

Parliamentary Committees



Education and Training Legislation Amendment Bill 2011

Report No. 5

**Industry, Education, Training and Industrial Relations
Committee**

November 2011

Industry, Education, Training and Industrial Relations Committee

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Abbreviations

ACS	Association of Christian Schools
ACR	Anglican Church Report
CCIQ	Chamber of Commerce and Industry Queensland
DET	Department of Education and Training
EGP Act	<i>Education (General Provisions) Act 2006</i>
ISQ	Independent Schools Queensland
LAPCSESC	Legal Affairs, Police, Corrective Services and Emergency Services Committee (Queensland Parliament)
Notes	Explanatory Notes
QCAT	Queensland Civil and Administrative Tribunal
QCAT Act	<i>Queensland Civil and Administrative Tribunal Act 2009</i>
QCEC	Queensland Catholic Education Commission
QCCL	Queensland Council for Civil Liberties
QCPCA	Queensland Council of Parent and Citizens' Associations
QCT	Queensland College of Teachers
QCT Act	<i>Education (Queensland College of Teachers) Act 2005</i>
QLS	Queensland Law Society
QUT	Queensland University of Technology
UQ	University of Queensland
VETE Act	<i>Vocational Education Training and Employment Act 2000</i>

Chair's Foreword

This report presents the recommendations and findings of the Committee's Inquiry into the Education and Training Legislation Amendment Bill 2011.

On 3 August 2011 the House referred the Bill to the Committee for consideration and report, it having been introduced on that day by Hon Cameron Dick MP, Minister for Education and Industrial Relations. On 7 September 2011 the House subsequently nominated a reporting date of 7 November 2011.

On behalf of the Committee I would like to thank all of those who have informed the Committee's deliberations: officials from the Department of Education and Training, the 14 public submissions the Committee received in respect of the Bill, the witnesses who appeared at a public hearing, and research conducted by the Committee's secretariat, the Technical Scrutiny secretariat and the Queensland Parliamentary Library. The Committee has also sought and considered comment from the Parliament's Legal Affairs, Police, Corrective Services and Emergency Services Committee (LAPCSESC) on aspects of the Bill that interface with the criminal justice system.

The Bill seeks to protect Queensland children by amending legislation in respect of two key areas:

- mandatory reporting by school staff of child sexual abuse and risk of sexual abuse (*Education (General Provisions) Act 2006*)
- cancellation of teacher registration, and lifetime bans on teaching, for teachers convicted of serious offences (*Education (Queensland College of Teachers) Act 2005*).

and would also

- enable universities to use land held in trust in more flexible ways than at present (through amendments to various university acts)
- ensure the integrity of Queensland school qualifications by tightening eligibility criteria for overseas schools registered as Queensland schools (through amendment to the *Education (General Provisions) Act 2006*)
- clarify that Queensland's two statutory TAFE authorities are not for profit organisations.

Submissions in respect of the child protection elements of the Bill were all supportive of the Bill's intent, but had concerns about practical implications – such as definition of key terms such as 'sexual abuse' and the ability of school governing councils to delegate their obligation to report to police; and the balance between the two goals of protecting children, and complying with fundamental legislative principles, in particular protection of individual rights and liberties.

The Committee makes a number of recommendations in relation to these concerns, as summarised in the section 'Recommendations and Findings'; and invites the Minister to consider its suggestions in respect of training around recognising and responding to sexual abuse (including reporting) and to clarify the ability of a person whose eligibility declaration is revoked, to re-apply.

The Committee unanimously recommends that the Bill proceed subject to the amendments it has recommended and clarification by the Minister of points raised in this report.



Kerry Shine MP
Chair

November 2011

1 Summary of Recommendations and Findings

1.1 Recommendations

The Committee makes five recommendations in respect of the Bill, as follows:

Recommendation 1

The Committee recommends that the Bill proceed subject to the amendments recommended and consideration and clarification by the Minister of points raised in this report (see '1.2 Summary of findings' below).

Recommendation 2

A definition of 'sexual abuse' and 'likely sexual abuse' is required. The Committee recommends that the terms 'sexual abuse' and 'likely sexual abuse' be defined in the Act; and that the Queensland Government's existing definition of sexual abuse as outlined by the Department of Communities Child Safety Services would seem to be appropriate. At the very least, the definition should be consistent with those used in other Queensland Government agencies; and include 'grooming'.

Recommendation 3

The current situation with regard to practising teachers being charged with serious offences is that they are suspended from duty. This removes any potential risk to children, while maintaining the presumption of innocence. After considerable deliberation the Committee recommends that clause 15, proposed Division 4, 12M (a), which provides for automatic revocation of an eligibility declaration for a holder of such a declaration who is *charged* with a serious offence, be removed from the Bill. This would mean that the status quo would apply: practising teachers charged with serious offences would be suspended; and a teacher's registration or eligibility declaration would be cancelled on *conviction* for a serious offence. Unregistered teachers who hold eligibility declarations would be subject to existing tests with regard to suitability to teach, should they wish to apply for registration.

Recommendation 4

The Committee recommends that clause 15 of the Bill provide for a right of appeal to QCAT in respect of decisions by the QCT not to grant an eligibility declaration.

Recommendation 5

That in respect of the Minister's foreshadowed amendments to enable retrospectivity, a 'show cause' process aligned with existing QCT and QCAT show cause processes, rather than automatic cancellation of registration, be adopted for teachers practising at the time of commencement of the amendments.

1.2 Summary of findings

In addition to the five recommendations for amendments to the Bill, the Committee makes a number of findings, and invites the Minister to note its suggestions in respect of training (clauses 7-12), and to provide clarification in respect of one point in clause 15:

◆ clauses 1–2

The Committee concludes that clauses 1 - 2 should proceed without amendment.

◆ **clauses 3-4**

All submissions supported the proposed amendments to the Bill in respect of use of state-owned university land held in trust, although the University of Queensland (UQ)¹ sought further amendments to give even greater flexibility to universities. The Committee is satisfied that the current proposed amendments relating to university land will increase the ability of universities to attract investment as intended by the Government.

The Committee concludes that clauses 3 - 4 should proceed without amendment.

◆ **clauses 5-6**

The Committee concludes that clauses 5 – 6 should proceed without amendment.

◆ **clauses 7-12**

The Committee believes a definition of the terms ‘sexual abuse’ and ‘likely sexual abuse’ is required in the Act. The consequences of mandating a reporting requirement without defining exactly what must be reported, could be significant for individuals accused, for teachers, for young people and for the child protection system.

The Committee believes that training for school staff is critical to achieving the policy objectives of the Bill (that is, protecting the safety and wellbeing of Queensland students), and is pleased to note the advice from the Department of Education and Training (DET) that it and other relevant agencies are working with the Department of Communities to develop resources to support people who are mandated to report abuse and suspected abuse. However, it retains concerns that a focus in training on reporting abuse may not be sufficient to achieve the policy intent of the Bill – protecting young people. School staff should also have some training on how to recognise and appropriately respond to sexual abuse.

The Committee would like to draw DET’s attention to an example of a training resource that encompasses these elements, developed by the Education Department in British Columbia, Canada. It provides for a model of staff responses based on the risk inherent in a range of sexual behaviours that might be displayed by children.²

The Committee has formed the view that training should be consistent across school sectors, given the likelihood of staff working across sectors.

◆ **clause 11**

The Committee notes advice from Queensland Catholic Education Commission (QCEC)³ and in the Explanatory Notes (the Notes) (p. 3), that the delegation of responsibility to report provision is designed to cover situations where a single person is the governing authority (for example, the Archbishop of Brisbane in respect of the Brisbane archdiocese), and further, that delegation would be optional. It also notes the suggestion from Dr Walsh and Assoc. Prof. Mathews that teachers could report individually to the police, informing the principal, and concludes that a streamlined approach to reporting is preferable, particularly given teachers are free to make reports as individuals if they are concerned that no report has been made. The Committee concludes that clause 11 should proceed without amendment.

¹ University of Queensland, submission 3

² *Responding to Children's Problem Sexual Behaviour in Elementary Schools - A resource for educators*, British Columbia Ministry of Education, 1999 <http://www.bced.gov.bc.ca/sco/resourcedocs/probsexbehave.pdf>

³ Queensland Catholic Education Commission, submission 8

◆ clause 15*Proposed Division 4, 12 E (2)*

Upon revocation of an eligibility declaration, the eligibility of a person charged with a serious offence for which they plead not guilty and are subsequently cleared, to reapply is unclear. It would seem to depend upon a distinction being drawn by the QCT between a revocation and a decision to refuse a previous eligibility declaration. This is because a refusal would prevent a further eligibility application being made within two years.

The Committee invites the Minister to provide clarification of the consequences of a revocation under clause 12E for a person charged but not subsequently convicted of a serious offence, in respect of an ability to reapply.

Proposed Division 4, 12 F (1)

The Committee has undertaken significant deliberation about the presumption that a declaration not be granted unless exceptional circumstances exist. It notes that the test accords with the test for considering suitability to teach in the [Education \(Queensland College of Teachers\) Act 2005](#) (QCT Act). On balance, the Committee believes the approach is consistent with other elements of the Act which mandate the banning of such people from teaching, and believes this part of clause 15 should proceed without amendment.

Proposed Division 4, 12M (a)

The Bill proposes that an eligibility declaration once granted would be automatically revoked if, after it is issued, the applicant is charged with what would be a further serious offence. The Queensland Law Society (QLS) and the Queensland Council for Civil Liberties (QCCL) both refer to the fundamental basis of our criminal justice system - the presumption that a person is innocent until proven guilty. The Committee has given considerable attention to the question of revocation on being charged with, rather than conviction for, a serious offence and believes that the presumption of innocence is compromised by automatic revocation. However, it also recognises that the wellbeing of children is paramount.

Recommendation 4 addresses this issue, noting that the status quo provides an appropriate balance.

Right of appeal

The Committee notes the concerns raised in submissions, and in correspondence from the Queensland Parliament's LAPCSESC, about the lack of appeal rights in respect of an application for an eligibility declaration being refused. While an application for a judicial review could be made, this would focus on the process and application of law rather than on the merits of an individual's situation. As an issue of fundamental legislative principle, administrative power should be subject to an appropriate level of review. The Committee believes that a right of appeal is consistent with this principle.

The Committee's recommendation 4 addresses the right of appeal in respect of eligibility declarations.

◆ clauses 16–30

The Committee concludes that clauses 16 -30 should proceed without amendment.

◆ **clauses 31–40**

All submissions supported the proposed amendments to the Bill in respect of use of state-owned university land held in trust, although UQ⁴ sought further amendments to give a greater degree of flexibility to universities than is proposed. DET pointed out to the Committee that the amendments suggested by UQ would have implications reaching beyond university land, because many other bodies (for example local government authorities) hold state trust land. Any such amendments would require a more extensive review than has been the focus of this Bill.

The Committee is satisfied that the current proposed amendments relating to university land will increase the ability of universities to attract investment to support educational objectives; and acknowledges that further amendment to land arrangements is a broader issue. These clauses should proceed without amendment.

Consistency with fundamental legislative principles

The Committee notes the advice provided by DET in response to potential non-conformance of the Bill with fundamental legislative principles as defined under the [Legislative Standards Act 1992](#):

- The lack of clear and unambiguous definition (sexual abuse/likely sexual abuse)
- The lack of appeal rights in respect of eligibility declarations and cancellation of registration
- Retrospective application (in the foreshadowed Ministerial amendment).

The Committee's recommendation 2 relates to the definition of sexual abuse; and recommendation 4 relates to a right of appeal.

Retrospectivity

On consideration of all available information, the Committee believes that the Minister's proposed amendments to the Bill are justified on the basis that there are three remaining registered teachers who are not currently teaching and have not been assessed under the Queensland College of Teachers (QCT) 'exceptional case' criteria. It would seem that this assessment could not occur for those three registered but not practising teachers without legislative change under existing QCT processes.

However, to avoid undue disadvantage to the seven teachers who have already been assessed, a 'show cause' process is recommended instead (as provided for generally in the QCT Act), whereby the person must show why the matter is an exceptional case in which the best interests of children would not be harmed if the specified order were not made. The fact that they have already been assessed by the QCT and found to be suitable to teach could support the granting of a waiver of the cancellation requirement. The Committee also notes the majority view of the LAPCSESC in respect of the proposed retrospectivity of the Bill. The Committee's recommendation 5 relates to retrospectivity.

⁴ University of Queensland, submission 3

2 Introduction

2.1 The role of the Committee

The Industry, Education, Training and Industrial Relations Committee (the Committee) is a bipartisan portfolio committee of the 53rd Queensland Parliament established by motion of the House on 16 June 2011. It has responsibility for the portfolio areas of tourism, manufacturing, small business, state development and trade, the Coordinator-General, education, employment, skills and training, workplace health and safety, industrial relations and retail.

Section 93 (1) of the [Parliament of Queensland Act 2001](#) provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio area to consider –

- The policy to be given effect by the legislation
- The application of fundamental legislative principles and
- For subordinate legislation – its lawfulness.

2.2 The Committee's processes

Referral

On 2 August 2011, the House referred the [Education and Training Legislation Amendment Bill 2011](#) (the Bill), introduced by Hon Cameron Dick MP, Minister for Education and Industrial Relations, to the Committee for consideration and report. The Committee's consideration of the Bill included a public submission process, a public briefing by officials from the DET and a public hearing. The Committee also sought comment on the Bill from the LAPCSESC; and considered advice on the Bill's conformance with fundamental legislative principles listed in section 4 of the *Legislative Standards Act 1992 (Qld)*.

