



# **Education Legislation Amendment Bill 2013**

**Report No. 16**  
**Education and Innovation Committee**  
**July 2013**

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## Education and Innovation Committee

Chair	Mrs Rosemary Menkens MP, Member for Burdekin
Deputy Chair	Mrs Desley Scott MP, Member for Woodridge
Members	Mr Steve Bennett MP, Member for Burnett Mr Mark Boothman MP, Member for Albert Mr Ray Hopper MP, Member for Condamine Mr Michael Latter MP, Member for Waterford Mr Neil Symes MP, Member for Lytton
Committee Staff	Ms Bernice Watson, Research Director  Ms Emily Booth, Principal Research Officer Mr Gregory Thomson, Principal Research Officer Ms Carolyn Heffernan, Executive Assistant Ms Debbie Mohi, Executive Assistant
Technical Secretariat	Scrutiny Ms Renee Easten, Research Director  Ms Marissa Ker, Principal Research Officer Mr Karl Holden, 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 7070
Email	<a href="mailto:eic@parliament.qld.gov.au">eic@parliament.qld.gov.au</a>
Web	<a href="http://www.parliament.qld.gov.au/eic">www.parliament.qld.gov.au/eic</a>

## 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.

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## Abbreviations and definitions

EGPA	Education (General Provisions) Act 2006
ISQ	Independent Schools Queensland
NSSAB	Non-State Schools Accreditation Board
Prep	Preparatory Year
QCEC	Queensland Catholic Education Commission
QTU	Queensland Teachers' Union
the Bill	Education Legislation Amendment Bill 2013
the committee	Education and Innovation Committee
the Convention	Convention on the Rights of the Child
the department	Department of Education, Training and Employment

## Chair's foreword

This report presents a summary of the committee's examination of the Education Legislation Amendment Bill 2013.

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 it has sufficient regard to rights and liberties of individuals and to the institution of Parliament. A number of potential issues were identified and examined during the course of our inquiry.

The public examination process allows the Parliament to hear from the public and other stakeholders they may not have otherwise heard from, which should make for better policy and legislation in Queensland. It is pleasing to note the general support provided in submissions for this Bill.

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

I commend the report to the House.



Rosemary Menkens MP  
**Chair**

July 2013

## Recommendations

**Recommendation 1** **2**

The committee recommends that the Education Legislation Amendment Bill 2013 be passed.

**Recommendation 2** **10**

The committee recommends that the Minister for Education, Training and Employment confirms in the House that fee charging practices for students listed on page two of the explanatory notes will not change as a result of the Education Legislation Amendment Bill 2013.

**Recommendation 3** **11**

The committee recommends that the Minister for Education, Training and Employment develop and publish a fact sheet in simple English and relevant community languages on the Department of Education, Training and Employment's website to outline the process the department can take in the event that tuition fees for certain international students are not paid, including:

- when and how enrolment can be cancelled,
- who the parent or carer should contact if they are unable to pay tuition fees or have received a cancellation notice, and
- that a student can be re-enrolled upon payment of outstanding fees.

**Recommendation 4** **12**

The committee recommends that the Minister for Education, Training and Employment amends the Education Legislation Amendment Bill 2013 to require that 14 days' notice be provided to fee-paying international students enrolled after commencement of the amendments.

**Recommendation 5** **13**

The committee recommends that the Minister for Education, Training and Employment amends the explanatory notes of the Education Legislation Amendment Bill 2013 to correct typographical errors, including:

- delete the first 'state school' from the last sentence in the last full paragraph on page 1,
- replace 'charges' with 'charged' in the second last bullet point on page 2, and
- insert the word 'than' between the words "rather" and "requiring" in the last sentence in the paragraph commencing "While the power..." on page 5.

## Points for clarification

### Point for clarification 1

5

The committee recommends that the Minister for Education, Training and Employment clarifies whether there are any circumstances under which it might be appropriate to offer a streamlined accreditation process for independent primary schools that currently offer Year 7 as primary education and have accreditation with the NSSAB for P-7 only, that wish to continue to offer Year 7 beyond 2015.

### Point for clarification 2

6

While acknowledging the high take up rate for the non-compulsory Prep year, the committee asks that the Minister for Education, Training and Employment advise the Education and Innovation Committee about non-participation in the Prep year, including:

- reasons why families do not send their children to Prep,
- any other patterns of non-participation such as (but not limited to) the geographical location of these families, and
- what measures are in place to engage with families who may not be aware of the benefits of Prep for their child.

### Point for clarification 3

10

The committee asks that the Minister for Education, Training and Employment clarify whether there are any safeguards in place to protect the enrolment status of the students listed on page two of the explanatory notes in the event of non-payment of fees.

