



Education Legislation Amendment Bill 2012

Report No. 11
Education and Innovation Committee
October 2012

Education Legislation Amendment Bill 2012

Report No. 11

Education and Innovation Committee

October 2012

Education and Innovation Committee

Chair	Mrs Rosemary Menkens MP, Member for Burdekin
Deputy Chair	Mr Tim Mulherin MP, Member for Mackay
Members	Mr Steve Bennett MP, Member for Burnett Mr Mark Boothman MP, Member for Albert Mr Michael Latter MP, Member for Waterford Ms Anastacia Palaszczuk MP, Member for Inala Mr Michael Pucci MP, Member for Logan Mr Neil Symes MP, Member for Lytton
Staff	Ms Bernice Watson, Research Director Ms Emily Booth, Principal Research Officer Ms Carolyn Heffernan, Executive Assistant
Technical Scrutiny Secretariat	Ms Renee Easten, Research Director Ms Marissa Ker, Principal Research Officer Ms Tamara Vitale, Executive Assistant
Contact details	Education and Innovation Committee Parliament House George Street Brisbane Qld 4000
Telephone	+61 7 3406 7363
Fax	+61 7 3406 7500
Email	eic@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/eic

Acknowledgements

The committee thanks those who briefed the committee, made submissions, gave evidence and participated in its inquiry. In particular the committee acknowledges the assistance provided by the Department of Education, Training and Employment.

Contents

Contents	i
Abbreviations	ii
Glossary	ii
Chair’s foreword	iii
Recommendations	iv
1 Introduction	1
1.1 Role of the committee	1
1.2 Policy objectives of the Education Legislation Amendment Bill 2012	1
<i>e-kindy</i>	1
<i>National Professional Standards for Teachers</i>	2
<i>Mandatory reporting of likely future sexual abuse</i>	2
<i>Anniversary letters</i>	2
2 Examination of the Education Legislation Amendment Bill 2012	4
2.1 Policy issues	4
<i>e-kindy</i>	4
<i>National Professional Standards for Teachers</i>	6
<i>Mandatory reporting of likely future sexual abuse</i>	8
<i>Anniversary letters</i>	12
3 Fundamental legislative principles	15
3.1 The institution of Parliament	15
<i>Delegated legislative power subject to scrutiny by the Legislative Assembly</i>	15
Appendices	18

Abbreviations

EGPA	<i>Education (General Provisions) Act 2006</i>
QCEC	Queensland Catholic Education Commission
QTU	Queensland Teachers' Union of Employees
QLS	Queensland Law Society
SSDE	State Schools of Distance Education
The College	Queensland College of Teachers
QCT Act	<i>Education (Queensland College of Teachers) Act 2005</i>
IETIRC	The former Industry, Education, Training and Industrial Relations Committee

Glossary

National Partnership Agreement	One of the agreements made under the National Agreement on Federal Financial Relations, under which Australian government funds are provided to states or territories in return for implementation of agreed specific outputs or projects.
--------------------------------	--

Chair's foreword

This report presents a summary of the committee's examination of the Education Legislation Amendment Bill 2012.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, whether the legislation has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

The public examination process allows the Parliament to hear views from stakeholders they may not have otherwise heard from, which should make for better policy and legislation in Queensland.

The bill has four key objectives:

- enable State Schools of Distance Education to deliver an e-kindy program to eligible children
- allow Queensland to adopt new national professional standards for teachers
- ensure that teachers who fail to report likely future sexual abuse of a student will not be subject to criminal sanctions
- remove the requirement that students permanently excluded from state schools receive annual written notice that they may make a submission to have the exclusion revoked.

The committee makes four recommendations, including that the Bill be passed.

On behalf of the committee I thank those individuals and organisations who lodged written submissions on this Bill, and others who have informed the committee's deliberations: officials from the Department of Education, Training and Employment, the committee's secretariat, and the Technical Scrutiny of Legislation secretariat.

I commend the report to the House.



Mrs Rosemary Menkens MP
Chair

[October, 2012]

Recommendations

Recommendation 1 **3**

That the Education Legislation Amendment Bill 2012 be passed.

Recommendation 2 **6**

The committee recommends that the Department of Education, Training and Employment ensure that training and resource materials designed to support school staff meet their obligation to report possible sexual abuse, should take account of any additional challenges faced by school staff interacting with students through distance education.

Recommendation 3 **12**

The committee recommends that during the second reading debate on the Education Legislation Amendment Bill 2012, the Minister for Education, Training and Employment outline the disciplinary process that would apply in the event of school staff failing to report the likelihood of future sexual abuse.

Recommendation 4 **14**

The committee recommends that the Minister for Education, Training and Employment provide the Parliament with details of the current approach to case management of excluded students within Queensland state schools.