Public submissions

The Committee advertised its Inquiry into the Bill in the Courier Mail and on the Parliament's webpages, on Saturday, 13 August 2011. At the same time, the Committee wrote to specific stakeholders and all subscribers to its email list, inviting written submissions on the Bill by Thursday, 15 September 2011. A total of 14 submissions were received (listed at Appendix One). Appendix Two provides a summary of the points raised in submissions. The Committee thanks all of those stakeholders who provided written submissions.

Public briefing

Officials from DET briefed the Committee in respect of the Bill on 24 August 2011. The briefing was open to the public, and a Hansard transcript was published on the Committee's webpage.

DET officials have also provided written advice to the Committee: responses and comments on the written submissions from stakeholders, and responses to questions identified by the Committee and its secretariat following the public hearing. These have been published on the Committee's webpage. The Committee thanks the Department for the assistance provided by DET officers.

Public hearing

The Committee invited four witnesses to appear at a public hearing, held on Wednesday, 12 October 2011. The hearing was advertised in the Courier-Mail on Saturday, 17 September as well as on the Committee's webpage and to email subscribers. The Committee questioned witnesses about their views on the Bill at this hearing, and sought suggestions in respect of issues raised in submissions to the Inquiry. A list of witnesses who gave evidence at the hearing is at Appendix Three; and a Hansard transcript of the hearing is available on the Committee's webpage. The Committee would like to thank those who appeared as witnesses at its hearing, adding significant value to that already provided by their written submissions.

3 Education and Training Legislation Amendment Bill 2011

The Bill aims to protect the safety and wellbeing of Queensland students through amendments to strengthen the reporting of sexual abuse and cancellation of teacher registration.

The Bill would amend the [Education \(General Provisions\) Act 2006](#) (EGP Act) to expand the current requirements regarding the reporting of sexual abuse to include reporting of suspected sexual abuse, and a likely risk of sexual abuse by any person.

It would also amend 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, irrespective of whether the person is sentenced to imprisonment
- enable a person who is prohibited from applying for registration or permission to teach to seek, in limited circumstances, an eligibility declaration, to enable them to apply for registration or permission to teach and
- extend the powers of the Queensland Civil and Administrative Tribunal (QCAT) to make disciplinary orders to prohibit a person from applying for registration or permission to teach for a stated period of time or for life.

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, through amendments to several university Acts; add an additional minimum eligibility criteria in respect of an application from an overseas school to become a 'recognised school' and implement Queensland Studies Authority syllabuses through amendment of the EGP Act; and amend the [Vocational Education, Training and Employment Act 2000](#) (VETE Act) to clarify that TAFE institutes operate on a not-for-profit basis.

3.1 Mandatory reporting provisions

Queensland schools are currently required to have policies and strategies in place to realise their common law duty of care to students in respect of protection from harm.

Staff of both state and non-state schools are obliged under the EGP Act to report suspected sexual abuse of students perpetrated by an employee of the school. Under common law, and in student protection policy, staff members are obliged to report sexual abuse, or risk of sexual abuse, of any students by any person. The Bill seeks to extend the legal obligation of school staff to report abuse they become aware of in the course of their employment at the school, in two ways:

- a) to report suspected abuse perpetrated by any person – that is, irrespective of where the suspected abuse has occurred; and
- b) to include a reasonably suspected likelihood of sexual abuse.

If passed, the amendments to the EGP Act will require staff members who become aware, or reasonably suspect that a student at the school has been or is likely to be sexually abused by another person, regardless of whether the abuser or potential abuser is a school staff member, to immediately report in writing to the principal or a director of the school's

governing body. Upon receiving the report the principal or director must immediately give a copy of the report to a police officer.⁵

The amendments have been informed by recommendations of a 2010 report⁶ (the *QUT report*), and reinforce the duty of care that schools have to report and prevent sexual abuse.

The reforms will raise the threshold for reporting risk of sexual abuse to be equivalent to or higher than those of other jurisdictions.

The mandatory reporting obligation could, under the Bill, be delegated by a non-state school's governing body. This provision is designed to cover situations in non-state schools where a single person is the governing authority (for example, the Archbishop of Brisbane in respect of the archdiocese of Brisbane), and where the ability of a single person to effectively carry out this obligation with immediacy, amongst their many other responsibilities, including non-school related responsibilities, could create significant difficulties.

3.2 Policy and legislative background

In 2003, two new provisions, sections 146A and 146B, were inserted into the EGP Act. These provisions imposed an obligation on a staff member of a school who 'becomes aware, or reasonably suspects, that a student under 18 years of age attending the school has been sexually abused by someone else who is an employee of the school'.

The current obligation applying to staff members in both state schools and non-state schools is to give a written report about the abuse or suspected abuse to the school's principal or the principal's supervisor.

The object of these provisions was to ensure there is an appropriate response to complaints of sexual abuse of school children by school-based employees.⁷ The amendments were motivated by the report of a Ministerial Taskforce which was formed to act on the recommendations of the Anglican Church Report (ACR).⁸

These changes were a response to sexual abuse that occurs in school settings, perpetrated by school staff. At the time, explicit reference was made to the broader child protection agenda, particularly in comments made in Parliamentary debates. The then Minister for Education, Hon Anna Bligh, stated that the ACR 'put beyond any doubt that activities of that nature [i.e. sexual abuse] that harm our children thrive most actively in closed environments where there is little scrutiny and a culture exists which all too often puts the interests of adults ahead of the safety of children... this bill seeks to remedy this in both state and non-state schools in a number of ways [including] by increasing the responsibilities of

⁵ Education and Training Legislation Amendment Bill 2011, clauses 9, 10 and 11.

⁶ Mathews, B., Walsh, K., Butler, D., & Farrell, A. (2010). *Teachers reporting child sexual abuse: Towards evidence-based reform of law, policy and practice: Final report*. Brisbane, QLD: Queensland University of Technology.

⁷ Education and Other Legislation (Student Protection) Amendment Bill 2003, Explanatory Notes, at p. 4; as cited by Mathews, B., and Walsh, K. (2004) Queensland Teachers' New Legal Obligation to Report Child Sexual Abuse, in *Australia 7 New Zealand Journal of Law & Education*, Vol 9, No. 1, 2004, pp. 25-40, at p. 26.

⁸ Mathews, B., and Walsh, K. (2004) Queensland Teachers' New Legal Obligation to Report Child Sexual Abuse, in *Australia 7 New Zealand Journal of Law & Education*, Vol 9, No. 1, 2004, pp. 25-40, at p. 26.

teachers... to take appropriate action where issues are brought to their attention, either formally or informally.’⁹

Since then, the publication of the QUT report, a widely publicised incident in a Queensland non-state school, and a criminal case involving a Queensland teacher have prompted the Government to amend Queensland’s laws in respect of children’s safety in schools so that thresholds for reporting abuse and for ensuring that people teaching in Queensland schools are fit to teach young people are at least equal to, and in some cases greater than, thresholds applying in other jurisdictions.

3.3 Teacher registration provisions

Teachers in Queensland are registered through the QCT, under the QCT Act. Decisions of the QCT are in most cases, appealable to the QCAT. QCAT decisions are appealable to the QCAT Appeals Tribunal or the Court of Appeal, where it is an appealable decision.

At present, any person can apply for registration as a teacher or permission to teach (ie where a non-qualified teacher may be given permission to teach, for example where there are no qualified teachers with a specific subject expertise) unless they are an “excluded person”. “Excluded persons” are those whose registration or permission to teach has been cancelled; who are prohibited from reapplying for such permission by a disciplinary order of QCAT; or who are subject to sexual offender obligations or orders.¹⁰

At present, the QCT must cancel a teacher’s registration or permission to teach where a teacher is convicted of a disqualifying offence (rather than the Bill’s broader group of ‘serious’ offences) and sentenced to a period of imprisonment or the court makes a disqualification order; or the teacher becomes subject to one of a range of orders including offender reporting obligations or final sexual offender orders. The decision to cancel a teacher’s registration is not appealable. Teachers can reapply for registration only under very limited circumstances, including if their conviction is overturned on appeal.¹¹

The Bill would ‘raise the bar’ by extending the cancellation provisions to teachers charged with serious, as opposed to just disqualifying, offences (“Disqualifying offences are generally serious sexual offences committed against children. Serious offences include disqualifying offences as well as other violent and drug related offences”¹²) and irrespective of whether imprisonment was imposed. It would prevent teachers whose registration was cancelled under these provisions from ever reapplying to teach.

However, the Bill also introduces an eligibility declaration process for persons prohibited from applying for registration in limited circumstances, with a presumption that an eligibility declaration (which would allow the person to apply for registration) will not be granted unless exceptional circumstances exist. This measure would ensure that a person who was clearly not a risk to children and young people could still be allowed to teach – for example, where the offence in question relates to a relationship that took place some years ago, when

⁹ Anna Bligh, Parliamentary Debates, Queensland, 12 November 2003, 4853; as cited in Mathews, B., and Walsh, K. (2004) Queensland Teachers’ New Legal Obligation to Report Child Sexual Abuse, in Australia 7 New Zealand Journal of Law & Education, Vol 9, No. 1, 2004, pp. 25-40, at pp. 26-27.

¹⁰ QCT Act, Schedule 3

¹¹ Education (Queensland College of Teachers) Act 2005, s 56

¹² Hon Cameron Dick MP, Minister for Education and Industrial Relations, Introduction and Referral Speech (Hansard pp. 2236, 3 August 2011).

both parties were young and one was under the legal age of consent, and a criminal conviction occurred as a result (the 'Romeo and Juliet' scenario).

The Bill also seeks to extend QCAT's powers to make disciplinary orders from the current five year upper limit on imposition of a ban on a teacher, to periods up to and including life. QCAT considers disciplinary matters that are outside the jurisdiction of the QCT – for example, relating to criminal offences that were not classed as 'disqualifying' or 'serious' offences; and matters on appeal from the QCT. This provision stems from a recent case where a teacher was convicted of assisting a student to dispose of a body, a crime not classed as a 'disqualifying offence' and which would not under the Bill be classed as a 'serious offence'. The amendment would ensure that there is a mechanism to impose lifetime bans in such cases.¹³

3.4 University land provisions

The amendments to various university Acts would enable universities who hold state land under a deed of grant in trust or as reserve, to grant interests in that land for up to 100 years to external entities for purposes that are consistent with the universities' interests. The increase from the current 25 year limit, and will increase the ability of universities to attract capital to support educational objectives, for example through joint research facility ventures.

3.5 Recognised school provisions

Overseas schools that are approved as 'recognised schools' in Queensland can offer Queensland senior school qualifications to students. Applications to be a 'registered school' are assessed against minimum eligibility requirements prescribed in the EGP Act. Further, it is grounds for cancellation of a recognised school status if the Minister considers the school is failing to meet the minimum eligibility criteria. The amendments would allow that a school's financial and legal status or capacity to deliver an educational program can be assessed as eligibility criteria; and taken into account when considering whether there are grounds for cancelling the recognised school status. The existing provisions do not allow this.

3.6 TAFE provisions

These clauses would amend the VETE Act, which relates to Queensland's two statutory TAFE institutes - Southbank Institute of Technology and Gold Coast Institute of TAFE. Like universities, statutory TAFEs are able to exploit commercially their intellectual property, and resources they control, in order to fund their service delivery and benefit the community. They are intended to be not-for-profit entities, and there is a concern that wording in the VETE Act is more commonly associated with for-profit entities, creating some lack of clarity. The amendments replace these terms with terms more usually associated with not-for-profit entities.

The Committee has not been advised of any particular event or circumstances which has given rise to this amendment, and notes that the Department has not conducted external consultation in respect of this amendment.

¹³ Mr Stuart Busby – DET public briefing, 24 August 2011, transcript p. 5
<http://www.parliament.qld.gov.au/documents/committees/IETIRC/2011/ETLAB/pbt-24Aug11.pdf>

4 Examination of the Bill

The table at Appendix Two provides a comprehensive summary of comments on the Bill as raised by submitters, together with responses to these comments provided to the Committee by DET.

The following section discusses the key issues that attracted the greatest volume of comment from submitters, and the Committee's views and recommendations about those issues.

For the remaining clauses, the Committee is satisfied with the advice provided by DET on the points raised by submitters and has no additional comment.

◆ clauses 3 and 4 - University Land ([Central Queensland University Act](#))

All relevant submissions supported the proposed amendments to the Bill in respect of use of state-owned university land held in trust. The Committee is satisfied that the current proposed amendments relating to university land will increase the ability of universities to attract investment as intended by the Government.

◆ clause 6 - Recognised school provisions

One submission, from the Chamber of Commerce and Industry Queensland (CCIQ)¹⁴, supported the proposed amendments which would allow that a school's financial and legal status or capacity to deliver an educational program can be assessed as eligibility criteria; and taken into account when considering whether there are grounds for cancelling the recognised school status. CCIQ acknowledged the effect of the amendments as being to maintain the integrity of the Queensland Certificate of Education, upon which employers rely.

The Committee agrees that ensuring Queensland (and other) employers can rely on this qualification when selecting employees is an important objective, and supports the proposed amendments as they stand.

◆ clauses 7–12 - Mandatory reporting

The Committee notes the following issues in respect of the mandatory reporting aspects of the Bill:

Definition

The lack of definition of 'abuse' and 'likely abuse' in the Bill is raised consistently as problematic by most submitters on this aspect of the Bill.¹⁵ For example, QLS, in the evidence it gave at the public hearing, pointed out that not having a legislated definition – particularly when criminal sanctions applied for failing to meet the legislated obligation - was unreasonable and in their written submission, maintained that this was a breach of fundamental legislative principle that legislation should be "unambiguous and drafted in a sufficiently clear and precise way"¹⁶ (see also 'Fundamental Legislative Principles' on p15 of this report). Mr MacKenzie, from the Criminal Law Committee of the QLS, gave evidence at the public hearing that:

¹⁴ Chamber of Commerce and Industry Queensland, submission 12

¹⁵ Independent Schools Queensland, submission 1; Queensland Catholic Education Commission, submission 8; Queensland Law Society, submission 9; Queensland College of Teachers, submission 14 ; Associated Christian Schools, submission 7

¹⁶ Queensland Law Society, submission 9, p. 2

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.¹⁷

There are consistent concerns expressed by submitters about the obligation to report a risk of 'likely sexual abuse'. Independent Schools Queensland (ISQ) claims this is 'fraught with error', a view supported by other submissions (QCEC, QLS etc). However the QUT researchers, Dr Walsh and Assoc. Professor Mathews, take a different view.