### Point for clarification 4

10

The committee asks that the Minister for Education, Training and Employment clarify whether the outstanding \$1.5 million has been accrued by people other than children of parents that are required to enrol their children in school according to their current visa.





## 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, consisting of government and non-government members.

The Education Legislation Amendment Bill 2013 (the Bill) was referred to the committee on 16 April 2013, and the committee is required to report to the Legislative Assembly by 16 July 2013.

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.

### 1.2 Inquiry process

The committee was briefed by the Department of Training, Education and Employment (the department) on 18 April 2013 (see Appendix B). It wrote to stakeholders and advertised the inquiry on its webpage calling for submissions on 24 April 2013. Six submissions were received from stakeholders by the closing date of 24 May 2013 (see Appendix A). The transcript of the briefing and submissions received and accepted by the committee are published on the committee's webpage at [www.parliament.qld.gov.au/committees](http://www.parliament.qld.gov.au/committees).

### 1.3 Policy objectives of the Bill

The objectives of the Bill are to:

- support implementation of the move of Year 7 to secondary school from 2015;
- include the Prep year in a state school student's basic allocation; and
- allow for the cancellation of the enrolment of international students at state schools for non-payment of fees.<sup>1</sup>

### 1.4 Background

#### Year 7 to secondary school

From 2015, Year 7 will be considered a part of secondary school as part of the Flying Start education reforms. Year 7 in secondary school will be piloted in 20 schools before the transition formally takes place in 2015. Consultation on the move of Year 7 to high school commenced with the release of a Green paper in 2010 and White paper in 2011. The department's Flying Start program website explains why it is considered important that Year 7 moves to secondary school:

*Educators agree that young teenagers are ready for greater independence and the depth of learning that high schools provide, which is why in most other states and territories Year 7 is already the first year of high school... By 2015 Queensland Year 7 students will be in their eighth year of school, and this is the right year for high school to begin. In 2012 Queensland adopted the new Australian Curriculum for the subjects of English, mathematics and science. Every Australian school student will learn this core national curriculum. In high school, our Year 7 students will have access to specialist resources, such as science labs and science teachers.*<sup>2</sup>

<sup>1</sup> Explanatory notes, Education Legislation Amendment Bill 2013, p1

<sup>2</sup> Department of Education, Training and Employment, <site accessed 18 June 2013>  
<http://flyingstart.qld.gov.au/q-and-a/Pages/home.aspx#whyyear7>

The Bill makes technical amendments following the decision to define Year 7 as secondary education, within the context of the 2011 policy decision to make Year 7 a part of secondary school.

### **Prep as first year of school**

The recognition of Preparatory Year (Prep) as the first year of schooling is also a part of the Flying Start education reforms. Since 2012, Prep has been considered the first year of school in Queensland:

*The Government's ambition is that every Queensland child will have thirteen years of schooling, from Prep to Year 12. This means that Prep is the first year of school. Prep is a full-time, five day per week program, and it is expected that students attend every day, unless there is a legitimate reason to be away, such as illness.*

*With the introduction of the new Australian Curriculum in 2012, full-time attendance in Prep gives students important foundational learnings that they will need for successful learning in Year 1.<sup>3</sup>*

The Bill includes Prep in the basic allocation of 26 semesters of state school education. This is a symbolic amendment to reflect that Prep is the first year of schooling. The Act currently provides a basic allocation of 24 semesters of state education.

### **Cancellation of enrolments**

The non-payment of state school fees by parents of dependent students who are required to enrol their children in schools as a condition of their visa has resulted in \$1.5 million in outstanding school fees. The Bill provides the department with power to cancel the enrolment of these dependent international students for the non-payment of fees.

### **Other amendments**

The Bill also makes an amendment to remove restrictions on the window of time in which a person may apply for a revocation of a decision to permanently exclude them from state schooling. The Bill removes the 30 day window restriction, allowing for an application to be made once a year in each calendar year following the date of exclusion.<sup>4</sup>

## **1.5 Should the Bill be passed?**

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed.

After examination of the Bill, consideration of submissions and the further information provided from the department, the committee is satisfied the Bill should be passed. The committee has made further specific recommendations in relation to the Bill throughout this Report.

#### **Recommendation 1**

The committee recommends that the Education Legislation Amendment Bill 2013 be passed.

<sup>3</sup> Department of Education, Training and Employment, <site accessed 18 June 2013>

<http://flyingstart.qld.gov.au/q-and-a/Pages/home.aspx#prepschooling>

<sup>4</sup> Explanatory notes, Education Legislation Amendment Bill 2013, p14

## 2. Examination of the Education Legislation Amendment Bill 2013

### 2.1 Policy issues

#### Define Year 7 as secondary education

General support was provided by those who made submissions to this inquiry for defining Year 7 as secondary education from 2015.<sup>5</sup> The committee did not receive any evidence that opposes these provisions. However clarification is sought regarding transitional amendments as detailed below.