1 Introduction

1.1 Role of the committee

The Education and Innovation Committee (the committee) was established by resolution of the Legislative Assembly on 18 May 2012. It consists of government and non-government members.

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill, and
- the application of the fundamental legislative principles to the Bill.

The Education Legislation Amendment Bill 2012 (the Bill) was referred to the committee on 21 August 2012, and the committee is required to report to the Legislative Assembly by 29 October 2012.

The committee was briefed by the Department of Education, Training and Employment (the department) and received eight submissions from stakeholders (see Appendix A). The committee held a public hearing on 12 October 2012 at Parliament House, and heard from witnesses representing three organisations (see Appendix B). The committee also considered the 2011 report of the former Industry, Education, Training and Industrial Relations Committee and submissions to that Committee's 2011 Inquiry relating to the mandatory reporting provisions of this Bill. Transcripts of briefings by the department, the submissions received and accepted by the committee and the public hearing are published on the committee's webpage at www.parliament.qld.gov.au/eic.

1.2 Policy objectives of the Education Legislation Amendment Bill 2012

The Bill would amend legislation to:

- enable State Schools of Distance Education to deliver an e-kindy program to eligible children
- allow Queensland to adopt new National Professional Standards for teachers
- ensure that teachers who fail to report likely future sexual abuse of a student will not be subject to criminal sanctions
- replace the requirement that students permanently excluded from state schools receive annual written notice that they may make a submission to have the exclusion revoked, with advice given at the time of exclusion and online.

e-kindy

e-Kindy is a new initiative established in the context of the National Partnership Agreement for Early Childhood Education, under which Queensland agreed to provide universal access to quality early childhood education. The bill enables e-kindy (digital, teacher-directed learning programs) to be delivered by parents and teachers to children who live in a remote location, have medical issues or an itinerant lifestyle.

The program is delivered via the internet and, like other kindergarten programs, helps prepare children for their first year of school. E-kindy would be provided at no cost to eligible children,

by State Schools of Distance Education (SSDE). The Bill amends the Education (General Provisions) Act 2006 (EGPA) to enable e-kindy to be delivered by SSDE. Under the EGPA as it stands, state schools are not able to deliver programs to children younger than school age.

National Professional Standards for Teachers

National Professional Standards for Teachers have been developed in the context of the National Partnership Agreement on Improving Teacher Quality. National standards provide consistent processes and standards for teacher registration and accreditation of courses for initial teacher education across Australia. They state what teachers are expected to know and be able to do at four career stages: graduate, proficient, highly accomplished and lead.¹ National standards would improve the mobility of teachers between states.

Professional standards are currently used in registration of teachers and for approving initial teacher education courses in Queensland. The 'Professional Standards for Queensland Teachers' are developed, maintained and amended by the Queensland College of Teachers (the College) under the *Education (Queensland College of Teachers) Act 2005* (QCT Act). This Act is to be amended to allow the College to adopt the national standards.

Mandatory reporting of likely future sexual abuse

The Bill's provisions in respect of school staff who fail to report the likely future sexual abuse of a student results from an issue that arose after the 2011 amendments to the EGPA expanding mandatory reporting requirements. Those amendments required school staff to report when they suspect (or become aware) that a student has been sexually abused by any person (and not just by a person in the school setting), and included mandatory reporting of a suspicion that abuse was 'likely' to occur in future.

The Explanatory Notes to the ELAB state that amendments were made to the 2011 bill prior to its passing, to the effect that failure to report likely abuse was intended to be dealt with by the education sector (for example via disciplinary action) and not criminal charges. However the amendments did not fully achieve this intent and as the (unproclaimed part of the) EGPA stands now, school staff could still be charged under the Queensland Criminal Code and face up to a year in prison if they failed to report.

Subordinate legislation (SL 70 of 2012) was considered by the committee on 1 August 2012. It delayed commencement of the new mandatory reporting provision of the EGPA for this reason, with a view to amending the EGPA accordingly.

The ELAB amends the EGPA to ensure that section 204 of the *Criminal Code* does not apply to failure to report a likely abuse.

Anniversary letters

Finally, the Bill seeks to change procedures relating to students who are excluded from state schools. The EGPA requires an annual notice be sent to students that have been permanently

¹ Australian Institute for Teaching and School Leadership, National Professional Standards for Teachers, February 2011, p1

excluded from a school, to advise they may apply to have the exclusion decision revoked. The notice is required to be sent until the student reaches 17 years of age.

The effectiveness of these notices is in question as many students will be unlikely to seek a revocation of the exclusion decision, if they have, for example, left the local area or settled in a different school.

The Bill amends the EGPA to remove the annual notice requirement, with a view to administrative processes being implemented to improve the effectiveness of advice to excluded students and improve efficiency within the department.

Recommendation 1

That the Education Legislation Amendment Bill 2012 be passed.