The point was made that criminal sanctions imposed on a teacher for failing to report a reasonable suspicion of abuse or of likelihood of sexual abuse would potentially mean that the teacher's career would be affected.¹⁸ Depending on how serious the failure to report was, it could result in the teacher being subject to disciplinary and/or criminal proceedings, which are considered in the teacher registration process. An unintended consequence of this could be over-reporting (for fear of being penalised for a failure to do so), to a child protection system that is already over-burdened. The Committee sees this as a valid point.

In the year ending 31 March 2011 there were 13,947 reports of suspected child abuse (for all forms of harm) made by school staff across state and non-state schools. Of these 2,993 met the threshold for further investigation (21%) and assessment by Child Safety Services, Department of Communities and 853 were assessed as substantial (6%). This suggests teachers may be over-reporting. Concerns have been raised¹⁹ that the legislation will increase over-reporting, with implications both for accused individuals, and for the police and the child protection system. However, DET has consulted with the Queensland Police Service and the Department of Communities in the development of the Bill and the Committee therefore accepts that the Government has considered and addressed any system capacity issues that may have been identified in the policy development process.

In respect of the impact on accused individuals, the Committee does retain some concerns but accepts the Government position in respect of mandatory reporting, that the best interests of children outweigh this possible impact. Its recommendation on the definitional issue (below) would reduce the risks of negative impacts somewhat, however.

Assoc. Professor Mathews and Dr Walsh in their evidence to the Committee at the public hearing, advised that research clearly indicates that teachers who do not have a mandated duty to report, report less. Evidence from other jurisdictions shows that around 70 percent

¹⁷ Mr MacKenzie, public hearing, 12 October 2010, transcript p. 16

¹⁸ QLS, submission 9, p. 2

¹⁹ QLS, submission 9, QCEC, submission 8, Independent Schools Queensland, submission 1

of reports come from members of groups mandated to report, with education personnel featuring prominently.²⁰ Assoc. Prof. Mathews referred to Australian studies as follows:

In Australia there is further evidence of the direct impact of a legislative reporting duty. We can see this in Lamont'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.²¹

This highlights to the Committee the importance of mandatory reporting regimes in terms of raising awareness of the importance of the need to protect children.

Several submissions, including that from the authors of the QUT report, considered that the reporting obligation should be targeted to particular groups of people who, by virtue of their professional training and experience, might be in a good position to recognise when a child is being sexual abused, or is likely to be at risk of sexual abuse.

The Committee notes though, that the current reporting obligation is on 'school staff' generally, so in this respect, the reporting obligation is not being extended to a new group of people. Further, in some school settings, such as boarding schools, there will be a range of school staff beyond teachers and guidance officers who would be in a position to know students well, and identify potential signs of sexual abuse such as changes in behaviour, or receive disclosures from students.

Advice from DET

DET advises that:

"The Bill does not define the term 'sexual abuse' because of concerns that doing so could inadvertently narrow the scope of the provision. The term is not defined in any other Queensland legislation where it is used, including the [Child Protection Act 1999](#) and the [Public Health Act 1995](#), nor in the existing education portfolio legislation.

The term has not been defined in the child protection legislation of other jurisdiction or legislation of other jurisdictions where a mandatory reporting requirement has been imposed".

²⁰ In the US, for example, mandated reporters make 74 percent of all substantiated sexual abuse reports. In Canada, it is 62 per cent. Assoc. Prof. Mathews, public hearing, 12 October 2010, transcript p. 2

²¹ Ibid

In respect of the definition of 'likely sexual abuse' DET has advised that:

"The bar for reporting suspicions of future sexual abuse is set quite high. The requirement is to report where the staff member reasonably suspects a student is 'likely to be sexually abused'. This high test requires more than a concern that there is a risk of future sexual abuse.

It is acknowledged that forming a suspicion that there is a likelihood of future sexual abuse involves an objective consideration based on facts presented to the staff member and their level of knowledge of indicators of sexual abuse.

In addition, to ensure reporting is sensible and appropriate, the Bill does not introduce criminal penalties for failing to report the risk of future sexual abuse. This is consistent with the approach adopted in New South Wales in relation to reporting risk of harm".²²

In both cases, the DET position is that training and policy guidance are the appropriate means of ensuring staff are aware of their obligations, and what behaviour should be reported. Current training in respect of child protection responsibilities, according to advice provided by DET²³, is via an online training package on student protection; and DET has subsequently advised that it intends to make a fact sheet detailing the new legislative requirement available to all staff. DET has more recently advised that it, along with several Government agencies, is working with the Department of Communities on a range of strategies to assist those people who are mandated to report child sexual abuse to determine when to report matters concerning harm or risk of harm to a child, including harm caused by sexual abuse.²⁴

In respect of training more broadly, QCEC advised the Committee at the public hearing of its view that training should be consistent across school sectors, particularly given the likelihood of staff working across sectors. The Committee supports this view.

Committee comment

In its written submission, the QCEC suggests it would be helpful to consider a definition of 'sexual abuse' such as that provided by the Queensland Government's Department of Communities, through Child Safety Services.^{25,26} The key feature of this definition is reference to an imbalance of power. The QUT report also supports a definition based on power imbalance between parties to the behaviour in question²⁷ and re-iterated this point in their evidence at the public hearing.²⁸ Such a definition would go some way towards addressing concerns raised by several submitters, including the QLS, that school staff would be put in a position of having to 'police' what may be consensual relationships between

²² DET response to concerns raised in submissions, at <http://www.parliament.qld.gov.au/documents/committees/IETIRC/2011/ETLAB/cor-DET-ETLAB.pdf>

²³ Mr Brett O'Connor, DET public briefing 24 August 2011, transcript, p. 5. <http://www.parliament.qld.gov.au/documents/committees/IETIRC/2011/ETLAB/pbt-24Aug11.pdf>

²⁴ DET responses to Committee questions 14 October 2011 <http://www.parliament.qld.gov.au/documents/committees/IETIRC/2011/ETLAB/cor-DET-17Oct2011-ETLAB.pdf>

²⁵ Queensland Catholic Education Commission, submission 8, p. 7

²⁶ <http://www.communities.qld.gov.au/childsafety/protecting-children/what-is-child-abuse>

²⁷ QUT Report, p. 22, glossary.

²⁸ Assoc. Prof. Mathews, public hearing, 12 October 2010, transcript p. 5

students²⁹; and the point made by QCEC that people from different generations can see the distinction between sexual behaviour and sexual abuse very differently.³⁰

QCEC also pointed out at the public hearing that holding a suspicion that a child is being 'groomed' for sexual abuse, and a definition of same, might usefully be included in the obligation to report.³¹ This is supported by the evidence given by Dr Walsh and Assoc. Professor Mathews³² in respect of the need for training on how to recognise grooming behaviour. The Committee agrees.

The Committee would also like to raise a concern about the potential impact of the legislation on young people seeking confidential advice from a trusted teacher at school about relationship issues. The fear that a teacher might have to report what has been shared, could prevent a young person seeking such advice, leaving them to deal with difficult issues without support. Once again, the provision of a definition of sexual abuse and likely sexual abuse would go some way towards reducing this impact.

Recommendation 2

A definition of 'sexual abuse' and 'likely sexual abuse' is required. The Committee recommends that the terms 'sexual abuse' and 'likely sexual abuse' be defined in the Act; and that the Queensland Government's existing definition of sexual abuse as outlined by the Department of Communities Child Safety Services would seem to be appropriate. At the very least, the definition should be consistent with those used in other Queensland Government agencies; and include 'grooming'.

The key to achieving the policy objectives of the Bill is, in the Committee's view, training. Extending the legal obligation to report 'likely sexual abuse' is identified as having significant training requirements, especially given the lack of definition of 'sexual abuse' in the Bill and the fact that all school staff, not just teachers, would be required to report.

The concern the Committee has is that the training proposed by DET may not be sufficient to achieve the policy intent of the legislation. The training should go beyond meeting reporting obligations, and include how to recognise and appropriately respond to suspected sexual abuse or likelihood of sexual abuse. This is important given the implications for individuals accused, for staff, and for young people, as identified in the paragraphs above. The Committee is of the view that the training should go beyond the reporting obligation and the mechanics of reporting, to training in signs of and responses to possible child sexual abuse that a school staff member might identify during the course of his or her employment.

The Committee would like to draw DETs attention to an example of a training resource developed by the Education Department in British Columbia, Canada, which provides for a model of staff responses based on the risk inherent in a range of sexual behaviours that might be displayed by children.³³

²⁹ Mr MacKenzie, public hearing, 12 October 2010, transcript p. 13

³⁰ QCEC, submission 8, p. 6

³¹ Ms Diggles, public hearing, 12 October 2010, transcript p. 8

³² Dr Walsh, public hearing, 12 October 2010, transcript p. 6

³³ Responding to Children's Problem Sexual Behaviour in Elementary Schools - A Resource for Educators"
British Columbia Ministry of Education, 1999
<http://www.bced.gov.bc.ca/sco/resourcedocs/probsexbehave.pdf>

Training should be consistent across all school sectors, and should include a focus on how to recognise 'grooming' behaviour as an indicator of likely sexual abuse. Given that the reporting obligation is to apply to all school staff, it should be tailored to the range of staff that are employed in school settings including grounds staff, catering and cleaning staff, house parents, teachers and guidance officers.

QLS expressed a view at the public hearing³⁴ that training could in fact raise the risk of over-reporting, making school staff more vulnerable to expectations that they should recognise abuse or likely abuse (and particularly noting the particular challenges of identifying the latter case, opens them to charges of failing to report).

However, the Committee believes that training should be generic and not 'specialised', recognising that school staff are not child psychologists or police but people who are in a position to incidentally identify sexual abuse by virtue of their close contact with young people. With the benefit of definitions of sexual abuse and likely sexual abuse, as also recommended by the Committee, this would mitigate a risk of over-reporting associated with training, and with the mandatory reporting requirement more generally.

◆ **clause 11 - Delegation of obligation to report to police**

Some submissions argue against the provision to allow a non-state school's governing authority to delegate the responsibility to report actual or likely sexual abuse to the police, on the basis that it is not good public policy³⁵; and that children are best protected by the simplest, most streamlined approach to reporting whereas delegation creates the potential for further fragmentation of the obligation.³⁶ However, the Committee notes advice from QCEC³⁷ and in the Notes (p3) that the provisions are designed to cover situations where a single person is the governing authority (for example, the Archbishop of Brisbane in respect of the archdiocese of Brisbane) and further, that delegation of responsibility is optional. DET confirms that where delegation does occur, ultimate responsibility remains with the delegator. It is therefore incumbent upon the delegator to ensure appropriate training and mechanisms are provided in respect of the obligation and procedures for reporting.

Assoc. Professor Mathews and Dr Walsh have submitted that the Bill could be amended to provide that teachers report directly to police, while keeping the principal informed.³⁸ The Committee considers that there is a benefit to a streamlined approach to reporting, with all reports to police coming through one channel. A teacher is free to make a report to the police, as an individual, if he or she has a concern that the report may not have been made. The Committee is satisfied with the proposed amendments as they stand.

◆ **clauses 13–14**

The Committee recommends these clauses proceed without amendment.

◆ **clause 15 - Eligibility declarations**

The Committee notes that all submitters supported the intent of the proposed amendments – that is, to protect children from harm by preventing teachers with serious criminal histories from working with them. However, concerns were raised in respect of the system

³⁴ QLS, public hearing, 12 October 2011, transcript, p. 15

³⁵ Mr David Robertson, Executive Director, Independent Schools Queensland, public hearing, 12 October 2010, transcript p. 10

³⁶ Assoc. Prof. Mathews, public hearing, 12 October 2011, transcript pp. 3-4

³⁷ QCEC, submission 8

³⁸ Assoc. Prof. Mathews, public hearing, 12 October 2011, transcript p. 4

which would manage this and specifically, the lack of an appeal mechanism for the eligibility declaration process; revocation of an eligibility declaration on being charged with, as opposed to convicted for, a serious offence; and the retrospectivity the Minister for Education and Industrial Relations is proposing to introduce during the second reading debate on the Bill.³⁹

Proposed section 12F (1)) – presumption against granting an eligibility declaration

The QLS in its oral evidence stated that in the proposed eligibility declaration process, the ‘institutional bias’ enshrined in the eligibility test against granting an eligibility declaration (unless exceptional circumstances exist) was a breach of fundamental legislative principles⁴⁰ (see also the Fundamental Legislative Principles section of this report).

DET, in its response to issues raised in submissions, pointed out that this test aligns with the test for considering suitability to teach in section 11 of the QCT Act, and is a strict test designed to ensure the best interests of children are not harmed.⁴¹

The Committee has undertaken significant deliberation about the presumption that a declaration not be granted unless exceptional circumstances exist. It notes that the test accords with the test for considering suitability to teach in the QCT Act. However some Committee members would prefer to see the QCT enabled to consider the full circumstances of the offending and conviction in making a decision whether or not to grant an eligibility declaration, rather than have an automatic presumption against granting with consideration restricted to a prescribed set of exceptional circumstances. This would align with the submission from the QLS which suggested that the test be as follows:

“the College may grant the eligibility declaration provided the college is satisfied that it is in the best interests of children”⁴²

with the existing provisions under ‘exceptional cases’ being appropriate determinants to inform the College’s decision in this regard. On balance, however, the Committee believes the approach is consistent with other elements of the Act which mandate the banning of such people from teaching, and believes this part of clause 15 should proceed without amendment.