The Queensland Catholic Education Commission) QCEC noted that it raised three issues with the department during consultation about transitional arrangements,<sup>6</sup> to which the department responded extensively in its response to submissions. In the main these were implementation issues, and not concerns relating to the Bill itself.

On the issue of whether the Year 7 Change Notice would enable Catholic diocesan school authorities to submit a single notice rather than one for each school, the department advised that this is a matter for the Non-State Schools Accreditation Board (NSSAB). The department anticipates that the form will be simple and possibly have 'tick box' options. In addition, it is noted that NSSAB is considering having two forms, one for a single school and another for a governing body with two or more schools.<sup>7</sup>

The NSSAB note that "... eligible schools will be able to action changes in accreditation, and Government-funding eligibility with minimal effort and in a substantially shorter period of time that would otherwise be the case."<sup>8</sup>

The QCEC also sought confirmation that all schools would be processed and provided with appropriate notice before students commenced Year 7 in secondary school in 2015. Although this is another matter for NSSAB, the department noted that it is believed that the NSSAB will "... ensure the timely availability of required notices and forms for the streamlined processes..." by writing to relevant governing bodies and placing relevant information on its website.<sup>9</sup>

It was also confirmed by the department, in response to an issue raised by the QCEC, that under the Bill schools would have full accreditation for Year 7 if they currently have full accreditation to provide secondary education and they lodge a Year 7 Change Notice.

While supporting the intent of the Bill, the following points for clarification regarding transitional arrangements for the move of Year 7 to secondary school were raised by Independent Schools Queensland (ISQ):

1. Will the process between the NSSAB and the Commonwealth to update records and adjust grant payments be fast and simple?
2. Could a simplified accreditation process be introduced for independent schools that currently offer Year 7 as primary education and already have accreditation with the NSSAB, that wish to offer Year 7 as secondary education?
3. Does the accreditation requirement for schools that currently offer Year 7 as primary education to have positive exemption notices for their directors duplicate existing provisions?<sup>10</sup>

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<sup>5</sup> See for example, Submissions 1, 4, 5 and 6

<sup>6</sup> Submission 4, Queensland Catholic Education Commission, p1

<sup>7</sup> Response to submissions from the Department of Education, Training and Employment, p6

<sup>8</sup> Submission 1, Non-State Schools Accreditation Board, p1

<sup>9</sup> Response to submissions from the Department of Education, Training and Employment, p7

<sup>10</sup> Submission 6, Independent Schools Queensland, pp1-2

The department advises that the NSSAB currently gives written notice to the Australian Government as soon as possible after decisions about accreditation and funding are made under the *Education (Accreditation of Non-State Schools) Act 2001*, and that this process will continue after the Act commences.

With regard to the accreditation process for offering Year 7 as secondary education within a primary school, the department notes that the streamlined process is only available if the school is provisionally accredited, or accredited, for Year 8 at the time the notice is given to the NSSAB. ISQ advises that some 35 independent primary schools have commenced the process of seeking approval to offer Year 7 as a secondary program in their primary school settings; and recommends that a simplified process be made available to these schools following the commencement of this clause of the Bill. The department points out that it is not possible for a school to apply to offer Year 7 as secondary education until the amendments commence; and that primary schools that are provisionally accredited or accredited for Year 8 and beyond will be able to use a streamlined Year 7 change notice.

In response to the requirement for schools that currently offer Year 7 as primary education to have positive exemption notices for their directors, the department advises that this does not duplicate existing provisions. Rather, it is an existing requirement under the *Education (Accreditation of Non-State Schools) Act 2001*. The new section proposed by the Bill simply requires "... the governing body to provide copies of the current notices with its application. It does not require the directors to seek additional positive notice."<sup>11</sup>

The Commission for Children and Young People and Child Guardian reiterated provisional support for the move of Year 7 to secondary school, conditional upon consultation with students and planned, resourced transitions that adequately address risks of moving students to a less structured and protected social environment. Although the issue of support, or otherwise, of moving Year 7 to secondary school is outside the scope of this inquiry, the department still responded in writing to the issues raised. The department noted that consultation on this matter took place in 2010, with over 2,600 people participating; and that many measures are being planned and are underway to ensure the smooth transition of Year 7 to secondary school.<sup>12</sup>

#### **Committee comment**

The general support provided for the technical amendment to define Year 7 as secondary education from 2015 is noted by the committee. The committee considers that the transitional provisions will reduce the administrative burden that would have otherwise applied to non-state schools that change their accreditation status.