2 Examination of the Education Legislation Amendment Bill 2012

2.1 Policy issues

e-kindy

The e-kindy proposal appears to have broad support in the community, and the only concerns raised relate to practical implementation issues. The committee noted a request from one submitter, the parent of a young child residing in a community one hour from a kindergarten: *“Please don’t delay in implementing e-kindy”*. The same submitter stated *“I believe that a good kindergarten program provides children with the appropriate skills and a positive attitude to school. With the right start children have the opportunity to do their very best in our education system”*.² The evidence supports this view, and is the rationale for Queensland’s, and indeed the nation’s, commitments in respect of early years education.³

Eligibility requirements

The committee noted the eligibility requirements for e-kindy, including that students must be Australian citizens or permanent residents, or children of Australian citizens or permanent residents. This is consistent with eligibility requirements under the EGPA for free education at state schools generally⁴, though provisions exist in that Act for charging fees for students who do not meet that eligibility requirement.⁵ It would seem that this should also be applicable to students of e-kindy delivered by SSDE.

Committee comment: The committee is interested in the eligibility requirements, given that the program, being delivered online, would appear to not warrant significant costs. The Explanatory Notes state that the cost of implementing e-kindy will be met from the Australian Government funding under the National Partnership for Early Childhood Education, but do not quantify those costs.

The Committee sees that e-kindy could be beneficial to children who are not Australian citizens or permanent residents, or children of Australian citizens or permanent residents, including, in the context of supporting regionalisation, children of workers from other countries living in mining communities, refugees whose residency status is still unresolved, or those who are unable to access face-to-face kindy programs for a range of other reasons.

Enrolment status

Both the Queensland Catholic Education Commission (QCEC) and the Queensland Teachers’ Union (QTU) raised the matter of whether students enrolled in e-kindy should be considered as students of the seven Schools of Distance Education (SSDE), which will be delivering the

² Mrs Julie Barnett, submission 8

³ National partnership Agreement on Early Childhood Education
http://www.federalfinancialrelations.gov.au/content/national_partnership_agreements/education/early_childhood/national_partnership.pdf

⁴ EGPA, s50

⁵ EGPA, s51

program. Section 419H of the Bill would make clear that these students are not enrolled in either a school or a program of distance education. QCEC were concerned that there be no misunderstanding that e-kindy was part of formal schooling.

Advice from the department is that for the most part, kindergarten programs (ie. for children in the year before formal school starts with Prep) are delivered by non-state organisations. The Bill would not preclude any other provider from providing a similar program.⁶

On the other hand, QTUs position was that e-kindy students should be considered as students, because student numbers affect resourcing of the SSDE. The concern was that existing resources would be stretched with the implementation of an additional program. “The issue with the program... is the use of facilities within the schools of distance education need to be taken into consideration to some degree in terms of adequately ensuring additional resources are there at the schools... as they need to be”.⁷

Committee comment: The committee considered this concern, and noted the department’s advice that excluding such students from the count – and from fee provisions, or provisions around exclusions and suspensions – was the clear intent. This aligns with the few other situations in which state schools deliver pre-Prep programs (for example, in some remote Indigenous communities).

The committee noted that resourcing has not been identified as a concern during the piloting of the program. The program being delivered online suggests a minimal impact on the schools resourcing. Without any evidence that it is likely to be an issue, the committee supports the intent of the Bill in this regard.

Mandatory reporting requirement

Another issue in relation to e-kindy was the extension of the mandatory requirement that school staff report sexual abuse or the likelihood of future sexual abuse of school children, to e-kindy students. QCEC raised the concern that the electronic delivery of the program poses some additional challenges to school staff fulfilling the mandatory reporting requirement over and above those experienced in a face-to-face setting.⁸

In response to those concerns, the department advised that school staff, including SSDE staff, receive training and policy material to support them fulfil this responsibility.

The department also advised, in a separate response to a committee query, that the mandatory reporting responsibility was extended to all other pre-prep services delivered by the state, despite such children not being considered enrolled at school. This is a child protection measure that is within the jurisdiction of the state. Other child care services are in the main regulated under national law, and beyond the scope of the EGPA.

Committee comment: The committee is satisfied that the mandatory reporting requirements should extend to students of e-kindy, and asks that the department ensure that recognition of

⁶ Department response to submissions, p1.

⁷ Hansard, 12 October 2012. Public Hearing - Education Legislation Amendment Bill 2012, p6, Mr Bevis.

⁸ QCEC submission, p1.

any unique challenges relating to distance education be given in training and resource materials supporting school staff to meet that requirement.

Recommendation 2

The committee recommends that the Department of Education, Training and Employment ensure that training and resource materials designed to support school staff meet their obligation to report possible sexual abuse, should take account of any additional challenges faced by school staff interacting with students through distance education.

The committee supports the e-kindy proposal, and, in the context of Queensland's geographically diverse population, commends the government on an innovative approach to meeting Queensland's commitment to provide universal access to quality early childhood education.