Proposed section 12 M (a) - revocation of eligibility declaration on charge with a serious offence

The Committee has considered submissions from the QLS and the QCCL in respect of the proposal to revoke an eligibility declaration for a person subsequently charged with a serious offence. The key submission is that this is at odds with the presumption of innocence that is the foundation of our criminal justice system. The Committee notes that a person who has an eligibility declaration is, by definition, a person who has already been convicted of a serious offence. Irrespective of this, the presumption of innocence applies. The DET advice is that the amendments are intended to protect the best interests of children, and any negative impacts on persons who fall subject to the provisions are outweighed by this.

³⁹ Correspondence from Minister to the Committee, at <http://www.parliament.qld.gov.au/documents/committees/IETIRC/2011/ETLAB/ltr-minister-23Aug11.pdf>

⁴⁰ Mr Dunn, public hearing 12 October 2011, transcript p. 14

⁴¹ DET response to issues raised in submissions, p. 16

<http://www.parliament.qld.gov.au/documents/committees/IETIRC/2011/ETLAB/cor-DET-ETLAB.pdf>

⁴² QLS, submission 9, pp. 6-7

The Committee acknowledges that the best interests of children are paramount, but suggests that the negative impacts on a person who falls subject to these provisions, and who should be presumed to be innocent of the charges he or she is faced with, can be less than those which would result from the current amendments. While it is clearly important that the person not be working with children while the legal process is played out, the Committee suggests that suspension of an eligibility declaration would be more appropriate. It notes that this would occur under the status quo.

If the teacher has been granted permission to teach subsequent to being granted the eligibility declaration, then they would face an automatic suspension if they were charged with a serious offence under the amended s 48 of the QCT Act; and an automatic cancellation of registration on conviction under s 56 of the amended QCT Act. If the holder of the eligibility declaration was not registered as a teacher, then their application for teacher registration would face the test for 'suitability to teach' in s 11 (3) (a) of the QCT Act (which requires the College to consider the circumstances of any alleged offences, as well as convicted offences). This would seem to be address the need to protect children, without compromising the presumption of innocence.

While the Committee believes the person should be removed from a teaching environment, to require them to go through the eligibility application process again in the event they are found not guilty of the serious offences with which they are charged, as would be required if their eligibility application were revoked, would seem unnecessarily onerous.

The Committee's recommendation 3 would provide a fairer balance between child protection and the rights and liberties of an individual who is presumed to be innocent.

Proposed section 12 E (2) – ability to reapply

Upon revocation, the eligibility of a person charged with a serious offence for which they plead not guilty and are subsequently not convicted, would depend upon a distinction being drawn by the QCT, under clause 12E (2) of the Bill, between a revocation and a decision to refuse a previous eligibility declaration. This is because a refusal would prevent a further eligibility application being made within two years.

The Committee invites the Minister to provide clarification of the consequences of a revocation under clause 12E for a person charged but not subsequently convicted of a serious offence, in respect of an ability to reapply.

Recommendation 3

The current situation with regard to practising teachers being charged with serious offences is that they are suspended from duty. This removes any potential risk to children, while maintaining the presumption of innocence. After considerable deliberation the Committee recommends that clause 15, proposed Division 4, 12M (a), which provides for automatic revocation of an eligibility declaration for a holder of such a declaration who is charged with a serious offence, be removed from the Bill. This would mean that the status quo would apply: practising teachers charged with serious offences would be suspended; and a teacher's registration or eligibility declaration would be cancelled on conviction for a serious offence. Unregistered teachers who hold eligibility declarations would be subject to existing tests with regard to suitability to teach, should they wish to apply for registration.

◆ **clause 21 - Cancellation of teacher registration**

The Committee notes that there is currently no right of appeal in either the QCT Act or the QCAT Act for appeals of decisions to cancel teacher registration where the teacher is convicted of a disqualifying offence, and recommends the clause proceed without amendment.

◆ **clauses 24–27 - QCAT disciplinary processes**

The Committee notes that the current QCAT Act deals with cancellation of teacher registration on conviction for disqualifying offences, and the Bill would 'raise the bar' from disqualifying to serious offences. It recommends the clause proceed without amendment.

◆ **clauses 31–32 - [Griffith University Act](#)**

All relevant submissions supported the proposed amendments to the Bill in respect of use of state-owned university land held in trust. The Committee is satisfied that the current proposed amendments relating to university land will increase the ability of universities to attract investment to support educational objectives.

◆ **clauses 33–34 - [James Cook University Act](#)**

All relevant submissions supported the proposed amendments to the Bill in respect of use of state-owned university land held in trust. The Committee is satisfied that the current proposed amendments relating to university land will increase the ability of universities to attract investment to support educational objectives.

◆ **clauses 35–36 - [Queensland University of Technology Act](#)**

All relevant submissions supported the proposed amendments to the Bill in respect of use of state-owned university land held in trust. The Committee is satisfied that the current proposed amendments relating to university land will increase the ability of universities to attract investment to support educational objectives.

◆ **clauses 37–38 - [University of Queensland Act](#)**

All submissions supported the proposed amendments to the Bill in respect of use of state-owned university land held in trust, although UQ)⁴³ sought further amendments to give even greater flexibility to universities. DET pointed out to the Committee that the amendments suggested by UQ would have implications reaching beyond university land, because many other bodies (for example local government authorities) hold state trust land.

The Committee is satisfied that the current proposed amendments relating to university land will increase the ability of universities to attract investment to support educational objectives; and acknowledges that further amendment to land arrangements is a broader issue requiring a more extensive consideration than has been the scope of this Bill.

◆ **clauses 39–40 - [University of Southern Queensland Act](#)**

All relevant submissions supported the proposed amendments to the Bill in respect of use of state-owned university land held in trust. The Committee is satisfied that the current proposed amendments relating to university land will increase the ability of universities to attract investment to support educational objectives.

⁴³ University of Queensland, submission 3

◆ **clauses 41–49 - Statutory TAFE provisions**

No submissions were received on this matter, and the Committee supports the amendments as they stand.

5 Consistency with fundamental legislative principles

The full technical scrutiny report is attached (Appendix Four). The potential breaches with which the Committee is most concerned are:

- The lack of clear and unambiguous definition (sexual abuse / likely sexual abuse)
- The lack of appeal rights in the Bill (eligibility declaration, cancellation of registration by QCT and QCAT)
- Retrospective application (in the proposed Ministerial amendment).

5.1 Clear and unambiguous definition

The Technical Scrutiny report identifies that section 4(3)(k) of the *Legislative Standards Act*, which provides that legislation should be unambiguous and drafted in a sufficiently clear and precise way in order to have regard for the rights and liberties of individuals⁴⁴, may be breached by the lack of definitions provided for the key terms 'sexual abuse' and 'likely sexual abuse'.

Submissions

All submissions which commented on this aspect of the Bill raised the lack of definition as a significant concern, as discussed more fully in the 'Examination of the Bill' section of this report. The lack of clarity is highlighted by the Association of Christian Schools (ASC), which asks 'does sexual abuse only refer to unlawful activities, eg if the person is under the age of consent?'⁴⁵ The QLS⁴⁶ shares this concern, making specific reference to fundamental legislative principles; and also raises the possibility of teachers being subject to penalties for failing to report abuse – which could in turn, affect their own teaching careers. Mr McKenzie advised that as it stands, he would advise a teacher seeking his advice as a criminal lawyer that the teacher should report everything, to ensure he was covered.⁴⁷

QCEC raises concerns about the impacts on innocent people who are suspected of being current or potential abusers of children, that could result from a lack of clarity about what should be reported.

DET advice

DET refers the Committee to the Notes for the Government position, which is that "the potential breach is justified on the grounds that all state school staff are currently subject to administrative reporting requirements to report risk of harm, including a risk of sexual abuse".⁴⁸

Committee comments

That concerns are consistently raised with this aspect of the Bill, including by those who represent schools who would be required to implement it, leads the Committee to conclude that this is a significant issue, and that a definition of 'sexual abuse' and 'likely sexual abuse'

⁴⁴ Technical Scrutiny report, Appendix 4, para 43

⁴⁵ Associated Christian Schools, submission 7, p4

⁴⁶ QLS, submission 9, p2

⁴⁷ Mr MacKenzie, public hearing on 12 October 2011, transcript p16

⁴⁸ DET response to submissions, 6 October 2011, multiple pages
<http://www.parliament.qld.gov.au/documents/committees/IETIRC/2011/ETLAB/cor-DET-17Oct2011-ETLAB.pdf>

is required to ensure the Bill can achieve its intended policy objective of protecting the safety and wellbeing of young people.

In its written submission, the QCEC suggests it would be helpful to consider a definition of 'sexual abuse' such as that provided by the Queensland Government's Department of Communities, through Child Safety Services.^{49,50} The key feature of this definition is reference to an imbalance of power. The QUT report also supports a definition based on power imbalance between parties to the behaviour in question⁵¹ and re-iterated this point in their evidence at the public hearing.⁵² Such a definition would go some way towards addressing concerns raised by several submitters, including the QLS, that school staff would be put in a position of having to 'police' what may be consensual relationships between students⁵³; and the point made by QCEC that people from different generations can see the distinction between sexual behaviour and sexual abuse very differently.⁵⁴

QCEC also pointed out at the public hearing that holding a suspicion that a child is being 'groomed' for sexual abuse, and a definition of same, might usefully be included in the obligation to report.⁵⁵ This is supported by the evidence given by Dr Walsh and Assoc. Professor Mathews⁵⁶ in respect of the need for training on how to recognise grooming behaviour. The Committee agrees.

Recommendation 2 covers this issue.

5.2 Lack of right to appeal or review

A number of submissions raised concerns about the lack of any right of review or appeal in the processes around granting and revoking an eligibility declaration, and cancelling a teacher's registration. While an application for a judicial review could be made, this would focus on the process and application of law rather than on the merits of an individual's situation.

An 'eligibility declaration' is the exemption available to an 'eligibility applicant'. The Bill proposes that there be no review or appeal under the QCT Act in relation to a decision of the college to refuse to grant an eligibility application for an eligibility declaration.⁵⁷

A person will only be able to seek a declaration if he/she has been convicted of a serious offence but was not imprisoned, and is not a 'relevant excluded person'.⁵⁸

If the eligibility application is granted, the college must issue an eligibility declaration to the eligibility applicant.⁵⁹ A successful eligibility applicant is then eligible to apply for registration or permission to teach.

⁴⁹ QCEC, Submission 8, p7

⁵⁰ <http://www.communities.qld.gov.au/childsafety/protecting-children/what-is-child-abuse>

⁵¹ QUT Report, p22, glossary.

⁵² Assoc. Prof. Mathews, public hearing on 12 October 2011, transcript p5

⁵³ Mr MacKenzie, public hearing on 12 October 2011, transcript p13

⁵⁴ QCEC, submission 8, p6

⁵⁵ Mr Wilkinson, public hearing on 12 October 2011, transcript p8

⁵⁶ Dr Walsh, public hearing on 12 October 2011, transcript p6

⁵⁷ Education and Legislation Amendment Bill 2011, clause 15, section 12G(4).

⁵⁸ A 'relevant excluded person' means a person who is subject to offender reporting obligations; an offender prohibition order; a disqualification order; a CPOPOA disqualification order; or a sexual offender order.

A CPOPOA is a disqualification order made under the Offender Prohibition Order Act, section 25; *Commission for Children and Young People and Child Guardian Act 2000*, schedule 7

⁵⁹ Education and Training Legislation Amendment Bill 2011, clause 15, 12G(1).

The college must refuse to grant an eligibility application unless the college is satisfied it is an exceptional case in which it would not harm the best interests of children to issue the eligibility declaration.⁶⁰

In deciding whether there is an exceptional case, the college must have regard to matters outlined in sections 14-15D of the QCT Act.⁶¹

With regard to the criminal history of the applicant, the college must consider the following matters relating to information about the commission, or alleged or possible commission, of an offence by the applicant:

- When the offence was committed, is alleged to have been committed or may possibly have been committed
- The nature of the offence and its relevance to the duties of a teacher
- Any penalty imposed by the court and the court's reasons for the penalty
- Documents or information contained in the applicant's eligibility application
- If the applicant has been refused registration in another jurisdiction or has held registration in another jurisdiction that has been suspended or cancelled – the reason for the refusal, suspension or cancellation; and the way in which the refusal, suspension or cancellation relates to the applicant's suitability to teach
- If the applicant has had the applicant's employment terminated by an employing authority for a school for a reason relating to the applicant's suitability to teach, the reason for the termination and
- Anything else the college considers relevant in deciding whether an exceptional case exists.⁶²

If the college considers the applicant **has not been convicted of a serious offence**, the college must give a notice to the applicant stating that:

- The college may issue an eligibility declaration only if the applicant has been convicted of a serious offence
- The college does not consider the applicant has been convicted of a serious offence and, for that reason, the college can not issue an eligibility declaration to the applicant;
- That, if the applicant is not an excluded person for another reason, the applicant may apply for registration or permission to teach and
- That the application will not be further dealt with by the college.⁶³

If the eligibility application is refused, the college must give the applicant a notice stating the reasons for the refusal. The Bill proposes that there be no review or appeal under the QCT Act in relation to a decision of the college to refuse to grant an eligibility application for an eligibility declaration.⁶⁴ This means that the only appeal mechanism available to a person who is refused an eligibility application, is judicial review.⁶⁵

⁶⁰ Education and Training Legislation Amendment Bill 2011, clause 15, 12F(1).