The committee believes the department has responded comprehensively to the points of clarification raised in submissions.

The departmental response makes it clear that a streamlined accreditation process is available for schools that are provisionally accredited, or accredited, for Year 8 at the time the notice is given to the NSSAB. The issue raised by ISQ is about independent schools that wish to offer Year 7 as secondary education in a primary school, that is, schools that are currently P-7. The schools to which this question relates have existing accreditation with the NSSAB, but it is not known whether this is for Year 8 and/or beyond. It is not possible that they could have applied to offer Year 7 as secondary school in the primary school setting, because until this Bill is enacted and commences, there is no legislative provision for offering Year 7 as a secondary school program. However if they have already been provisionally accredited or accredited to offer Year 8 as a secondary program, streamlined processes will apply. The committee queries whether if these schools have commenced the process

<sup>11</sup> Response to submissions from the Department of Education, Training and Employment, p10

<sup>12</sup> Response to submissions from the Department of Education, Training and Employment, pp4-5

of applying to offer Year 8 as the first year of secondary school, but have not yet been accredited or provisionally accredited, there should be any streamlined process available.

The committee seeks clarification from the Minister about whether there are any circumstances where it might be appropriate to offer a streamlined process for the accreditation of these independent primary schools to offer a secondary Year 7 program.

#### **Point for clarification 1**

The committee recommends that the Minister for Education, Training and Employment clarifies whether there are any circumstances under which it might be appropriate to offer a streamlined accreditation process for independent primary schools that currently offer Year 7 as primary education and have accreditation with the NSSAB for P-7 only, that wish to continue to offer Year 7 beyond 2015.

### **Prep as first year of schooling**

The recognition of Prep in a student's basic allocation of state education is a symbolic and technical amendment about which no significant issues were raised in submissions. The department noted in the public briefing that:

Under the Act, all students attending Queensland state schools are currently entitled to an allocation of 24 semesters of state education. This is called the basic allocation. This is enough to complete years 1 to 12, which was appropriate prior to the introduction of prep in 2007. The Bill amends the act to include prep in a student's basic allocation.<sup>13</sup>

P&Cs Qld supports the inclusion of Prep in state school students' basic allocation, as it formally recognises Prep as the first year of schooling in Queensland.<sup>14</sup> The Queensland Teachers' Union (QTU) also expressed support for the provisions, while noting that there is a "... lack of clarity ... around home schooling and subsequent access to the remaining allocations."<sup>15</sup> It is submitted by QTU that there should be appropriate accountability and monitoring processes in place to prevent home schooled students becoming lost outside the education system.

The department noted there are safeguards in place for children that receive a home schooling and that "[t]he Bill ... adequately provides for the remaining allocation of state education should they choose to subsequently enrol in a state school."<sup>16</sup> For example, the Bill provides that if a home schooled student applies to enrol in a state school, the school's principal must decide on the student's remaining allocation.<sup>17</sup>

QTU submits that Prep should be compulsory and the definition of 'compulsory school age' should be amended in the Bill to reflect this.<sup>18</sup> The department advised that there is no intention to make Prep compulsory as enrolment rates are already high, at around 97%, and it is unlikely this figure would significantly increase if Prep was made compulsory. Also, the department considers it important to retain flexibility for parents whose children may not be developmentally ready to commence Prep at 4 ½ years of age. To retain this flexibility while making Prep compulsory "... it would be necessary to prescribe a statutory process in the EGPA for parents to apply to delay enrolment. This would increase red tape for families and increase administrative burden on principals."<sup>19</sup>

<sup>13</sup> Public briefing, Department of Education, Training and Employment, 18 April 2013, p3

<sup>14</sup> Submission 5, P&Cs Qld, p1

<sup>15</sup> Submission 2, Queensland Teachers' Union, p2

<sup>16</sup> Response to submissions from the Department of Education, Training and Employment, p3

<sup>17</sup> Response to submissions from the Department of Education, Training and Employment, p3

<sup>18</sup> Submission 2, Queensland Teachers' Union, p1

<sup>19</sup> Response to submissions from the Department of Education, Training and Employment, pp1-2

**Committee comment**

The general support provided in submissions for the inclusion of Prep year in a state school students' basic allocation, and the absence of opposition to these provisions, is noted by the committee. Although the recognition of Prep as the first year of schooling is largely symbolic, the provisions are considered essential by the committee to confirm that Prep is an important component of early childhood education, and a core part of the curriculum.

The committee considers that the Bill is sufficiently clear on the basic allocation and remaining allocation for home-schooled students should the student at some point move to a state school.