It also notes that the model could prove valuable in other circumstances, including in urban areas for families who find themselves isolated for a range of reasons.

National Professional Standards for Teachers

The Bill amends the *Education (Queensland College of Teachers) Act 2005* (QCT Act) to permit Queensland to adopt national standards in lieu of the current Queensland standards.

Implementation of national professional standards for teachers is one of the strategies agreed to under the National Partnership Agreement on Improving Teacher Quality. The Australian Institute for Teaching and School Leadership developed National Professional Standards for Teachers in December 2010, which were endorsed by education ministers from all Australian jurisdictions.

National standards provide consistent processes and standards for teacher registration and accreditation of courses for initial teacher education across Australia. They state what teachers are expected to know and be able to do at four career stages: graduate, proficient, highly accomplished and lead.⁹ National standards would improve the mobility of teachers between states.

Professional standards are currently used for provisional and full registration of teachers and for approving initial teacher education courses in Queensland. The current 'Professional Standards for Queensland Teachers' are developed, maintained and amended by the College under the QCT Act. This Act is to be amended to allow the College to adopt the national standards.

Queensland standards will continue to be used during 2012, with a transition to the national standards proposed during 2013.¹⁰

⁹ Australian Institute for Teaching and School Leadership, National Professional Standards for Teachers, February 2011, p1

¹⁰ Queensland College of Teachers, National Professional Standards <www.qct.edu.au/standards/#imp2> Site accessed 3 September 2012

The committee notes that the adoption of the standards is supported by a key union (the QTU, subject to consultation)¹¹, supported by QCEC and not opposed by the Independent Education Union of Australia. No concerns about the national standards themselves were raised with, or identified by, the committee during its inquiry. However a few implementation issues emerged:

Ministerial approval

Currently, the College develops professional standards without approval of the Minister.¹² If the Bill is passed as it stands, the College will only be able to adopt or develop standards other than the national professional standards, with ministerial approval.¹³

The QTU opposes this requirement, believing that the College must be independent of political control in order to fulfill its role and maintain confidence of the teaching and wider community¹⁴, and that the College should not have to “*keep running back to the minister for approval*”.¹⁵

The College itself, however, had no such concern and supported the need for ministerial approval of changes.¹⁶

The department confirmed that the requirement for ministerial approval was because the national professional standards are adopted as part of a national agreement.¹⁷ Queensland’s commitments under that agreement are made through the responsible minister (the Minister for Education, Training and Employment). Consequently, the minister must ensure that any change to Queensland’s standards are not inconsistent with Queensland’s national commitments.

The committee also considered this issue in the context of fundamental legislative principles (see section 3 of this report).

Section 4(2)(b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament. The committee considered whether incorporating standards made outside of Queensland, which can be amended by a body other than the Queensland Parliament, could be viewed as tending to undermine the institution of Parliament by effectively adopting as law, something that can be changed by another body outside of the Queensland Parliament and in effect, delegating the making of Queensland law to outside bodies.

Committee comment: In the context of implementing a national curriculum, national standards and portability across jurisdictions becomes common sense, and the intent of the Bill in this regard is supported.

¹¹ Hansard, Ms Leah Mertens, p6,

¹² *Education (Queensland College of Teachers) Act 2005* s 235.

¹³ Education Legislation Amendment Bill 2012 cl 21.

¹⁴ Queensland Teachers Union, submission 4, p5.

¹⁵ Hansard, Mr Daniel Bevis, p7.

¹⁶ Queensland College of Teachers submission, p1.

¹⁷ National Partnership Agreement on Improving Teacher Quality

The committee sees that the requirement for ministerial approval is sensible on a practical level. It enables the minister to ensure Queensland's commitments under the national agreement are met, while ensuring an Act of the Queensland Parliament is not required in the event the standards change. Section 3 of this report discusses in more detail the question of whether the legislation aligns with fundamental legislative principles, including whether the proposed approach has sufficient regard to the institution of Parliament.

Consultation

The QTU, in its written submission, raised concerns that it, and other relevant unions, were not consulted during development of the Bill; and sought to be consulted before national professional standards for teachers are adopted or implemented in Queensland.

The department contraindicated this, advising the committee that the QTU and other stakeholders were consulted when developing Queensland's Implementation Plan for the National Partnership Agreement on Improving Teacher Quality (the national agreement which included adoption of the national standards).¹⁸

At the public hearing, the QTU advised that it had reached agreement with the government, subject to a ballot process underway in respect of the Teachers' Certified Agreement, on "*consult(ing) prior to any implementation of initiatives arising from the Australian Institute for Teaching and School Leadership (AITSL) agenda, including those matters linked to improving teacher quality*".¹⁹

Committee comment: The Committee is pleased to note that the concerns of the QTU about consultation appear to have been resolved.