⁶¹ Education and Training Legislation Amendment Bill 2011, clause 15, section 12F(2).

⁶² Education and Training Legislation Amendment Bill 2011, clause 15, 12F(4)(5).

⁶³ Education and Training Legislation Amendment Bill 2011. clause 15, 12G(1)-(3)

⁶⁴ Education and Legislation Amendment Bill 2011, clause 15, section 12G(4).

⁶⁵ Education and Training Legislation Amendment Bill 2011, clause 21, section 58A(7)(8); clause 25, section 12G(4).

During the public briefing, DET officers noted that the lack of rights to an appeal or review of a decision on an eligibility declaration under the Bill is similar to the 'blue card' and 'disability services legislation' schemes.⁶⁶

The *Commission for Children and Young People and Child Guardian Act 2000* provides that there is no review or appeal in relation to a decision of the commissioner to refuse an eligibility application.⁶⁷

Technical Scrutiny

The Technical Scrutiny report identifies that the lack of any right of review or appeal from the decision of the QCT could be a breach of section (4(3)(a) of the Legislative Standards Act)⁶⁸, which provides that administrative power should be sufficiently defined and subject to review.

DET advice

The Notes (pp. 16-17) justify the lack of any review or appeal mechanism on the basis that the matters which QCT must consider when deciding an eligibility declaration application are sufficiently defined, and decisions are subject to judicial review.

In respect of the cancellation of teacher registration (which it must be noted is the status quo, but for disqualifying rather than the proposed serious offences), the Notes (p. 15) state that the breach is justified because the best interests of children outweighs negative impacts on individuals; and that the person has been convicted of a serious offence. They have the opportunity to defend themselves through criminal proceedings, and if their conviction is overturned, they will no longer be subject to the automatic cancellation provision.

Submissions

The QLS submission suggests the Bill should allow for internal review of QCT decisions, followed by avenue to appeal to QCAT. This would be in the interests of procedural fairness and natural justice, and to limit the potential for inappropriate conduct of officials.⁶⁹

Committee comments

The Committee shares the concerns raised in submissions about the lack of any appeal or review mechanism in respect of a refused eligibility declaration. It also notes that there is currently no right of appeal in respect of a decision to cancel a teacher's registration when it is cancelled on conviction for a disqualifying offence, and makes no recommendation in respect of this situation. However, refusal of an application for an eligibility declaration is mandated when a person has been charged with a serious offence, with no opportunity for the decision-maker to review the full circumstances of the application.

The Committee also notes the unanimous concern expressed by the LAPSCESC in respect of the lack of an appeal mechanism.

The Committee believes that a right of appeal should exist, in the interests of natural justice, and that the right of appeal should be to QCAT.

⁶⁶ Department of Education and Training Briefing on the Education and Training Legislation Amendment Bill 2011 (24/08/11), at p. 4.

⁶⁷ *Commission for Children and Young People and Child Guardian Act 2000*, section 180(7).

⁶⁸ Technical Scrutiny report, Appendix 4, para 19.

⁶⁹ QLS, submission 9, p7

Recommendation 4

The Committee recommends that clause 15 of the Bill provide for a right of appeal to QCAT in respect of decisions by the QCT not to grant an eligibility declaration.

5.3 Retrospectivity

The Committee also has some concerns with the Minister's proposed retrospectivity amendments to the Bill. These are discussed in the 'Fundamental Legislative Principles' section of this report.

In his correspondence to the Committee, the Minister for Education and Industrial Relations states that:

"I have decided the Bill should be amended to ensure there are no teachers working in Queensland schools who have been convicted of serious offences and sentenced to imprisonment, irrespective of when the conviction occurred ... teachers with convictions for serious offences, irrespective of date of conviction or sentence of imprisonment, will have their registration cancelled. Those teachers who were not sentenced to imprisonment will be able to seek an eligibility declaration from the Queensland College of Teachers in order to be able to re-apply for registration. This process will enable the College to consider whether exceptional circumstances exist in their cases".⁷⁰

As it stands now, the Bill would only apply to teachers convicted of offences after the commencement of the Bill.⁷¹

The Committee understands that there are ten Queensland-registered teachers who would be affected by the proposed retrospectivity.⁷² Seven of them are currently teaching. Of the seven, only one had a conviction recorded, and none were imprisoned.⁷³ Four of the convictions were for carnal knowledge-type offences, three of them dating back to the 1960s. Because none of the seven were sentenced to imprisonment they could, if they wished to re-apply for registration, apply for an eligibility declaration (a person sentenced to imprisonment would never be able to apply for an eligibility declaration).

Submissions

The QCT, in its written submission to the Committee⁷⁴, expresses concerns with the proposed retrospectivity. The QCT states that its support for the proposed eligibility declaration and cancellation processes were premised on the Bill applying prospectively, not retrospectively. It advises that of the seven teachers, four have, because of the seriousness of the offences, had their 'suitability to teach' assessed specifically by the QCT under the 'exceptional case' criteria (which would not change under the proposed amendments) during registration renewal processes. Two more were assessed by the Board's Suitability to

⁷⁰ Hon Cameron Dick MP, Minister for Education and Industrial Relations, Correspondence of 23 August 2011. <http://www.parliament.qld.gov.au/documents/committees/IETIRC/2011/ETLAB/cor-MinFraser-23Aug2011.pdf>

⁷¹ Explanatory Notes, p15.

⁷² Mr Stuart Busby, DET, public briefing 24 August 2011, transcript p6 <http://www.parliament.qld.gov.au/documents/committees/IETIRC/2011/ETLAB/pbt-24Aug11.pdf>

⁷³ Queensland College of Teachers, submission 14 p2

⁷⁴ Queensland College of Teachers, submission 14 pp. 2-3

Teach Committee, also under the exceptional case criteria. All six met the suitability to teach requirement and have been granted registration accordingly. One of the seven was yet to be considered at the time of writing the submission. The QCT has only had one other application for registration in which the applicant had a conviction for a serious offence. In that case the applicant was found not suitable to teach and registration was refused.

The QCT position is that the registration of the teachers affected has already been assessed, using the same 'exceptional circumstances' test as would apply under the new process; and to put them through what is essentially the same assessment again does not add value, and would result in a loss of income for the individuals, and their incurring fees and costs for the eligibility declaration/application process. The Committee is sympathetic to this view. It would seem an unnecessary and onerous undertaking for both the individuals concerned and the QCT to have to repeat the same assessment as has already been done, under a new mechanism, to achieve the same outcome.

In addition to stakeholder submissions, the Committee invited comment from the Queensland Parliament's LAPCSESC. The LAPCSESC advised that a majority of its members (and not on party lines) had reservations about the implications of retrospectivity on the rights and liberties of individuals, including their right to work; and invited the Committee to ensure sufficient regard was paid to this aspect of the proposed legislation, particularly given that teachers who may be affected by it have legitimate expectations about current law.⁷⁵

Committee comments

On consideration of all available information, the Committee believes that the Minister's foreshadowed amendments are justified on the basis that there are three remaining registered teachers who are not currently teaching and so have not been assessed under the 'exceptional case' criteria. It would seem that this assessment could not occur without legislative change under existing QCT processes. However, to avoid undue disadvantage to the seven teachers who have already been assessed, a 'show cause' process is recommended instead (as provided for generally in the QCT Act), whereby the person must show why the matter is an exceptional case in which the best interests of children would not be harmed if the specified order were not made. The fact that they have already been assessed by the QCT and found to be suitable to teach should support the granting of a waiver of the cancellation requirement.

Recommendation 5

That in respect of the Minister's foreshadowed amendments to enable retrospectivity, a 'show cause' process aligned with existing QCT and QCAT show cause processes, rather than automatic cancellation of registration, be adopted for teachers practising at the time of commencement of the amendments.

⁷⁵ LAPCSESC Correspondence to Committee, 6 October 2011.
<http://www.parliament.qld.gov.au/documents/committees/IETIRC/2011/ETLAB/cor-LAPCSESC-10Oct2011-ETLAB.pdf>

6 Appendices

Appendix One – List of submissions received

- 001 - Independent Schools Queensland
- 002 - Queensland University of Technology, Faculty of Law
- 003 - The University of Queensland
- 004 - Queensland Council of Parents and Citizens' Associations
- 005 - Queensland University of Technology
- 006 - Queensland Council for Civil Liberties
- 007 - Associated Christian Schools
- 008 - Queensland Catholic Education Commission
- 009 - Queensland Law Society
- 010 - Commission for Children and Young People and Child Guardian
- 011 - Griffith University
- 012 - Chamber of Commerce and Industry Queensland
- 013 - James Cook University
- 014 - Queensland College of Teachers

Appendix Two – List of witnesses at the public hearing on 12 October 2011

Organisation	Witness
Queensland Law Society	Ms Raylene D’Cruz Policy Solicitor
	Mr Matt Dunn Principal Policy Solicitor
	Mr Kenneth Mackenzie Member, Criminal Law Committee
Independent Schools	Mr David Robertson Executive Director
	Ms Shari Armistead Principal Adviser, Strategic Relations
Queensland Catholic Education Commission	Mr John Browning Manager, Professional Standards and Student Protection, Brisbane Catholic Education
	Mr Michael Wilkinson Executive Officer, Student Protection Subcommittee
	Ms Justine Garvin Legal Counsel, Employee Services, Brisbane Catholic Education
	Ms Sue Diggles Senior Education Officer, Student Protection, Brisbane Catholic Education
Queensland University of Technology	Associate Professor Ben Mathews Associate Professor, School of Law, Faculty of Law
	Dr Kerryann Walsh Senior Research Fellow, Faculty of Education

Appendix Three – Summary of issues raised with DET comments

Clause	Submitter	Sub No.	Section / initiative	Key Points	DET comments (provided on 6 October 2011)
MANDATORY REPORTING – Lack of definition					
8, 9, 10, 11	Independent Schools Queensland	1	Obligation to report abuse and likely sexual abuse – lack of definition	How would a staff member determine “likely sexual abuse” – the lack of definition is problematic.	<p>While there is no consistent legislative standard for the reporting of sexual abuse or risk of sexual abuse across Australia, most jurisdictions require mandatory reporting of harm and risk of harm which includes harm caused by sexual abuse.</p> <p>The amendments are supported by recommendations of a Queensland University of Technology report titled <i>Teachers reporting child sexual abuse: Towards evidence-based reform of law, policy and practice</i>. The author of the QUT report, Associate Professor Ben Matthews, has made a submission to the Industry, Education, Training and Industrial Relations Committee (the Committee) supporting the amendments.</p> <p><u>Current requirements for non-state schools</u></p> <p>Section 10 of the <i>Education (Accreditation of Non-State Schools) Regulation 2001</i> requires that non-state schools have policies regarding the health and safety of its students. This includes written processes covering the reporting of harm or a suspicion of harm, including harm caused by sexual abuse.</p> <p>At common law, all schools owe a duty of care to students to take reasonable action to address all foreseeable risks of harm to students.</p> <p><u>Training</u></p> <p>It is the responsibility of all schooling sectors to adequately inform and train their staff to be cognisant of their legal reporting requirements and procedures for reporting.</p> <p>In the state sector, staff members are required to complete online student protection training upon commencing work.</p> <p>It is proposed to make a fact sheet detailing the new legislative requirement available to all employees via the Department’s website.</p> <p>DET has also signalled its intention to share its training resources with the non-state sectors.</p> <p>These amendments provide a clear indication to all schooling sectors that school staff must be vigilant in reporting suspicions of sexual abuse, including a likelihood of sexual abuse.</p> <p>The bar for reporting suspicions of future sexual abuse is set quite high. The requirement is to report where the staff member reasonably suspects a student is ‘likely to be sexually abused’. This high test requires more than a concern that there is a risk of future sexual abuse.</p> <p>It is acknowledged that forming a suspicion that there is a likelihood of future sexual abuse involves an objective consideration based on facts presented to the staff member and their level of knowledge of indicators of sexual abuse.</p> <p>Adequate training will promote appropriate reporting practices.</p> <p>In addition, to ensure reporting is sensible and appropriate, the Bill does not introduce criminal penalties for failing to report the risk of future sexual abuse. This is consistent with the approach adopted in New South Wales in relation to reporting risk of harm.</p>
8,9,10,11	Queensland College of Teachers	14	Obligation to report sexual abuse and likely sexual abuse – lack of definition	The Committee might wish to consider whether these terms are sufficiently clear to enable a staff member to determine that a reporting obligation has arisen.	
8, 9, 10, 11	Associated Christian Schools	7	Obligation to report sexual abuse and likely sexual	Difficulties with the lack of definitions of abuse, sexual abuse, and “by another person”. For example, does	The terms ‘any person’ and ‘likely’ are not defined and will take their ordinary meaning.