The concerns expressed by QTU and the response from the department about the non-compulsory nature of Prep are noted. The committee is pleased that current attendance rates for Prep are high.

The committee agrees with the department that making Prep compulsory may not in itself significantly increase attendance rates; and agrees it is important to retain flexibility for parents and minimise red tape for families and principals. To maximise enrolment in the Prep year it is essential that the reasons for non-enrolment are well understood. It is acknowledged by the committee there are many reasons a family might not enrol a child in Prep. These include geographical and developmental factors. However, while noting this is beyond the scope of the Bill itself, the committee is interested in whether there is any data available about children not participating in Prep for other reasons - such as a lack of parental awareness.

**Point for clarification 2**

While acknowledging the high take up rate for the non-compulsory Prep year, the committee asks that the Minister for Education, Training and Employment advise the Education and Innovation Committee about non-participation in the Prep year, including:

- reasons why families do not send their children to Prep,
- any other patterns of non-participation such as (but not limited to) the geographical location of these families, and
- what measures are in place to engage with families who may not be aware of the benefits of Prep for their child.

**Cancel enrolment of international students**

Submission authors expressed general support for the provisions in the Bill that enable the cancellation of the enrolment of international students for the non-payment of school fees. No issues were raised in submissions regarding these provisions. During the introductory speech, the Minister for Education, Training and Employment noted:

Queensland charges dependent students fees of approximately \$8,000 to \$10,000 per year depending on the year of schooling the child is enrolled in. All Australian states and territories charge tuition fees to dependent students. Parents of dependent students are advised of the requirement to enrol their children in school before they apply for a visa and must prove to the Commonwealth Department of Immigration and Citizenship that they have sufficient funds to pay school fees during their stay in Australia. However, the experience has been that, after the first year of enrolment, many of these parents ignore the requirement to pay as there is no power to cancel enrolment for failure to pay fees.<sup>20</sup>

QTU believes that international students who do not pay their fees on time cannot expect to use the resources and services of state schools.<sup>21</sup> P&Cs Qld considers it important that there are penalties

<sup>20</sup> Hansard (Qld), Minister for Education, Training and Employment, 16 April 2013, p959

<sup>21</sup> Submission2, Queensland Teachers Union, p1

for non-compliance in any contractual relationship. The availability of waivers in extenuating circumstances was noted by P&Cs Qld, as well as the option for re-enrolment in the event that fees are paid.<sup>22</sup>

#### **Committee comment**

Although no issues have been identified with regard to the provisions to cancel the enrolment of international students for the non-payment of school fees, the committee identifies some issues in respect of fundamental legislative principles. These are considered in the next chapter of this report.

#### **Other amendments**

The Bill also makes an amendment to remove restrictions on the window of time in which a person may apply for a revocation of a decision to permanently exclude them from state schooling. The Bill removes the 30 day window restriction, allowing for an application to be made once a year in each calendar year following the date of exclusion.<sup>23</sup>

This matter was considered by the committee as part of its inquiry into the Education Legislation Amendment Bill 2012. That Bill removed the requirement to issue anniversary letters to students advising them of their right to apply for a revocation (essentially, to appeal the decision to revoke their enrolment), but left unchanged the provision that such an application had to occur within a 30 day window of opportunity around the anniversary date of the exclusion. In its report on that inquiry, the committee reported that the Queensland Law Society had pointed out that the 30 day window “may not coincide with the person having the necessary<sup>24</sup> 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”.<sup>25</sup>

#### **Committee comment**

The Committee is pleased to see that information obtained through a stakeholder submission to its previous inquiry has been considered, and will be reflected in legislation.

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<sup>22</sup> Submission 5, P&Cs Qld, p1

<sup>23</sup> Explanatory notes, Education Legislation Amendment Bill 2013, p14

<sup>24</sup> Explanatory notes, Education Legislation Amendment Bill 2013, p14

<sup>25</sup> Education and Innovation Committee, Report No. 11, October 2012, p13



### 3. Fundamental legislative principles

As well as considering the policy to be given effect by the legislation, portfolio committees are required to review Bills in respect of their lawfulness, and advise the Legislative Assembly on whether fundamental legislative principles have been given appropriate regard.

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.

The committee has examined the application of fundamental legislative principles to the Bill and identified the following issues.

#### 3.1 Rights and liberties of individuals

##### Cancel enrolment of international students

Clause 10 of the Bill amends section 51 of the *Education (General Provisions) Act 2006* (EGPA) to authorise the chief executive to cancel the enrolment of an international student at a state school for non-payment of fees. If a student’s enrolment is cancelled, he or she is not able to receive education at a state school. Therefore, clause 10 may have the effect of denying a child access to education.