Mandatory reporting of likely future sexual abuse

The Bill seeks to clarify beyond all doubt that staff of Queensland government and non-government schools who fail to meet their mandatory reporting obligations in respect of a suspected likelihood of future sexual abuse, will not be liable for criminal charges.

The mandatory reporting provisions of the EGPA have not yet commenced. While it was always intended that criminal charges not apply to school staff in this situation, it has been identified that section 204 of the Criminal Code could apply. This carries a maximum penalty of one year imprisonment. Section 204 reads:

Disobedience to statute law

- (1) *Any person who without lawful excuse, the proof of which lies on the person, does any act which the person is, by the provisions of any public statute in force in Queensland, forbidden to do, or omits to do any act which the person is, by the provisions of any such statute, required to do, is guilty of a misdemeanour, unless some mode of proceeding against the person for such*

¹⁸ Department response to submissions, p11

¹⁹ Hansard, EIC public hearing 12 October 2012, Ms Leah Mertens, p6

disobedience is expressly provided by statute, and is intended to be exclusive of all other punishment.

(2) *The offender is liable to imprisonment for 1 year.*

The Bill would “expressly provide by statute” that this section of the *Criminal Code* would not apply. While the Bill does not specify what action might be taken against a staff member who failed to meet their obligations to report likely future sexual abuse, the Minister confirmed in his introductory speech that “*failure to comply with this specific obligation was to be dealt with by the education sectors through disciplinary action in appropriate instances*”.²⁰

The rationale for the amendments contained in this Bill is that it is important to be clear that criminal sanctions will not apply, to minimise the risk of inappropriate and over-reporting of low-level concerns by school staff.

It must be noted that criminal sanctions may still apply to school staff who fail to report a suspected *actual* sexual abuse of a student (as opposed to this provision relating to the *likelihood* of abuse occurring in the *future*).

The relevant unions – QTU and the Independent Education Union of Australia (Queensland and Northern Territory Branch) (IEUA), along with the advocacy and support group Bravehearts, support the amendment.

The Queensland Law Society (QLS) supports the amendment, but believes the government should go further and remove criminal sanctions for against school staff who fail to report a suspicion of actual sexual abuse of students. Reasons for this view relate to the definitions of sexual abuse in the EGPA, and are discussed on p15 of this report.

QLS believes that failure to report suspected actual sexual abuse should, as will be the case in respect of likely future sexual abuse, also be dealt with as a question of professional conduct.

The government’s position on this is that retaining a criminal sanction in respect of failing to report suspected sexual abuse will “*provide a strong deterrent to the cover up of sexual abuse within schooling systems and school communities and ensure timely responses to concerns about sexual abuse*”.²¹ This reflects that the rationale for the legislation and the reporting process contained within it was to address some issues that had arisen within the non-government school sector.²²

Definitions of sexual abuse

In considering this element of the Bill, the committee reviewed the report of, and submissions to, the former Industry, Education, Training and Industrial Relations Committee (IETIRC) Inquiry into the Education and Training Legislation Amendment Bill 2011, which introduced the

²⁰ Hansard, 24 August 2012, Introduction of Education Legislation Amendment Bill, p1531

²¹ Explanatory Notes, Education and Training Legislation Amendment Bill 2011, p8
http://www.legislation.qld.gov.au/Bills/53PDF/2011/EducTrainLAB11_AinCE.pdf

²² Public briefing to the Industry, Education, Training and industrial Relations Committee, 24 August 2011, Education and Training Legislation Amendment Bill 2011, p5
<http://www.parliament.qld.gov.au/documents/committees/IETIRC/2011/ETLAB/pbt-24Aug11.pdf>

mandatory reporting requirement in question. In its report, the IETIRC expressed concerns that the failure to report abuse or the likelihood of future abuse could result in school staff facing criminal charges. As well as the impact on individuals, the risk that this might increase the amount of inappropriate reporting was identified. The IETIRC remarked in its report that if the Government adopted the Committee's recommendation to more clearly define abuse and likely abuse in the Act, this risk would be reduced.²³

That committee's recommendation that there be a clearer definition of sexual abuse and likely sexual abuse in the Act was informed by the QLS submission to that Inquiry, and the Government did accept this recommendation in part, advising as follows:

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'.²⁴

However, despite the inclusion of a definition in the Act, ongoing concerns have been raised by the QLS in its submission relating to this current Bill. While the concerns are broader than the scope of this Bill, the committee believes they warrant some discussion given that they continue to be a concern.

The definitions of both 'abuse' and 'sexual abuse' are seen to be vague, and "very difficult to be regarded as likely to be interpreted and enforceable in due course. It refers to concepts and phrases that are really unknown in terms of legislative provisions and legislative interpretation. One can imagine great difficulty in a court ultimately interpreting the meaning of things such as 'power' 'coerces' 'exploits'".²⁵ The QLS recommends a more precise statement of what sexual abuse is, so that it is clearer to school staff when they need to report in the first instance. "We feel that...teachers, who are concerned about the prospect of committing a criminal offence for

²³ Industry, Education, Training and Industrial Relations Committee, November 2011, p15.

