

**INDUSTRY, EDUCATION, TRAINING AND INDUSTRIAL RELATIONS
COMMITTEE**

REPORT No.5 ON THE

EDUCATION AND TRAINING LEGISLATION AMENDMENT BILL 2011

QUEENSLAND GOVERNMENT RESPONSE

INTRODUCTION

On 7 November the Industry, Education, Training and Industrial Relations Committee tabled Report No.5 in relation to the Education and Training Legislation Amendment Bill 2011.

The Queensland Government response to recommendations made and clarification on points raised by the Committee are provided below.

RESPONSE TO RECOMMENDATIONS

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.

Government Response - the recommendation is noted.

Recommendation 2 - 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. The Committee suggests that at the very least, the definition should be consistent with those used in other Queensland Government agencies and including grooming.

Government response – the recommendation is supported in part. It is proposed to introduce an amendment to be moved during consideration in detail to provide clarity around the circumstances in which sexual behaviour should be reported under the proposed mandatory reporting provisions.

It is not proposed to define 'sexual abuse' because it could inadvertently narrow the scope of the mandatory reporting provisions. The term is not defined in any other Queensland legislation where it is used, including the *Child Protection Act 1999*, *Commission for Children and Young People and Child Guardian Act 2000* and the *Public Health Act 1995*, nor in the existing education portfolio legislation.

However, the Queensland Government notes the concerns raised by a range of stakeholders, including the Queensland Catholic Education Commission, Independent Schools Queensland, Associated Christian Schools and the Queensland Law Society about scope of the reporting requirement. The Queensland Government also notes the concerns raised by the Queensland Catholic Education Commission that it would be

compelled, under the provisions, to report consensual relationships between students in every instance. This was not the intention of the proposed provisions.

To address these concerns, the proposed amendment to be moved during consideration in detail will provide additional clarity around the reporting obligation by inserting into the Bill an inclusive statement of the circumstances in which sexual behaviour should be reported under the proposed mandatory reporting provisions. This will include circumstances where the student is the subject of bribery, coercion, threat, exploitation or violence, where there is an imbalance of power between the student and the other person involved in the behaviour or where there is a significant disparity in the intellectual capacity or maturity of the student and the other person involved in the behaviour.

The Queensland Catholic Education Commission and Independent Schools Queensland has indicated support for the proposed clarification.

The Committee has suggested the Bill define the term 'likely' sexual abuse. It is not considered necessary to define this term 'likely' as it has been judicially interpreted to mean 'more probable than not' and 'more than a real and substantial chance'.

The Committee also suggested the definition of 'sexual abuse' include 'grooming'. As identified above, it is not proposed to define the term 'sexual abuse'. It is also not considered appropriate to define grooming. An individual act of grooming behaviour is not sexual abuse of itself. It is an indicator that could lead a staff member to reasonably suspect a student is likely to be sexually abused.

It is expected that all schooling sectors will provide additional support to their staff members about the scope of their reporting obligations and indicators of sexual abuse through appropriate training and policy guidance. It is considered best that guidance about the indicators of sexual abuse and identification of grooming behaviour be addressed in training and resource material.

Recommendation 3 - the Committee recommends that clause 15, division 4, section 12M(a), which provides for the automatic revocation of an eligibility declaration for a holder of a declaration who is charged with a serious offence, be removed from the Bill.

Government response - Recommendation 3 is supported in part. It is proposed to provide that a person's eligibility declaration is not ceased upon a charge for a serious offence if the person to whom the eligibility declaration has been issued also holds registration or permission to teach under the *Education (Queensland College of Teachers) Act 2005* (QCT Act).

As indicated by the Committee, the existing provisions of the QCT Act will operate adequately to protect the safety of children if the person holds registration or permission to teach when they are charged.

Under the QCT Act, as amended by the Bill, a teacher charged with a serious offence will have their registration or permission to teach immediately suspended. If

convicted, the person becomes an excluded person, their registration or permission to teach would be cancelled and their eligibility declaration ceased.