The former Scrutiny of Legislation Committee recognised that the rights and liberties mentioned in the *Legislative Standards Act 1992* included “... rights (especially human rights) which arise out of Australia’s international treaty obligation”.<sup>26</sup>

The right to education on the basis of equal opportunity has been recognised by international law in the Convention on the Rights of the Child (the Convention), which that requires States “... recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular (a) Make primary education compulsory and available free to all ...”.<sup>27</sup> The Convention also requires that it be implemented without discrimination of any kind.

Australia ratified the Convention in 1990 and it came into force for Australia in 1991.<sup>28</sup> However, as Australia has not enacted provisions into Australian law, the Convention is not binding.

##### Committee comment

The committee considers it appropriate that international students be required to pay fees for a state education, excluding those children listed in the explanatory notes.<sup>29</sup> Parents are made aware of their obligation to pay fees when they apply for a visa to enter Australia and their capacity to pay is required to be evidenced before a visa is granted. This condition is established under Commonwealth law.

The safeguards in place to ensure that these provisions – cancelling a child’s enrolment - are used as a last resort are noted, including the warning provided to parents or carers before any enrolment is cancelled, retainment of the power to exempt a person from paying fees under certain

<sup>26</sup> Former Scrutiny of Legislation Committee, *Annual Report 1998 – 1999*, 1999, p6

<sup>27</sup> United Nations Convention on the Rights of the Child, article 28

<sup>28</sup> N O’Neill, S Rice, Simon, R Douglas, *Retreat from Injustice: Human Rights Law in Australia*, 2<sup>nd</sup> ed, The Federation Press, Sydney, 2004, p147

<sup>29</sup> Explanatory Notes, Education Legislation Amendment Bill 2013, p2

circumstances and the option of entering into a payment plan. The committee is satisfied that the impact of these provisions on the rights and liberties of individuals is justified in this case.

### Proportionality

The non-payment of state school fees by parents of dependent students who are required to enrol their children in schools as a condition of their visa has resulted in \$1.5 million in outstanding school fees. Provisions in the Bill that seek to address this issue apply more broadly than solely to the children of parents on conditional visas.

Clause 10 has been inserted as a way to recoup school fees by enacting a legislative consequence for non-payment. However, clause 10 permits cancellation of enrolment of *any* person who is not an Australian citizen or permanent resident or the child of an Australian citizen or permanent resident. The power to cancel an enrolment is not limited in applicability to parents of children whose visa requires enrolment in a school, where those parents have evidenced that they have sufficient funds to pay school fees before being granted a visa.

The explanatory notes list international student groups that will not be affected by the proposed power to cancel enrolments for the non-payment of fees. However, the Bill itself does not provide that these students are excluded from having their enrolments cancelled. Instead, these arrangements will be "... left to administrative practice rather [than] requiring amendments to legislation."<sup>30</sup> The department advised that the provisions are not limited to a particular class of visa holder as these "... arrangements are set by the Commonwealth Government and are subject to change over time".<sup>31</sup>

### Committee comment

The committee notes that the Bill is intentionally drafted to apply significantly more broadly than the problem it seeks to address. Although it is not the Government's intention to alter the fee charging practices for refugees, children of asylum seekers in community detention or on bridging visas, dependents of temporary skilled migrants on skilled migrant visas and students entering Australia on a New Zealand passport, the committee is concerned that the Bill introduces a power that in fact does allow the Director-General to cancel the enrolment of students in these population groups for non-payment of fees.

The committee acknowledges that some of these students are not currently charged fees, and therefore could not have their enrolment cancelled as a result of non-payment under the Bill. The committee also acknowledges the safeguards in place so that enrolments are cancelled only as a last resort, such as the power to waive fees during times of financial hardship, the use of payment plans and the warnings provided before an enrolment is cancelled.

The committee agrees that it would be impractical for the Bill to limit the power to cancel enrolment to particular classes of visa holders, given visa arrangements are set by the Commonwealth Government and subject to change, as identified in the explanatory notes. Nevertheless, it is important to ensure there are no unintended consequences as a result of the discrepancy between the intention of the Bill and its practical application. As a committee we are mindful of the responsibility to maximise the proportionality of legislation.<sup>32</sup>

A potential unintended consequence of the provisions as they stand is that future governments could under this legislation permit the Director-General to cancel the enrolment of the students in those population groups specified above, for non-payment of fees. While the committee trusts that this will not be the interpretation of, or application by, the current Government, legislation should be that provides greater breadth of power than is intended might be used more broadly by future

<sup>30</sup> Explanatory Notes, Education Legislation Amendment Bill 2013, p5

<sup>31</sup> Explanatory Notes, Education Legislation Amendment Bill 2013, p5

<sup>32</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, 2008, p120

governments, without the opportunity for additional Parliamentary scrutiny. The committee considers it important that legislation is unambiguous and that it aligns with its original intention.