<http://www.parliament.qld.gov.au/documents/committees/IETIRC/2011/ETLAB/rpt-005-7Nov2011.pdf>

²⁴ Government Response to the Industry, Education, Training and Industrial Relations Committee report no. 5, pp. 1-2

<http://www.parliament.qld.gov.au/documents/committees/IETIRC/2011/ETLAB/gr-16Nov2011-ETLAB.pdf>

²⁵ Hansard, 12 October 2012, Education Legislation Amendment Bill public hearing, Mr Glen Cranny, p2

suspected abuse so defined, will take the default position of simply reporting it as a matter of course". In the absence of such clarity, the QLS submits that criminal sanctions ought not to be imposed.

QCEC indicated an understanding of that position, though pointed out that the current definition is proving useful in terms of training school staff about when to report.²⁶

QLS also raised the potential of an unintended consequence of the mandatory reporting provision and the definitions applicable to it, whereby students are deterred from confiding in teachers or school counselors about personal relationships. The broad definition of sexual abuse could require that counselors are required to report the relationship. However, the department advises that a requirement to report suspected sexual abuse has been in place for some time in state schools, and the legislation simply mandates what was already the practice in state schools to apply more broadly.²⁷ It also notes that the mandatory reporting requirements, using the definitions in question, have been in place since July 2012 and the department has not been advised of any issues with interpretation and implementation to date.

Committee comment: It would seem that the definition is being considered from two different perspectives: a legal interpretation by a court in the event of criminal charges being brought to bear, and a practical interpretation to support school staff who are the subject of this legislation, in terms of being in a unique position to identify possible sexual abuse of a student.

The committee tends towards the view that of primary importance is that school staff are supported to know when to report. The advice from QCEC is that the definitions as they stand are useful in that regard, and the advice from the department is that there have been no issues raised to date (presumably because such concepts as power imbalances, coercion and exploitation are more readily understood in a human services field). The role of the courts and its judges is, as the committee understands it, to look at each case on its merits and make the appropriate determinations. Should a difficulty arise for a court in doing so, it might be appropriate to review the current definitions.

As a general comment, the committee considers that school staff should be supported in their unique position through professional development, rather than criminalisation.

Ultimately though, this matter is beyond the scope of the Bill and thus the committee's terms of reference, and so the committee does not make any recommendations in this respect. Rather, it reports for the Parliament's benefit that the issue has been raised during this Inquiry.

²⁶ Ibid, Mr Mike Wilkinson, p9

²⁷ Department response to submissions, Education Legislation Amendment Bill, p7
<http://www.parliament.qld.gov.au/documents/committees/EIC/2012/ELAB/gr-10Oct2012-ELABsubs.pdf>

Disciplinary process

Bravehearts has commented that there should be an appropriate avenue for disciplinary action in appropriate cases, where school staff fail to report likely future sexual abuse.²⁸

The QCEC recommends that the Minister for Education, Training and Employment should reiterate the intention that failure to report likely future sexual abuse will be addressed through disciplinary action, rather than criminal charges.²⁹

Committee comment: The committee notes that the disciplinary process that would apply to school staff (including teachers) who fail to report likely future sexual abuse has not been explained in the public arena in the context of the proposed amendments.

Recommendation 3

The committee recommends that during the second reading debate on the Education Legislation Amendment Bill 2012, the Minister for Education, Training and Employment outline the disciplinary process that would apply in the event of school staff failing to report the likelihood of future sexual abuse.

Anniversary letters

The EGPA currently requires that an annual notice be sent to students that have been permanently excluded from a state school, to advise they may apply to have the exclusion decision revoked. The notice is required to be sent until the student reaches 17 years of age. A student has 30 days from the date of the notice to apply for a revocation of the exclusion decision. Non-government schools have their own processes in respect of excluded students, and are not affected by this proposal.

The effectiveness of the annual notices for excluded state school students is in question. Many students will have since left the local area or settled in a different school, and are therefore unlikely to seek revocation of the exclusion decision.³⁰

The Bill amends the EGPA to remove the annual notice requirement. Instead, new processes would be implemented to improve the effectiveness of advice to excluded students and improve efficiency within the department.

New processes would include advising the student at the time of exclusion of their right to periodically apply for a revocation; and placing advice about review rights including revocation, on the department's website.