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Clause	Submitter	Sub No.	Section / initiative	Key Points	DET comments (provided on 6 October 2011)
			abuse – lack of definition	the latter include other children? Does sexual abuse refer only to unlawful activities, eg if the person is under the age of consent?	<p><u>'Sexual abuse'</u></p> <p>The Bill does not define the term 'sexual abuse' because of concerns that doing so could inadvertently narrow the scope the provision.</p> <p>The term is not defined in any other Queensland legislation where it is used, including the <i>Child Protection Act 1999</i> and the <i>Public Health Act 1995</i>, nor in the existing education portfolio legislation.</p> <p>The term has not been defined in the child protection legislation of other jurisdiction or legislation of other jurisdictions where a mandatory reporting requirement has been imposed.</p> <p>The concern is that defining the term could inadvertently narrow the scope of matters reported.</p> <p>Staff members can be informed of their obligations through appropriate training and policy guidance as to what indicators or behaviours should be reported under the requirement.</p>
8,9,10,11	Queensland Law Society	9	Obligation to report sexual abuse and likely sexual abuse -lack of definitions	<p>Whether there is a likelihood of sexual abuse will be difficult for school staff to assess.</p> <p>Under the <i>Legislative Standards Act 1992</i> legislation must be unambiguous and drafted in a sufficiently clear and precise way. The Queensland Law Society contends the legislation does not meet this requirement because no guidance is given to the term 'likely sexual abuse'.</p>	<p><u>Requirement for legislation to be unambiguous</u></p> <p>The Explanatory Notes to the Bill provide the Government position in relation to the argument that the proposed mandatory reporting requirement is inconsistent with the <i>Legislative Standards Act 1992</i>. (ie. that the potential breach is justified on the grounds that all state school staff are currently subject to administrative reporting requirements to report risk of harm, including a risk of sexual abuse).</p>
8,9,10,11	Queensland Catholic Education Commission	8	Obligation to report sexual abuse and likely sexual abuse – lack of definition	<p>QCEC advocates for a definition of the term 'sexual abuse'. The submission notes that the lack of a definition creates considerable uncertainty and a potential for:</p> <ul style="list-style-type: none"> • delay/neglect in reporting; • increased unnecessary reporting; • increased reporting of unsustainable allegations resulting in residual damage to reputations of innocent persons. <p>The QCEC proposes an alternative approach be adopted whereby non-state schools could be mandated to have policies dealing with risks of future sexual abuse.</p> <p>The QCEC note non-state school stakeholders have previously unanimously opposed expanding the mandatory reporting obligations to include reporting of future sexual abuse.</p> <p>Suggests using the Department of Communities (Child Safety Services) to define these terms. The key feature of the definition is an imbalance of power.</p>	<p>See comments re. ACS and ISQ submissions re. overreporting.</p> <p><u>Impact on persons against whom allegations are made inappropriately</u></p> <p>The protection of children from harm caused by sexual abuse is the primary concern of the proposed amendments.</p> <p>The proposed amendments will provide a clear message that the Queensland Government is committed to protecting children and young people from sexual abuse.</p> <p>Staff members of Queensland schools must be vigilant in ensuring the safety of students in our schools. As noted above, it is recognised that staff will need adequate training to understand their reporting and implement appropriate reporting responsibilities.</p> <p><u>Alternative approach: mandate schools have policies to address risks of future sexual abuse rather than mandate reporting to police.</u></p> <p>The introduction of statutory reporting requirements sends the strongest possible message to school staff about the expectation of the Government in relation to protecting children from sexual abuse.</p> <p>The proposal would not address the state school system, where reporting of the risks of sexual abuse would remain a matter for policy.</p> <p>Mandatory reporting to police ensures that appropriate qualified officers can investigate allegations. This could not be assured under policy.</p> <p>The introduction of legislative requirement for reporting ensures consistency across all schools, state and non-state about what is to be reported and to whom it must be reported.</p>

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Clause	Submitter	Sub No.	Section / initiative	Key Points	DET comments (provided on 6 October 2011)
MANDATORY REPORTING - GENERAL					
	Associated Christian Schools	7	Obligation to report sexual abuse and likely sexual abuse – impact on common law duty of care	ACS is concerned that the statement extracted below from the Explanatory Notes could be relied upon in civil cases when considering the extent of the common law duty of care owed by schools: <i><u>'A likelihood of sexual abuse is foreseeable a matter schools ought to be considering in development of any risk management strategies, policies or procedures aimed at ensuring their common law duties are met.'</u></i>	The intention of the statement in the Explanatory Notes referred to by ACS was to note that school policies and risk management strategies that provide for action to respond to concerns about a likelihood of sexual abuse would not be inconsistent with the common law duty. The statement was not intended to be an interpretation of, or advice on, the extent of the existing common law duty owed by schools to students.
8,9,10,11	Independent Schools Queensland	1	Obligation to report sexual abuse and likely sexual abuse – possibility of over-reporting	ISQ raises the risk that either over-reporting or failing to report could result because of the difficulty in 'predicting' a likelihood of sexual abuse in the future.	The bar for reporting suspicions of future sexual abuse is set quite high. The requirement is to report where the staff member reasonably suspects a student is 'likely to be sexually abused'. This high test requires more than a concern that there is a risk of future sexual abuse. It is acknowledged that forming a suspicion that there is a likelihood of future sexual abuse involves an objective consideration based on facts presented to the staff member and their level of knowledge of indicators of sexual abuse. Adequate training will promote appropriate reporting practices. In addition, to ensure reporting is sensible and appropriate, the Bill does not introduce criminal penalties for failing to report the risk of future sexual abuse. This is consistent with the approach adopted in New South Wales in relation to reporting risk of harm.
8,9,10,11	Queensland Catholic Education Commission	8	Obligation to report sexual abuse and likely sexual abuse - extending requirements to report beyond teachers		The existing reporting requirement applies to all school staff. In the interests of child safety, the Bill applies the expanded requirement to all school staff as well. The obligation on staff members is to report when the person 'reasonably suspects' a student has been or is likely to be sexually abused. It is acknowledged that training of the expanded statutory requirements may need to be targeted towards the staff members having regard to the level of contact relevant staff may have with children and the opportunity to observe behaviour giving rise to suspicions of sexual abuse. A jurisdictional analysis of mandatory reporting provisions indicates that there is no consistent approach to who is required to report across all jurisdictions. However, the analysis confirms that teachers and non-teaching staff, including volunteers are required to report in some jurisdictions. This is supported in the QCEC analysis. Most jurisdictions require all staff and non-teaching staff, including volunteers to report under policy, therefore in practice a reporting obligation in most jurisdictions already extends to all school staff.
8,9,10,11	Queensland Law Society	9	Obligation to report sexual abuse and likely sexual abuse - mandatory reporting per se	Interstate experience shows that mandatory reporting is not working to protect children. Teachers are adequately reporting under existing Queensland law (including voluntary reporting under the <i>Child Protection Act 1999</i> . Mandatory requirements, especially with risk of criminal sanction will result in over-	<u>Interstate experience</u> The Bill does not introduce a criminal penalty for failing to report suspicions that a student is likely to be sexually abused. This aims to mitigate risks that a new penalty would increase over reporting of inappropriate low level concerns. This aligns with one approach adopted in New South Wales to address concerns about over reporting, identified in the Report of the Special Commission of Inquiry into Child Protection Services in NSW. The proposed amendments ensure that Queensland's standards for reporting sexual abuse in schools is equivalent to, or higher

Clause	Submitter	Sub No.	Section / initiative	Key Points	DET comments (provided on 6 October 2011)
				<p>reporting.</p> <p>A policy driven approach would be more useful, whereby staff members are trained to recognise signs of sexual abuse and encourage reporting under the voluntary reporting under the <i>Child Protection Act 1999</i>.</p> <p><i>Child Protection Act 1999</i> affords the notifier confidentiality not provided under education legislation.</p> <p>Concerns raised about livelihood, mental health and relationships of innocent persons against whom allegations are made.</p> <p>The requirement could capture reporting of consensual relations between two students. The Queensland Law Society also raises concerns about the long term impact on young persons being charged with offences relating to consensual sexual relationships with another student under the age of 16.</p> <p>The 'another person' requirement could result in reduced student willingness to seek advice and support from school staff.</p>	<p>than, requirements in other jurisdictions.</p> <p><u><i>Impact on persons against whom allegations are made inappropriately</i></u></p> <p>See response to QCEC, and:</p> <p>The protection of children from harm caused by sexual abuse is the primary concern of the proposed amendments.</p> <p>The proposed amendments will provide a clear message that the Queensland Government is committed to protecting children and young people from sexual abuse.</p> <p>Staff members of Queensland schools must be vigilant in ensuring the safety of students in our schools. As noted above, it is recognised that staff will need adequate training to understand their reporting and implement appropriate reporting responsibilities.</p>
9,10	QUT	2	Obligation to report - reporting to police	<p>A modification is suggested to allow a teacher to make a report directly to the police or relevant child safety department with the Principal notified.</p> <p>It is suggested that the legislation enable the teacher to report to the police if they are aware the principal has not.</p> <p>The submission suggests this would reduce the risk of the report not being forwarded by the Principal.</p>	<p>The Bill as drafted implements the Government's policy intention in relation to reporting of allegations of sexual abuse.</p> <p>The Bill places an obligation on principals and their supervisors (or directors in the non-state sector) to pass reports about sexual abuse made by staff members directly to the police.</p> <p>Reporting through the principal of the school ensures a coordinated approach to the reporting of allegations of sexual abuse of school students to the police.</p> <p>Reporting through the principal allows the principal the opportunity to implement strategies to ensure that students as well as staff members making a report receive support as necessary</p> <p>Concerns with non-reporting can be referred to appropriate officers within schooling systems or the police.</p>
DELEGATION OF REPORTING RESPONSIBILITY					
11	ISQ	1	366B – delegation of a director's reporting function under s366 or s366A	<p>Current requirement is clear, not onerous and the duty is appropriately placed with the principal or board member given the importance.</p> <p>The delegation could be to a variety of positions eg. chaplain, protection officer or counsellor resulting in a line of reporting which is less clear than is allowed currently.</p> <p>It is anticipated that the delegation would normally be to the principal but they are already required to report to police so this may narrow the opportunity for a staff member</p>	<p>The Bill is consistent with the Government's position in relation to delegation of directors' functions to receive and make reports about suspected sexual abuse.</p> <p>The proposal to allow the director of a non-state school's governing body to delegate their function to receive reports about alleged sexual abuse and report the allegation to the police aims to promote the timely reporting of allegations of sexual abuse.</p> <p>As indicated in the Explanatory Notes to the Bill, this amendment is being made to enhance reporting processes, especially for sole directors of non-state school governing bodies, who may have significant other duties to those as the director. An example is the Archbishop of the Catholic Archdiocese of Brisbane.</p> <p>Delegation is an option. Where reporting arrangements are working well to ensure child safety, there is no onus on the</p>

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Clause	Submitter	Sub No.	Section / initiative	Key Points	DET comments (provided on 6 October 2011)
				to report a matter of concern.	<p>school to delegate.</p> <p>To ensure appropriate and efficient reporting practices continue under a delegation, the Bill provides that the delegator remains liable if the delegate fails to meet their reporting obligations. The delegator must therefore ensure appropriate training is provided about the obligation and procedures for reporting.</p> <p>It is noted that the Bill introduced into Parliament does not prohibit director delegating their function to the principal of the school. However, the Bill also does not prohibit a person reporting to the director despite a delegation being made. Accordingly, if a teacher had an allegation against a principal, they could still report to the director should the principal be the delegate.</p>
11	ACQ	7	366B – delegation of a director’s reporting function under s366 or s366A	<p>ACQ raises concerns about the implications of the delegator remaining liable for a breach of the delegate’s obligations.</p> <p>In Associated Christian Schools, the principal would be the likely delegate.</p>	<p>See above response to ISQ, and:</p> <p>The liability of the delegator for the failure of the delegate to report aims to ensure appropriate and efficient reporting practices continue under a delegation. The delegator must ensure appropriate training is provided about the obligation and procedures for reporting.</p> <p>As indicated above, the amendments to prohibit the delegation of the responsibility to the principal or other staff member of the school are being considered in response to the concerns raised with the Department.</p>
11	QCEC	8	366B – delegation of a director’s reporting function under s366 or s366A	<p>Supports the ability to delegate, but understands this is to a person in a governance position similar to a director, and not to a principal or other staff member of a school.</p>	<p>Noted. (NB See comments as above, in particular: “As indicated in the Explanatory Notes to the Bill, this amendment is being made to enhance reporting processes, especially for sole directors of non-state school governing bodies, who may have significant other duties to those as the director. An example is the Archbishop of the Catholic Archdiocese of Brisbane”)</p>
TEACHER REGISTRATION					
	Queensland Council for Civil Liberties	6		<p>Amendments fail to adequately balance the need for rehabilitation against the need to protect the community.</p> <p>Current legislation provides for an appropriate balance.</p> <p>The submission raised particular concern that the Bill extends the prohibition on teaching to those merely charged with a serious offence.</p> <p>The submission notes the potential for the amendments to capture the ‘Romeo and Juliet’ scenario.</p>	<p>The Bill is consistent with and achieves the intended policy objectives. These amendments are proposed to uphold the high standard of, and maintain public confidence in, Queensland’s teaching profession.</p> <p>The Bill will provide for the automatic cancellation of a teacher’s registration, and will prohibit a person from applying for registration, if the person is convicted of a serious offence. The automatic cancellation of teacher registration provisions only operate where a person has been convicted of a serious offence.</p> <p>The Bill will also enable the Queensland Civil and Administrative Tribunal (QCAT) to make a disciplinary order prohibiting a teacher or former teacher from applying for registration for a stated period or for life. QCAT is currently limited to orders of up to five years.</p> <p>QCAT raised concerns about this limit on its power to make disciplinary orders following a matter where a former teacher was convicted of offences relating to the disposal of a body and making false statements. In that matter, QCAT prohibited the person from applying for registration for 5 years - the maximum time available, but commented that it would have increased the prohibition if it had the capacity to do so.</p> <p>The Queensland College of Teachers can seek such disciplinary orders for a range of conduct, such as convictions for criminal offences and other matters relating to suitability to teach.</p> <p>While QCAT will have the capacity to prohibit a person from applying for registration for life without the person being convicted of a serious offence, this decision is reviewable. The facts of the matter would need to support such a decision.</p> <p>The eligibility declaration allows the ‘Romeo and Juliet’ scenario to be addressed.</p>

