureau of Justice Statistics, 2000, p 1-17, cited in D Finkelhor, 'The Prevention of Childhood Sexual Abuse' (2009) 19(2) *Future of Children* 53-78, 56.



Outcomes of government investigations show that every year, around 3500 children are sexually abused in Australia, a rate of 8 in 10,000 children.¹⁰ However, despite these high official figures, the actual incidence is much higher. Police records show that in 2009 there were 3266 victims aged 0-9; 4741 victims aged 10-14; and 4643 victims aged 15-19.¹¹ Australian population studies show an even greater difference. A 2004 study found that 1.1% of people reported being sexually abused by a parent.¹² Of studies conducted in Australia regarding sexual assault by anyone:¹³

- Moore et al (2010) found a prevalence among girls of 17% and in boys of 7%;
- Dunne et al (2003) found that before age 16:
 - 12% of girls and 4% of boys experienced penetrative abuse,
 - 33.6% of girls and 15.9% of boys experienced non-penetrative abuse;
- Dinwiddie et al (2000) found that before age 18, 5.9% of girls and 2.5% of boys had been forced into sexual activity, including intercourse;
- Fleming (1997) found that before age 16, 20% of girls experienced abuse involving genital contact.

The serious consequences of child sexual abuse on health and personal functioning are detailed at length in our report.¹⁴ The effects commonly occur initially after the abuse, and continue through adolescence and in many cases through adulthood, at enormous cost to the individual and society. Immediate and initial effects commonly include post-traumatic stress disorder (PTSD); depression; low self-esteem; inappropriate sexualised behaviour; difficulty with peer relationships; aggression; and anger. In adolescence, the child is even more likely to have PTSD and depression, and effects also often extend to self-harming; suicidal ideation and behaviour; criminal offending; alcohol abuse; substance abuse; running away from home; not completing school; teen pregnancy; and adverse effects on intellectual, academic and personal achievement. In adulthood, there is often continuance of PTSD, depression, low self-esteem, anxiety, alcohol abuse, substance abuse, and difficulty navigating adult relationships.

There is strong evidence that the adverse effects of abuse are likely to be even more heightened when the abuse is of greater duration, severity, and is perpetrated by a trusted adult. Hence, the earliest intervention possible is also economically advantageous, by preventing its further infliction, and enabling the earliest possible intervention and treatment to deal with the consequences of the abuse.

¹⁰ Australian Institute of Health and Welfare, *Child protection Australia 2009-10*, AIHW, Canberra, 2011.

¹¹ Australian Bureau of Statistics, *4510.0 Recorded Crime – Victims, Australia 2009*, ABS, Canberra, 2010.

¹² S Rosenman & B Rodgers, 'Childhood adversity in an Australian population' (2004) 39(9) *Social Psychiatry and Psychiatric Epidemiology* 695-702.

¹³ M Dunne, D Purdie, M Cook, F Boyle & J Najman, 'Is child sexual abuse declining? Evidence from a population-based survey of men and women in Australia' (2003) 27 *Child Abuse & Neglect* 141-152; J Fleming, 'Prevalence of childhood sexual abuse in a community sample of Australian women' (1997) 166 *Medical Journal of Australia* 65-68; S Dinwiddie, M Heath, M Dunne, K Bucholz, P Madden, W Slutske et al, 'Early Sexual Abuse and Lifetime Psychopathology: a Co-twin Control Study' (2000) 30 *Psychological Medicine* 41-52; E Moore, H Romaniuk, C Olsson, Y Jayasinghe, J Carlin & G Patton, 'The prevalence of childhood sexual abuse and adolescent unwanted sexual contact among boys and girls living in Victoria, Australia' (2010) 34 *Child Abuse & Neglect* 379-385.

¹⁴ Mathews, Walsh, Butler and Farrell (2010), above n 2.



2.3 Practice-related justifications

- 2.3.1. Having a common legislative duty applying to all teachers in the State will facilitate a coherent and high-quality training system for teachers in this context, which will assist reporting effectiveness.
- 2.3.2 Evidence from our study shows that teachers are more likely to report suspicions if they know the duty is in legislation rather than in policy. It is a stronger measure to have the duty in legislation as well as in policy, so that teachers know the duty is not simply another bureaucratic imposition. Rather, teachers would know that it is a key social policy measure, enacted with the imprimatur of Parliament as a representative of the community's concern to prevent child sexual abuse. Other evidence from our study (comparing Western Australia with Queensland and New South Wales) showed a positive association between the presence of a legislative duty and the numbers of cases of sexual abuse actually detected.
- 2.3.3 The amendments will make the legislation congruent with what teachers (across government and non-government sectors) believe their reporting duty to be. Our study showed that teachers who were aware of a reporting duty were not able to distinguish between the different content of the legislative duty and the policy-based duty.
- 2.3.4 This alignment between the new legislative duty, the existing common law and policy duties and teachers' current beliefs about their duty also means that the legislative changes will not require substantial changes to teacher training or additional resources. Hence, it is a cost effective reform.
- 2.3.5 Overall, these factors suggest a common legislative duty with associated infrastructure and support will lead to greater professionalisation of the teaching workforce and more effective reporting of child sexual abuse, which facilitates improved early intervention in these cases with associated crime prevention and downstream economic saving.

2.4 Suggested modification to the mechanism of reporting

- 2.4.1 We generally support the changes to the method of forwarding reports, which represents an improvement on the current process. However, within the proposed changes, there remains the possibility that a report made by a teacher to a principal will not be forwarded by that principal, whether out of oversight, disagreement with the teacher's suspicion, negligence, or for more sinister reasons.

We discussed this topic at length in our report and preferred a method of reporting which required the teacher to report directly to police or the relevant child safety department, to avoid any possibility of a report not being forwarded by the principal. Our preferred approach was outlined in more detail in p 54-57, and accommodates the need for school principals to be kept apprised by teachers of the relevant situation.

If the proposed legislative change is to remain in its current form – and it would be the only legislative duty to have such a mechanism, as far as we are aware – it would be prudent to add a clause stating that if a teacher is aware that the principal has not forwarded the report, then the teacher should forward the report directly to police.