²⁸ Bravehearts, submission 6
<http://www.parliament.qld.gov.au/documents/committees/EIC/2012/ELAB/submissions/Sub006-Bravehearts.pdf>

²⁹ QCEC, submission 3, pp2-3
<http://www.parliament.qld.gov.au/documents/committees/EIC/2012/ELAB/submissions/Sub002-QldCatholicEdCommission.pdf>

³⁰ Explanatory Notes, p4. <http://www.legislation.qld.gov.au/Bills/54PDF/2012/EducLegAmb12E.pdf>

The committee heard from the department that since 2006, it has “*significantly enhanced case management of excluded students. Regional case managers are appointed to work with all excluded students to facilitate the student’s successful re-engagement in education or another eligible option such as TAFE. Case managers also follow up with the student within one month of the student’s enrolment in a new school or other education or training program, and again within six months to ensure the student’s continued engagement. Case managers are able to assist students and their parents understand their review rights and capacity to seek a revocation of the decision. Case managers also work with child safety officers with children in the care of the state*”.³¹

Concerns were raised by the QLS about removing the requirement to send anniversary letters to advise excluded students of their right to apply to have the exclusion decision revoked.

The QLS submitted that review processes are very complicated, given the large amount of discretion allowed in making the original decision. Consequently, quite complicated submissions for revocation are required, and they have a large failure rate.³² This seems to be supported by department advice that of the 25 appeals from 2009 to 2011, only six were successful.³³ It is important to note though, that 2800 students were excluded over that time.³⁴ Anniversary letters were, presumably, sent to those whose anniversary dates fell within that period. This suggests a very low response rate to anniversary letters, raising questions about their effectiveness.

The QLS, while submitting that anniversary letters should be retained, also spoke about the fact that the 30 day period in which a young person can apply for a revocation of the decision may not coincide with the person having access to the necessary support to make a submission, or that other factors in their life may mean the timing is not right to re-engage with education; and that the focus of the legislation should be to make the appeals process more, not less, accessible. This could be achieved by appeals being possible all year round, rather than confined to a 30 day period each year.³⁵

Committee comment: The Bill does not make any changes to the annual window during which appeals can be made. It simply removes the requirement that annual advice be provided when that 30 day window commences. The committee notes the department’s increased focus on case management in state schools, and would hope that advice to students of their right to appeal is a feature of the case management process in all cases. The committee position is that the enhanced case management approach, along with the alternative means of advising excluded students of their appeal rights as proposed by the department, are likely to be more effective than anniversary letters in supporting students to re-engage with education. The

³¹ Department advice on submissions, p12.

<http://www.parliament.qld.gov.au/documents/committees/EIC/2012/ELAB/gr-10Oct2012-ELABsubs.pdf>

³² Hansard, Education Legislation Amendment Bill 2012, public hearing 12 October 2012, Mr Jonathan West, p3

³³ Hansard, Education Legislation Amendment Bill 2012, public briefing 12 September 2012, p6, Ms Julie Grantham.

³⁴ Ibid.

³⁵ Hansard, Education Legislation Amendment Bill 2012, public hearing 12 October 2012, Mr Jonathan West, p3

committee also notes that cultural competency should be a feature of case management. The committee notes the advice of QCEC (in respect of sexual abuse, but extrapolated more broadly here) that Catholic schools tend to have a strong focus on pastoral care, early intervention and guidance to students.³⁶

Recommendation 4

The committee recommends that the Minister for Education, Training and Employment provide the Parliament with details of the current approach to case management of excluded students within Queensland state schools.

³⁶ Hansard, 12 October 2012, Education Legislation Amendment Bill public hearing, Mr Mike Wilkinson, p10

3 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

3.1 The institution of Parliament

Delegated legislative power subject to scrutiny by the Legislative Assembly

Section 4(2)(b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament.

The Bill replaces current s.235 of the QCT Act to provide that the College must adopt the national standards or, with the approval of the Minister, adopt or develop standards other than the national professional standards.³⁷ Any standards adopted or developed under that section (ie. standards other than the national standards) may be amended by the College.

The genesis for these proposed changes is discussed in the Explanatory Notes at pages 2-3:

The Melbourne Declaration on Education Goals for Young Australians was made by the Ministerial Council for Education, Early Childhood Development and Youth Affairs (MCEEDYA) in December 2008. MCEEDYA released its Four Year Plan to support the Declaration in March 2009, which includes the National Partnership Agreement on Improving Teacher Quality (the National Agreement).

One of the agreed strategies under the National Agreement was implementing national professional standards for teachers in all jurisdictions. Education Ministers endorsed the National Professional Standards for Teachers (National Professional Standards) developed by the Australian Institute for Teaching and School Leadership (AITSL) in December 2010.

Under the Education (Queensland College of Teachers) Act 2005 (QCT Act), the Queensland College of Teachers (QCT) has a function to develop, maintain and amend professional standards. In accordance with this function, the QCT has developed the Professional Standards for Queensland Teachers (the Queensland Standards).