Clause	Submitter	Sub No.	Section / initiative	Key Points	DET comments (provided on 6 October 2011)
	Queensland Law Society	9		<p>QLS supports the intent, but suggests that the amendments could be improved by making the following suite of amendments:</p> <p>Enable a person to reapply for an eligibility declaration if there has been a substantial change in circumstances; their most recent application was deemed to be refused or where the previous application was based on incomplete or wrong information.</p> <p>Prescribe the test for issuing an eligibility declaration as follows: "the college may grant the eligibility declaration provided the college is satisfied that it is in the best interests of children".</p> <p>Allow for internal review followed by avenue to appeal to QCAT in the interests of procedural fairness and natural justice and to limit the potential for inappropriate conduct of officials.</p> <p>Specify a time period for deciding the eligibility declaration with provision for extending the time.</p> <p>Allow for revoking the declaration upon conviction, not charge of a serious offence.</p> <p>Grounds for deemed withdrawal should be deemed refusal because there are valid reasons why an applicant may be unable to satisfy the requests of the QCT within the time limits and this should not be taken to be a withdrawal from the process.</p> <p>Allow for a review of the reasonableness of a request for information and/or the time allowed to respond during the eligibility declaration process.</p> <p>Provide that a decision to cancel the registration of a person who successfully appeals a conviction for a serious offence is void to absolve the person of all wrong doing and negative consequences of the cancellation decision.</p>	<p><u>Eligibility declaration</u></p> <p>For consistency across the criminal screening systems for working with children and people with a disability, the eligibility declaration process proposed in the Bill is modelled closely on the existing eligibility declaration processes prescribed in the <i>Commission for Children and Young People and Child Guardian Act 2000</i> and the <i>Disability Services Act 2006</i>.</p> <p>Variation has been made to cater for the fact that the Bill lifts the bar for teacher registration to provide for cancellation for conviction for <u>serious</u> rather than <u>disqualifying</u> offences.</p> <p>Persons applying for an eligibility declaration will have been convicted of serious sexual, violent or drug related offences. The test proposed for issuing the eligibility declaration accords with the Government policy position. It is a strict test where by a declaration ought not be issued unless it would not harm the best interests of children to do so. The test aligns with the test for considering suitability to teach in section 11 of the <i>Education (Queensland College of Teachers) Act 2005</i>.</p> <p>The amendments are aimed at protecting the best interests of children, which is of paramount importance to the Government. Any negative impact on persons who fall subject to the provisions is outweighed by the need to implement the strongest possible protection to children.</p> <p>The Explanatory Notes to the Bill provide the justification for not providing for a right of appeal from an eligibility declaration decision (ie. that the breach is justified because the matters the College must consider when deciding an eligibility declaration application are sufficiently defined, and decisions are subject to judicial review).</p> <p>The proposed part 1A, division 3 (Withdrawal of eligibility application) provides for the withdrawal of an eligibility application in various circumstances. There are no limits or prohibitions on a person making a fresh application after the withdrawal of an application under this division. Conversely, if an application is refused, proposed section 12E(2) will prohibit the person making a new application for at least two years, unless the decision is base don wrong or incomplete information.</p> <p><u>Cancellation of teacher registration</u></p> <p>Even if a person is no longer an excluded person, because their conviction is overturned, there may be other grounds for the Queensland College of teachers to seek disciplinary orders against them.</p> <p>Further information on this process is outlined in the response to the submission by the Queensland Council for Civil Liberties at page 15 above.</p>
UNIVERSITY TRUST LAND					
Various eg Clause 38	University of Queensland	3		<p>The University of Queensland proposes amendments to provisions dealing with trust land under the <i>Land Act 1994</i> and the <i>Statutory Bodies Financial Arrangements Act 1982</i> for consideration. The</p>	<p>The Bill implements measures aimed at reducing restrictions on Queensland Universities regarding the leasing of trust land (ie. land dedicated as reserve or granted in trust under the <i>Land Act 1994</i>) and to provide clarity around the use of certain trust land. The amendments as drafted implement the Government's intention.</p>

Examination of Education and Training Legislation Amendment Bill 2011

Clause	Submitter	Sub No.	Section / initiative	Key Points	DET comments (provided on 6 October 2011)
				<p>proposed amendments would increase the ability of universities to use trust land for commercial purposes beyond the effects of the current Bill (see summary of submissions).</p> <p>The University of Queensland also proposes amendments to the Bill including for example:</p> <ul style="list-style-type: none"> clause 38 should be amended to provide that the purpose for use of trust land is taken to include anything that is consistent with or would facilitate or enhance the purpose of the dedication or grant. clause 38 of the Bill be expanded to refer to other purposes such as education, teaching and research. <p>The University is also seeking confirmation from the Department of Environment and Resource Management about land title records.</p> <p>In particular, the University seeks confirmation that the terms university and college purposes will be used for future dedications or grants.</p>	<p><u>Amendments proposed to the Land Act 1994 and the Statutory Bodies Financial Arrangements Act 1982</u></p> <p>Amendments have been sought to procedures for dealing with trust land in the <i>Land Act 1994</i> and the <i>Statutory Bodies Financial Arrangements Act 1982</i> regarding trust land. Amendments to these Acts fall outside the ambit of the Bill and the responsibilities of the Minister for Education and Training.</p> <p>It is noted that there is capacity under the <i>Land Act 1994</i> for the holder of trust land to seek the agreement of the Minister responsible for administration of the <i>Land Act 1994</i> to be exempted from seeking approval to lease trust land (section 64). This is currently the Minister for Finance, Natural Resources and The Arts.</p> <p>Amending the <i>Land Act 1994</i> as suggested by the University of Queensland would require a more extensive investigation of the impacts on bodies beyond universities. Many other bodies apart from universities (eg Local government) also hold state trust land.</p> <p>Historically, land has been dedicated as reserve or granted in trust to universities for operational purposes, including for an educational institution, university and college purposes.</p> <p>This is not current practice. Under the <i>Land Act 1994</i>, land is now dedicated or granted for community purposes, listed in schedule 1 of the Act (eg. Scenic and park purposes).</p> <p>More recently, land has been given to universities as freehold tenure. Land is unlikely in the future to be dedicated or entrusted to universities for operational purposes that will need clarification or alignment with the universities' functions.</p> <p>The amendments are aimed at addressing concerns raised by Universities that the sometimes narrow interpretation of the scope of the purpose for which trust land may be used has affected their ability to provide facilities for ancillary student services or to take advantage of joint ventures with external entities for commercial purposes.</p> <p>These concerns were raised in relation to trust land held for general educational, university and college purposes. The amendments intentionally focus on trust land that has been dedicated or granted to universities for such purposes.</p> <p>To achieve the Government's objectives, the Bill clarifies that where land has been granted in trust or dedicated as reserve for a purpose relating to educational institution, university or college purposes, the purpose is to include any purpose consistent with the functions of the university.</p> <p>University functions are generally consistent across the university Acts and include the provision of ancillary services for the wellbeing of staff and students and the commercial exploitation of a facility or resource of the university, including, for example, study, research or knowledge, or the practical application of study, research or knowledge, belonging to the university, whether alone or with someone else.</p>

FUNDAMENTAL LEGISLATIVE PRINCIPLES

Clause No.	Source	Key Points	DET comments (Explanatory Notes and comments provided 6 October)
MANDATORY REPORTING			
8-11	Scrutiny of Legislation Secretariat	Expansion of the obligation to report abuse or likelihood of abuse by any person, may be inconsistent with an individual's right to privacy.	The impact on the right to privacy is justified on the grounds that the overriding objective of the provision is the protection of children from sexual abuse, that a reasonable suspicion must be formed before information is shared and that information may only be shared with the police to enable further enquiries to be made.

FUNDAMENTAL LEGISLATIVE PRINCIPLES

Clause No.	Source	Key Points	DET comments (Explanatory Notes and comments provided 6 October)
11	Scrutiny	Delegation of obligation to report – holds a Director liable for the failure of a delegate to report unless the Director can provide that s/he took all reasonable steps to ensure that the delegation was complied with.	The breach is justified on the basis that Directors have a choice as to whether to delegate or not; and in doing so the Director is assuming liability for the actions of his or her delegate. Also, this will ensure that the governing bodies of non-state schools continue to view the handling of reports as a serious matter which needs to be actively monitored by Directors.
8-11	Scrutiny	The <i>Legislative Standards Act</i> provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation does not confer immunity from proceeding or prosecution without adequate justification. These clauses expand existing immunity from prosecution and proceeding when reporting suspected sexual abuse.	Justified to ensure enforceability of the criminal sanction. There are many similar examples in other laws. Providing legal protection to people who report, makes it more likely they will refer matters to the appropriate authority. It is not considered appropriate that an individual be made personally liable for carrying out their responsibilities under the legislation in good faith.
15	Scrutiny	Access to reports regardless of when the offence may have been committed impacts on the person's rehabilitation prospects and right to work.	Given the ongoing community interest in issues of child protection, this potential breach of fundamental legislative principle is considered appropriate. To determine whether there are exceptional circumstances relating to the person it is imperative that the College be able to access the full criminal history, including information about 'spent' convictions and charges. Applicants will have access to information about how their criminal history details will be used. The QCT Act requires the QCT to keep guidelines regarding its use of information obtained under the Act and make the guidelines available, upon request, to applicants for an eligibility declaration.
9, 11	Scrutiny of Legislation Secretariat	The <i>Legislative Standards Act</i> provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation is unambiguous and drafted in a sufficiently clear and precise way. It may be difficult to determine the scope of this reporting requirement and when to report. However it is noted that the obligation only applies where a staff member forms a suspicion in the course of their employment at school, and that no penalty applies for failing to report under the new provisions (though it still does in respect of existing requirements).	The potential breach is justified on the grounds that all state school staff are currently subject to administrative reporting requirements to report risk of harm, including a risk of sexual abuse. Staff are provided training on the implementation of policies and teachers in particular are trained to observe relevant factors in children and use analytical skills to form conclusions. All schools owe a common law duty of care to students under which there is a positive obligation to take all reasonable steps to minimise the risk of foreseeable harm.
Teacher Registration – Eligibility Declarations and Cancellation of Registration			
21	Scrutiny	The College would be required to automatically cancel a registration and prohibit from applying for registration for life, a teacher who is convicted of a serious offence, irrespective of whether imprisonment occurred. Further, QCAT would be allowed to make disciplinary orders prohibiting a person from applying for registration for a period up to and including life (beyond the current 5 years).	The best interests of children are paramount and outweigh any negative impact on individuals. This would enable QCAT to discipline teachers in situations beyond the scope of the College – that is, where a teacher is convicted of an offence that is not classed as a 'serious' offence (eg the McNeil case) and so doesn't come under the QCT Act.
15 and 21	Scrutiny	These clauses provide (15) that an eligibility application must be refused unless the college is satisfied it is an exceptional case in which it would not harm the best interests of children to issue the declaration; and (21) the automatic cancellation, for life, of teacher registration where a teacher is convicted of a serious offence. There is no right of review or appeal in either case.	The breach is justified because a) children's interests are paramount - they must be protected from risk posed by people who have committed serious offences; and b) the matters the College must consider when deciding an eligibility declaration application are sufficiently defined, and decisions are subject to judicial review; and c) Upholds the standards and standing of the teaching profession in Queensland; d) Teachers whose registration is cancelled under these provisions have the opportunity to defend themselves, and appeal, through criminal proceedings.

FUNDAMENTAL LEGISLATIVE PRINCIPLES

Clause No.	Source	Key Points	DET comments (Explanatory Notes and comments provided 6 October)
21		<p>The <i>Legislative Standards Act</i> provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation does not adversely affect rights and liberties or impose obligations retrospectively.</p> <p>The automatic cancellation provision could have retrospective effect because it applies irrespective of when the offence occurred (as the Bill currently proposes); or b) when the conviction occurred, (as per Minister Wilson's proposed amendments).</p> <p>The retrospectivity also impacts on individual rights and freedoms, particularly the right to work.</p>	No response provided in explanatory notes

Appendix Four - Committee report on consistency with fundamental legislative principles

EDUCATION AND TRAINING LEGISLATION AMENDMENT BILL 2011

BACKGROUND

1. The bill aims to protect the safety and wellbeing of Queensland students (explanatory notes,1) through amendments to strengthen the reporting of sexual abuse and cancellation of teacher registration.

LEGISLATIVE PURPOSE

2. The bill would amend the *Education (General Provisions) Act 2006* (EGP Act) to expand the requirements regarding the reporting of sexual abuse to include reporting of suspected sexual abuse or a likely risk of sexual abuse by any person.
3. It would also amend the *Education (Queensland College of Teachers) Act 2005* (QCT Act) to:
 - provide for the automatic cancellation of teacher registration or permission to teach and a lifetime ban on teaching, where a person is convicted, after commencement of part 4 of the bill, of a serious offence, irrespective of whether the person is sentenced to imprisonment;
 - enable a person who is prohibited from applying for registration or permission to teach to seek, in limited circumstances, an eligibility declaration, to enable them to apply for registration or permission to teach; and
 - permit the Queensland Civil and Administrative Tribunal (QCAT) to make disciplinary orders to prohibit a person from applying for registration or permission to teach for a stated period of time or for life.
4. 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.

APPLICATION OF FUNDAMENTAL LEGISLATIVE PRINCIPLES

Sufficient regard to rights and liberties of individuals

Rights and liberties

5. Fundamental legislative principles include requiring that legislation have sufficient regard to rights and liberties of individuals. This requirement is stated in section 4(2) of the *Legislative Standards Act 1992*.
6. Under sections 365 and 366 of the Act a number of penalties derive from the obligation to report a reasonable suspicion that a student has been sexually abused by an employee of the school.
7. Clauses 8 and 10 would amend sections 365 and 366 to provide that these penalties would apply to the failure to report sexual abuse by any person.
8. In addition, two new offences would be created both in respect of state and non state schools. These amendments have the potential to affect rights and liberties of individuals. The proposed new offences and maximum penalties are identified below.