If the person is not convicted of the serious offence, the Queensland College of Teachers (the College) must take disciplinary action against the person at the Queensland Civil and Administrative Tribunal (QCAT), based on their suitability to teach. QCAT has the power to cancel the person's registration or permission to teach and to prohibit the person from applying for registration or permission to teach in the future. If such an order is made, the person becomes an excluded person and their eligibility declaration would be ceased.

If the eligibility declaration of a teacher ceased upon a charge their registration would be immediately cancelled as they would become an excluded person. Due process, prescribed in the QCT Act, for considering the effect of the charge on the person's suitability could therefore not be followed.

However, where a person to whom an eligibility declaration has been issued does not also hold teacher registration or permission to teach, the Bill will continue to cease the declaration upon the charge for a serious offence. The person would need to re-apply for an eligibility declaration if the person wishes to seek teacher registration in the future.

This is considered appropriate as it gives the College the opportunity to consider the facts of the matter leading to the charge together with the person's previous criminal history to decide whether it is appropriate for the person to hold an eligibility declaration. It also maintains alignment with the other criminal history screening systems.

Where possible, the Queensland Government aims to ensure consistency across Queensland's criminal history screening processes, including the blue and yellow card systems for working with children and people with a disability and screening for teacher registration.

The eligibility declaration provisions in the *Commission for Children and Young People and Child Guardian Act 2000* and the *Disabilities Services Act 2006* provide for ceasing of the declaration upon a charge for prescribed offences. Deviation from these criminal history screening processes is only considered appropriate for registered teachers.

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 College not to grant an eligibility declaration. The Committee notes the concerns of the Legal Affairs, Police, Corrective Services and Emergency Services Committee in relation to appeal rights.

Government response - Recommendation 4 is not supported.

The Bill is aimed at protecting the best interests of children, which is of paramount importance to the Queensland 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 in Queensland schools.

As noted above, the Queensland Government's position is that where possible consistency between the three screening systems is maintained. The proposed eligibility declaration provisions align with the criminal history screening processes in the *Commission for Children and Young People and Child Guardian Act 2000* and the *Disabilities Services Act 2006* where there is no right of appeal for a person aggrieved by a decision to refuse an eligibility declaration.

In addition, the Queensland Government considers this administrative power in this case is sufficiently well defined and is subject to an appropriate level of review, being judicial review by the Supreme Court. Justification for not prescribing an appeal right from a decision to refuse an eligibility declaration is outlined in the Explanatory Notes to the Bill.

Recommendation 5 – the Committee recommends that a ‘show cause’ process aligned with existing College and QCAT show cause processes, rather than automatic cancellation of registration, be adopted for teachers practicing at the time of commencement of the amendments.

Government response – recommendation 5 is supported in part only in relation to those teachers with existing convictions, who were not sentenced to a term of imprisonment.

It was proposed to introduce amendments during consideration in detail to provide that a person who has been convicted of a serious offence, irrespective of the date of the conviction, is an excluded person under the QCT Act. This proposal would mean that all existing teachers who were convicted of a serious offence prior to commencement would have their registration cancelled.

There are ten registered teachers who have existing convictions for serious offences. Three of these teachers were sentenced to imprisonment and are not currently working in Queensland schools. The remaining seven teachers were not sentenced to imprisonment. All ten of these registered teachers have been considered through registration and renewal processes by the College to be suitable to teach under exceptional circumstances.

Under the proposed amendments, the seven teachers who were not sentenced to imprisonment would be able to seek an eligibility declaration and if the declaration were issued, would be entitled to re-apply for teacher registration. The three teachers who were imprisoned will have their registration permanently cancelled and be prohibited from ever applying for registration.

The Queensland Government considered the approach proposed in the Bill to be an appropriate measure, not only to ensure the protection of children in Queensland schools, and to uphold the standard of the teaching profession in Queensland, but importantly, to uphold public confidence in the teaching profession.

The Committee recommends that a show cause process be introduced rather than requiring teachers who had been previously assessed by the College to use the eligibility declaration process. This would only apply to the seven teachers who were

not sentenced to imprisonment. The approach proposed by the Committee is not considered unreasonable, particularly given most of the affected teachers did not have convictions recorded against them. It is therefore proposed to adopt this approach through amendments to be moved during consideration in detail.