The QCT Act does currently not permit the QCT to adopt standards developed by other entities, including the National Professional Standards. The Act needs to be amended to facilitate the QCT adopting the National Professional Standards in lieu of the current Queensland Standards.

³⁷ in ss.235(1) of the QCT Act

Professional standards articulate what teachers are expected to know and be able to do during stages of their career and are used for the QCT's functions of registering teachers for provisional and full registration and approving courses of initial teacher education. The Graduate and Proficient levels of the National Professional Standards set out the requirements for beginning teachers to gain provisional registration to enter the profession, and for teachers with the requisite experience to gain full registration.

Adoption of the National Professional Standards will reduce red tape by improving the mobility of teachers throughout the nation and requiring the same standards and consistent processes to achieve teacher registration and accreditation of courses of initial teacher education in all jurisdictions.

The Notes also advise that: *The Bill provides the QCT with the function to develop or adopt other professional standards in the event the National Professional Standards are not maintained in the future. When adopted by the QCT, the National Professional Standards will replace the current Queensland Standards.*

The preceding paragraph from the Explanatory Notes suggests that adopting the national standards in replacement of the current Queensland standards is the assumed option for the College and that developing or adopting other professional standards is the 'fall-back position' should the national standards not be maintained in the future. Department advice confirms this.³⁸ The net effect of this is that the standards adhered to by the College will originate from outside of Queensland and will include any subsequent amendments made to the national standards as occur from time to time at a national level.

The Queensland Parliament's former Scrutiny of Legislation Committee had raised concerns where Queensland law incorporated by reference various external documents that are able to be changed externally. That committee considered that because these documents were being incorporated by reference into Queensland law but were made outside of Queensland, and could be amended by a body other than the Queensland Parliament, they could be viewed as tending to undermine the institution of Parliament by effectively delegating the making of Queensland law to outside bodies.³⁹ That committee referred to Parliament '*the question of whether the incorporation of various extrinsic documents in ambulatory form has sufficient regard to the institution of Parliament.*'

The former Scrutiny of Legislation Committee also found (in the context of national scheme legislation) drafting that permits modifications to address local issues to be less objectionable.⁴⁰ Given section 235(1)(b) would allow the College to adopt or develop, with the approval of the Minister, standards other than the national standards, there appears to be (presumably limited) scope for the College to step away from the national standards if they proved to be unsuitable for local conditions in some respect.

³⁸ Department advice on submissions, p11

³⁹ *Alert Digest* 9/2003, pp. 33-36.

⁴⁰ *Alert Digest* 2005/12, p. 20; AD 2005/9, p. 8; AD 2005/8, pp. 4-6; AD 2004/5, pp. 20-21; AD 2003/6, pp. 17-18; AD 2002/11, pp. 35-36.

The goal of requiring state bodies to adopt national standards is to ensure uniformity of rights, obligations and expectations for (in this case) teachers across the nation which also facilitates the movement of teachers from one teaching jurisdiction to another. National standards ensure that the professional standards expected of teachers for registration in one state would typically be, in jurisdictions where the national standards have been wholly or substantially adopted, much the same as in other jurisdictions. If individual jurisdictions use different standards to the national ones, then the smooth transition of teachers across jurisdictions becomes more difficult.

Committee comment: The proposed new section 235 of the QCT Act appears to strike an appropriate balance between practicality and public interest. It effectively obliges the College to adopt the national standards, which fulfils Queensland's commitment under the national agreement; whilst simultaneously providing scope to adopt or develop standards other than the national standards if that is required to meet Queensland's particular needs.

Whether 'other' (non-national) standards which may be adopted under section 235 in the future will have sufficient regard to the institution of Parliament will depend upon whether they are ultimately incorporated in a Regulation and thus subject to the scrutiny of, and potential disallowance by, the Queensland Parliament.

Appendices

Appendix A – List of Submissions

Sub #	Submitter
1	Commission for Children and Young People and Child Guardian
2	Queensland Catholic Education Commission
3	Queensland College of Teachers
4	Queensland Teachers Union of Employees
5	Queensland Law Society
6	Bravehearts Inc.
7	Mrs Julie Barnett
8	Independent Education Union Qld-NT Branch

Appendix B – Witnesses at public hearing – 12 October 2012

Witnesses
<u>Queensland Law Society</u> Mr Glen Cranny, Chair, Criminal Law Committee, Ms Raylene D’Cruz, Policy Solicitor Mr Matt Dunn, Principal Policy Solicitor Mr Jonathan Ward, Member, Children’s Law Committee
<u>Queensland Teachers’ Union of Employees</u> Mr Daniel Bevis, Acting Industrial Advocate Ms Leah Mertens, Research Officer/Assistant Secretary, Professional Issues
<u>Queensland Catholic Education Commission</u> Ms Jane Slattery, Executive Officer, Education Programs Mr Mike Wilkinson, Executive Secretary