The committee asks that the Minister clarifies whether there are any safeguards in place to protect the enrolment status of the students listed on page two of the explanatory notes in the event of non-payment of fees, including any future administrative arrangements; and clarifies whether the \$1.5 million has been accrued by people other than children of parents that are required to enrol their children in school according to their current visa.

### **Recommendation 2**

The committee recommends that the Minister for Education, Training and Employment confirms in the House that fee charging practices for students listed on page two of the explanatory notes will not change as a result of the Education Legislation Amendment Bill 2013.

### **Point for clarification 3**

The committee asks that the Minister for Education, Training and Employment clarify whether there are any safeguards in place to protect the enrolment status of the students listed on page two of the explanatory notes in the event of non-payment of fees.

### **Point for clarification 4**

The committee asks that the Minister for Education, Training and Employment clarify whether the outstanding \$1.5 million has been accrued by people other than children of parents that are required to enrol their children in school according to their current visa.

### **Retrospectivity**

An international student's enrolment that commenced before the Act commences could be cancelled due to non-payment of fees. This means that the Bill operates retrospectively. At least 14 days' notice must be given of the intention to cancel the enrolment. The explanatory notes state that this potential breach of fundamental legislative principles is justified as follows:

*These potential breaches of fundamental legislative principles are considered justified. Parents of dependant students are fully informed of their obligations and agree to pay school fees prior to obtaining their visa and enrolling in a state school. It is a Commonwealth Government requirement that children of parents intending to study in Australia are enrolled in school before the parents apply for a visa. Parents are also required to prove to the Commonwealth Government that they have sufficient funds to pay school fees during their stay in Australia.<sup>33</sup>*

### **Committee comment**

As parents are fully informed of their requirement to pay school fees when they apply for a visa, the committee considers the retrospective nature of these provisions to be justified in this case.

### **Administrative power**

Cancellation of enrolment would be an exercise of administrative power by the chief executive. The potential impact of this exercise of administrative power is significant, that is, it could result in a child not receiving education. Therefore, it must be considered whether powers such as this are sufficiently defined and subject to appropriate review.

<sup>33</sup> Explanatory Notes, Education Legislation Amendment Bill 2013, p6

Exercise of this administrative power is defined in terms of whether fees have been paid. The definition does not, for example, specify whether payment is required in advance or whether payment by installment is permitted. The explanatory notes indicate that payment of school fees under section 51 is sometimes made subject to flexible payment arrangements and, in appropriate circumstances, waiver of fees, and that the lack of detail in the Bill is deliberate:

*Administrative practices will be put in place to support parents to meet the payment obligations and support the ongoing enrolment of these students where possible. This process of cancellation is not prescribed in the Bill as it can be a seesawing one whereby payment plans are entered into and revised over time. Confusion may result if the prescribed notice process does not align with the practice of encouraging payment.*<sup>34</sup>

The Bill does not provide for any review mechanism for this exercise of administrative power. The explanatory notes identify this issue and indicate that the omission of a review mechanism was a deliberate choice as “[t]here are concerns that any review mechanism will be used by parents of dependant students to avoid cancellation and payment of fees.”<sup>35</sup> If a student’s enrollment is cancelled by the chief executive, the only review option available to a student (or his or her parents) is to apply for a judicial review of the decision.

### Committee comment

Although the Bill does not provide a review mechanism before an enrolment is cancelled, the committee is satisfied that there are appropriate processes in place to ensure that cancellation of enrolment will take place only as a last resort. Parents who do not pay fees are aware that they are required to pay fees, will be provided with sufficient warning before any enrolment is cancelled, have options available in the event they are in financial difficulty and have the option of re-enrolling their child once the fees are paid.

The committee believes that a review process could be used by parents to avoid or delay the payment of fees until such time that they leave the country. As this is the situation the department seeks to avoid, it is considered that the absence of such a process is appropriate in this instance; with judicial review providing a suitable safeguard to ensure correct application of the legislation has occurred.

The committee also considers that the administrative power to cancel an enrolment, including the circumstances in which this power can be exercised, is sufficiently clear in the Bill. However, to ensure that this information is available in an appropriate format and location for parents, students and other stakeholders, the committee recommends that a fact sheet be developed and made available on the department’s website. The fact sheet should be available in simple English and relevant community languages, and outline what process can be undertaken in the event that fees for tuition are not paid, including the cancellation of enrolment, and who the parent or carer should contact in the event that they are unable to pay these fees or have received a cancellation notice.