New Section	Offence	Proposed maximum penalty
365(2A) state school 366(2A) non-state school	Being the school principal and the first person to suspect sexual abuse failing to provide a written report to the police immediately	20 penalty units (\$2 000)
365(5) state school	Being the school principal or principal's supervisor failing to immediately give a copy of a report about sexual abuse by an employee of the school to the chief executive's nominee	20 penalty units (\$2 000)
366(2B) non-state school	Being the school principal failing to immediately give a copy of a report about sexual abuse by an employee of the school to the director of the school's governing body	20 penalty units (\$2 000)

9. The explanatory notes provide that the amendments to the reporting procedures (at 20, 21):

...aim to ensure the timely provisions of reports to the police. They also ensure a school's governing body (or the department) is informed of allegations and, where appropriate, can initiate internal disciplinary action against a teacher (or employee) against whom the allegations are made.

10. **Clauses 8-11, 15, 21 and 25-27** may affect rights and liberties of individuals and, in particular rights to work and information privacy.

11. First, new section 12C would exclude the operation of the *Criminal Law (Rehabilitation of Offenders) Act 1986* in relation to eligibility declaration applications to enable the Queensland College of Teachers (the college) to access and consider the full criminal history of an applicant including all convictions and charges regardless of when they may have occurred. Similar provisions exist in relation to applications for registration and permission to teach under the QCT Act (sections 11(4) and 14(5)).

12. New section 12F would provide that when considering an eligibility application, the college may obtain criminal history reports, police investigative information and other information about an applicant which may be obtained under sections 14 to 15D of the QCT Act as if the application were an application for registration or permission to teach. This includes:

- police and other information about the person's Queensland and interstate criminal history;
- information about the person's criminal history from the Director of Public Prosecutions;
- information from the chief executive responsible for corrective services about sexual offender orders under the *Dangerous Prisoners (Sexual Offenders) Act 2003*; and
- information obtained from the Commissioner for Children and Young People and Child Guardian.

13. In respect of these provisions, the explanatory notes state (at 16):

This is a potential breach of fundamental legislative principles as these measures reduce an individual's right to privacy. Given the on-going community interest in issues of child protection, this potential breach of fundamental legislative principles is considered appropriate. To determine whether there are exceptional circumstances relating to the person it is imperative that the QCT be able to access the applicant's full criminal history (including information about 'spent' convictions and charges).

Applicants will have access to information about how their criminal history details will be used. The QCT Act requires the QCT to keep guidelines regarding its use of information obtained under the Act and make the guidelines available, upon request, to applicants, for an eligibility declaration.

14. Second, the expansion of the obligation under clauses 8 to 11 to report suspected sexual abuse of a student by an employee of a school to suspected abuse or a likelihood of sexual abuse by any person may be inconsistent with an individual's right to privacy.

15. Justification is provided (explanatory notes, 13-4):

The impact on the right to privacy is justified on the grounds that the overriding objective of the provision is the protection of children from sexual abuse, that a reasonable suspicion must be formed before information is shared and that information may only be shared with the police to enable further enquiries to be made.

16. Third, the QCT Act would be amended to:

- require the college to automatically cancel a teacher registration or permission to teach and prohibit from applying for registration or permission to teach for life, a teacher who, is convicted of a serious offence, irrespective of whether the person is sentenced to a term of imprisonment after the commencement of the relevant provision;
- permit QCAT to make a disciplinary order prohibiting a person from applying for registration or permission to teach in excess of the current maximum of 5 years for disciplinary action arising after commencement of part 4 of the bill.

17. These amendments are discussed in further detail below. Justification is provided in the explanatory notes on the grounds that the best interests of children are of paramount importance and outweigh any negative impact on individuals (quoted in full below at 24).

18. In respect of the disciplinary orders available to the Tribunal, the explanatory speech introducing the bill stated (at 5):

These amendments have been necessitated by a recent matter considered by the Tribunal where a former teacher had been convicted of offences relating to disposal of a body and making false statements. As these offences are not disqualifying offences or serious offences under the Children's Commission legislation, a person convicted of these offences would not have their registration cancelled and would not be automatically prohibited from applying for registration under the current regime.

The amendments will ensure the Tribunal has the power to make orders, including prohibiting applications for life, or a stated period.

Administrative power

19. Section 4(3)(a) of the *Legislative Standards Act* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

20. **Clauses 15 and 21** would confer administrative power on the college which may not be subject to appropriate review.

21. Clause 15 would insert new chapter 2, part 1A, which would allow persons convicted of a serious offence to apply, in limited circumstances, to the college for an eligibility declaration, allowing the person to subsequently apply for registration or permission to teach. An eligibility application must be refused under the new section, unless the college is satisfied it is an exceptional case in which it would not harm the best interests of children to issue the declaration. New section 12G would provide that there is no right of review or appeal from the decision of the college.

22. Justification is provided (explanatory notes, at 16-7):

The lack of appeal rights in relation to the eligibility declaration decision is a breach of the fundamental legislative principles under section 4(3)(a) of the Legislative Standards Act 1992 that administrative power should be sufficiently defined and subject to review. This breach of fundamental legislative principles is considered justified because the matters the QCT must consider when deciding an eligibility declaration application are sufficiently defined and decisions are subject to judicial review. Also, seeking an eligibility declaration is a voluntary application available in limited circumstances to people convicted of sexual, violent or drug related offences. People convicted of such offences would, if they were a teacher, be subject to automatic cancellation without appeal. Applicants seeking a declaration will be aware that the QCT decision is final.

23. Clause 21, new section 58A, would provide for the automatic cancellation of teacher registration or permission to teach by the college with no right of appeal, where a teacher is convicted of a serious offence or made subject to a supervision order after commencement of the Bill. Cancellation carries a prohibition from applying for registration or permission to teach for life. In limited circumstances a person may be able to apply for an eligibility declaration, as discussed above.

24. The explanatory notes provide justification (at 15):

The potential breaches of the fundamental legislative principles are justified on the grounds that the best interests of children are of paramount importance and that the need to protect children from the risk posed by people who have committed serious offences outweighs the negative impacts on individuals whose registration is cancelled. The proposal also upholds the standard of the teaching profession in Queensland and aims to maintain public confidence in the profession. By providing for automatic cancellation, the Queensland Government is sending a clear message about the standard of conduct which is expected of Queensland teachers.

The automatic cancellation of teacher registration depends on whether or not the person is convicted of a serious offence. Therefore individuals have the opportunity to defend themselves against the automatic cancellation of their teacher registration through criminal proceedings. If the conviction under which registration was cancelled is overturned on appeal the person will no longer be subject to the automatic cancellation provision.

Natural justice

25. Section 4(3)(b) of the *Legislative Standards Act* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is consistent with principles of natural justice.
26. **New section 58A** may be inconsistent with principles of natural justice as it would provide for the immediate cancellation of teacher registration or permission to teach upon commencement.
27. The justification in the explanatory notes is quoted above (at 24).

Onus of proof

28. Section 4(3)(d) of the *Legislative Standards Act* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not reverse the onus of proof in criminal proceedings without adequate justification.
29. Legislation provides for the 'reversal' of the 'onus of proof' where it declares the proof of a particular matter to be a defence or when it refers to acts done without justification or excuse, the proof of which lies on the accused.
30. **Clause 11** new section 366B would provide that the director(s) of a governing body of a non-state school may delegate their obligation to receive reports and report to the police under sections 366 and 366A about the suspicion of sexual abuse of students.
31. However the new section provides that a director would be held liable for the failure of a delegate to give a copy of a report to the police under section 366(4) of the Act unless the director can prove that they took all reasonable steps to ensure that the delegation was complied with.
32. The explanatory notes provide justification (at 14):

This potential breach of legislative standards is justified on the basis that directors will have a choice as to whether to make a delegation. By making a delegation, a director or governing body will be voluntarily assuming liability for the actions of their delegate.

It is also considered important for directors to continue to be held responsible for the discharge of their function to receive and make reports under sections 366 and 366A of the EGPA. This will assist in ensuring that the governing bodies of non-state schools continue to view the handling of reports about the suspected sexual abuse of students as a serious matter which needs to be actively monitored by directors.

Immunity from proceeding and prosecution

33. Section 4(3)(h) of the *Legislative Standards Act* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not confer immunity from proceeding or prosecution without adequate justification.
34. **Clauses 8 to 11** would expand the existing immunity against prosecution and proceeding conferred on a staff member, principal or principal's supervisor when reporting suspected sexual abuse, to cover their expanded reporting obligations under the bill.
35. The explanatory notes provide adequate justification (at 13):

These potential breaches of fundamental legislative principles are justified because of the need to promote and protect the interests of children and to ensure the enforceability of the criminal sanction. There are many existing examples on the statute book of legal protections being provided to reporters on this basis.

Providing legal protection to people who report suspicions or concerns about the safety of children makes it more likely that individuals will act in the interests of children by referring matters to an appropriate authority. Sections 365 and 366 of the EGPA impose criminal sanctions for failure to report relevant matters to relevant authorities. The immunity clause therefore reduces the potential for a person who fails to report a concern about the sexual abuse of a student from justifying their actions on the grounds that they would be criminally, civilly or administratively liable for sharing information as required under the legislation. It is not considered appropriate that an individual may be made personally liable for carrying out his or her responsibilities under the legislation in good faith. The Bill provides that, instead of liability being attached to the individual, the liability attaches to other entities including the State or a network. (This does not apply to persons who provide information to a quality assurance committee, root cause analysis team or a clinical review). It should also be noted that the protection from liability only extends to acts done honestly and without negligence.

Retrospective Operation

36. Section 4(3)(g) of the *Legislative Standards Act* provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation does not adversely affect right and liberties, or impose obligations, retrospectively.
37. **New section 58A**, the automatic cancellation provision may have retrospective effect because it would apply to a person who is convicted of a serious offence after commencement, regardless of whether the act or omission that led to the person being charged happened prior to commencement.
38. The former scrutiny of legislation committee examined legislation that would have effect retrospectively to evaluate whether there would be any adverse effects on rights or liberties or whether obligations imposed retrospectively would be unduly onerous. When considering 'sufficient regard', the committee generally examined whether:
- the retrospective operation would be adverse to people other than the government; and
 - people have relied on and would have legitimate expectations based on the existing law.
39. The justification provided in the explanatory notes has been referred to above (at 24).
40. The committee notes that the Minister has expressed an intention to amend the bill, by letter to the committee dated 23 August 2011. The letter states:
- I have decided the Bill should be amended to ensure there are not teachers working in Queensland schools who have been convicted of serious offences and sentenced to imprisonment, irrespective of when the conviction occurred.*
- Under the proposal, teachers with convictions for serious offences, irrespective of date of conviction or sentence of imprisonment, will have their registration cancelled. Those teachers who were to sentenced to imprisonment will be able to seek an eligibility declaration from the Queensland College of Teachers in order to be able to re-apply for registration. This process will enable the College to consider whether exceptional circumstances exist in their cases.*
41. Such an amendment would have an adverse retrospective effect on the rights and liberties of individuals because any person convicted of a serious offence would have their registration cancelled irrespective of the date of conviction.
42. The proposed amendment could also be considered under section 4(2) of the *Legislative Standards Act* generally, as having the potential to affect the right of an individual to work.

Clear Meaning

43. Section 4(3)(k) of the *Legislative Standards Act* provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation is unambiguous and drafted in sufficiently clear and precise way.
44. **Clauses 9 and 11** which would insert new sections 365A and 366A may not be drafted in a sufficiently clear and precise way.
45. The Act requires staff to report a reasonable suspicion that a child has been sexually abused by an employee of the school.
46. The new sections would extend the reporting obligations under the Act to require staff of state and non-state schools to report a reasonable suspicion that a child is likely to be sexually abused by another person.
47. The explanatory notes recognise that it may be difficult to determine the scope of this reporting requirement and when to report. Justification is provided (explanatory notes, 12):

This potential breach is justified on the grounds that all state school staff are currently subject to administrative reporting requirements to report risk of harm, including a risk of sexual abuse. School staff members are provided training on the implementation of the respective policies and teachers, in particular, are a professional class of people who are trained to observe relevant factors in children and to use analytical skills to form conclusions.

All schools (state and non-state) owe a common law duty of care to students under which there is a positive obligation to take all reasonable steps to minimise the risk of foreseeable harm. Also, all regulated businesses (that is, those involving children) are required under the CCYPCG Act to have risk management strategies in place regarding the wellbeing and protection of children. These are to include training materials to help identify risk of harm and how to handle disclosures about risk of harm. A likelihood of sexual abuse is

foreseeably a matter schools ought to be considering in development of any risk management strategies, policies or procedures aimed at ensuring their common law duties are met.

48. It is noted that:

- the bill would clarify that the obligation only applies where a staff member forms a suspicion during the course of their employment at school;
- while penalty provisions apply to the reporting of a reasonable suspicion of sexual abuse no penalty provisions would apply for failing to report under the new provisions.

OPERATION OF CERTAIN STATUTORY PROVISIONS

Explanatory notes

49. Part 4 of the *Legislative Standards Act* relates to explanatory notes. Subsection 22(1) states that when introducing a Bill in the Legislative Assembly, a member must circulate to members an explanatory note for the Bill. Section 23 requires an explanatory note for a bill to be in clear and precise language and to include the bill's short title and a brief statement providing certain information.

50. Explanatory notes were tabled with the introduction of the bill. They are clear and precise and contain the information required by section 23