The Bill will continue to provide for the cancellation of the registration of the three teachers who were sentenced to imprisonment, despite the College's previous position in relation to them. It will also provide for the cancellation of the registration of a teacher whose conviction only comes to the attention of the College after commencement, irrespective of the date of the conviction. This is considered appropriate given the policy objectives outlined above.

The Committee report also notes the concerns raised by a majority of members of the Legal Affairs, Police, Corrective Services and Emergency Services Committee about the implications for existing teachers because of the retrospective operation of the cancellation provisions. Legislation is considered to adversely affect the rights and liberties of an individual if it adversely affects rights and liberties, or imposes obligations, retrospectively. Legislation is only considered retrospective where it affects a person's rights prior to commencement.

The Government's position is that the amendments proposed to be moved during consideration in detail are not retrospective. The cancellation provisions apply to the existing registered teachers because of events that occurred prior to commencement (that is, their convictions for serious offences). The amendments do not operate retrospectively because they provide for the future operation of the cancellation provisions, based on those past events. This position is supported in the Federal Court decision of *La Macchia v Minister for Primary Industry* (1986) 72 ALR 23.

It is accepted that the amendments will impact on this small number of existing teachers - people who have been convicted prior to commencement of serious sexual or violent offences. The justification for the amendments is outlined above.

CLARIFICATION ON POINT RAISED BY THE COMMITTEE

Revocation of the eligibility declaration - the Committee sought clarification about the consequences of a revocation under clause 12E for a person charged but not subsequently convicted of a serious offence (page 3).

Government clarification - as advised to the Committee on 14 October 2011, the two year limitation on applying again for an eligibility declaration under section 12E(2) only applies when a person has made a previous eligibility application that has been refused by the College under section 12G. It does not apply to a person whose eligibility declaration is revoked under the proposed section 12M. Please note, the amendments to be moved during consideration in detail use the terminology that the eligibility declaration is 'ceased' under section 12M, rather than revoked. This aligns with language used in the *Children and Young People and Child Guardian Act 2000* and the *Disabilities Services Act 2006*.

If a person's eligibility declaration is ceased under the proposed section 12M, the person may re-apply at any time for another eligibility declaration, provided the

person meets the definition of an ‘eligibility applicant’ under the proposed new section 12D.

MATTERS RAISED BY THE COMMITTEE TO NOTE

Training - the Committee invites the Minister to note the views expressed about training staff members about the reporting obligations. The Committee notes that training is key to achieving the policy objectives of the Bill and notes the following matters for consideration:

- the Committee has concerns that the training proposed by the Department of Education and Training 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.
- attention is drawn 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.

Government response – Education Queensland already provides comprehensive training to state school staff. The training deals with issues such as identifying appropriate and inappropriate sexual behaviours and how to respond to those behaviours. Education Queensland will make its training materials available to the non-state school sector so that there can be consistency in training across both sectors.

Education Queensland staff are required to complete online Student Protection Training on commencing work in a state school. Training is targeted to the role of the staff member. Staff members are informed about the Student Protection Policy, which outlines required responses to suspicions of harm.

The amendments to the mandatory reporting requirements in the Bill will reinforce this policy requirement in legislation. A fact sheet detailing the new legislative requirement will be produced and made available to all employees via the Department’s website.

Education Queensland provides similar resources to the British Columbia training resource, to assist schools determine an appropriate response to student sexual behaviour. *Students’ sexual behaviour – a guide for schools* provides information to help school staff identify age appropriate sexual behaviours. The guide makes use of Family Planning Queensland’s *Traffic Lights Framework* to assist staff in identifying, assessing and responding to sexual behaviours ranging from normal and developmentally appropriate through to inappropriate or problematic. In addition, the *Principals’ Checklist: Managing Students’ Sexual Behaviour* provides a step by step procedure for principals to follow.

Prior to commencement of the mandatory reporting procedure, Education Queensland will review these resources and ensure they are included as a reference in the online Student Protection training.

Government's expectation is that, like state school staff, governing bodies and staff of non-state schools are to treat all suspicions of child sexual abuse and harm very seriously and with the highest priority.

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

The non-state sector will be given access to Education Queensland resources to assist in training staff to identify and respond to concerns about sexual abuse and other forms of harm.