### Recommendation 3

The committee recommends that the Minister for Education, Training and Employment develop and publish a fact sheet in simple English and relevant community languages on the Department of Education, Training and Employment’s website to outline the process the department can take in the event that tuition fees for certain international students are not paid, including:

- when and how enrolment can be cancelled,

<sup>34</sup> Explanatory Notes, Education Legislation Amendment Bill 2013, p6

<sup>35</sup> Explanatory Notes, Education Legislation Amendment Bill 2013, pp6-7

- who the parent or carer should contact if they are unable to pay tuition fees or have received a cancellation notice, and
- that a student can be re-enrolled upon payment of outstanding fees.

### Notice to cancel enrolment

The Bill provides that 14 days' notice of intention to cancel enrolment be given to international students who have outstanding fees in a state school prior to commencement of the Act. This is drafted as a transitional provision. However the Bill does not provide for any notice of cancellation to be given in respect of fees charged *after* commencement of the Bill – that is, for fee-paying students into the future.

### Committee comment

The committee considers it essential that a minimum period of notice is provided before any international student's school enrolment is cancelled. This notice period allows parents to seek additional information from the department and/or to rectify the issue before their child is no longer allowed to attend school.

The committee recommends that the notice period that applies to international students enrolled prior to commencement of the amendments be extended to include students enrolled after commencement of the amendments. That is, that 14 days' notice be provided to all students before an enrolment is cancelled. The lack of a review process increases the importance of adequate notice being provided to relevant students.

### Recommendation 4

The committee recommends that the Minister for Education, Training and Employment amends the Education Legislation Amendment Bill 2013 to require that 14 days' notice be provided to fee-paying international students enrolled after commencement of the amendments.

## 3.2 The institution of Parliament

### Transitional regulation making power

Proposed new section 252 (transitional regulation making power) allows the Bill to be amended by regulations made up to two years after the Act commences. As such, they are potential Henry VIII provisions, whereby Acts can be amended by instruments subordinate to those Acts.

Such transitional provisions could demonstrate insufficient regard for the institution of Parliament because the regulations, which operate under the executive, may amend any other provisions of the Act, which is made by the Parliament.<sup>36</sup> In its 1997 report, the former Scrutiny of Legislation Committee stated that transitional provisions like this may be excusable, depending on the given circumstances, where the clause is to implement urgent legislation.<sup>37</sup> The committee has taken this position into account.

The explanatory notes justify the provision as necessary "... so that any transitional issues in relation to the non-state school accreditation process and the move of Year 7 to secondary school that have not been identified during the drafting process can be quickly addressed."<sup>38</sup> Section 252 and any regulations made under it expire two years after commencement of the Bill.

<sup>36</sup> Alert Digest No 3. 1996, p10

<sup>37</sup> Scrutiny of Legislation Committee, Report No. 3, *The Use of 'Henry VIII Clauses' in Queensland Legislation*, 1997

<sup>38</sup> Explanatory Notes, Education Legislation Amendment Bill 2013, p7

**Committee comment**

The committee supports the time limit imposed by new section 252. Any transitional issues that potentially impede the move of Year 7 to secondary school or non-state school accreditation could be considered urgent, therefore, the committee considers the transitional regulation making power is justified in this case.

**3.3 Explanatory notes**

Part 4 of the *Legislative Standards Act 1992* requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the minimum information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. Although the notes contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins, a number of typographical errors were identified.

**Recommendation 5**

The committee recommends that the Minister for Education, Training and Employment amends the explanatory notes of the Education Legislation Amendment Bill 2013 to correct typographical errors, including:

- delete the first 'state school' from the last sentence in the last full paragraph on page 1,
- replace 'charges' with 'charged' in the second last bullet point on page 2, and
- insert the word 'than' between the words "rather" and "requiring" in the last sentence in the paragraph commencing "While the power..." on page 5.

**Appendix A – List of submissions**

Sub #	Submitter
1	Non-State Schools Accreditation Board
2	Queensland Teachers' Union
3	Commission for Children and Young People and Child Guardian
4	Queensland Catholic Education Commission
5	P & Cs QLD
6	Independent Schools Queensland

**Appendix B – Witnesses at public briefing – 18 April 2013**

## Witnesses

**Department of Education, Training and Employment**

Dr Jim Watterston, Director-General

Ms Annette Whitehead, Deputy Director-General, Policy and Programs

Ms Lyn McKenzie, Deputy Director-General, Education Queensland

Ms Jo House, Executive Director, DET International

Mr Stuart Busby, Director, Policy and Legislation

Mr Pat Parsons, Director, Policy and Programs