Parliamentary Committees

Education and Other Legislation Amendment Bill 2014

Report No. 40
Education and Innovation Committee
October 2014

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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

Abbreviations and definitions

Accreditation Act	Education (Accreditation of Non-State Schools) Act 2001
CCSE	Centres for Continuing Secondary Education
DETE	Department of Education, Training and Employment
DG	Director-General
ECS Act	Education and Care Services Act 2013
EGPA Act	Education (General Provisions) Act 2006
FET Act	Further Education and Training and Act 2014
MAS	Mature-age student
NSSAB	Non-State Schools Accreditation Board
QEC	Queensland education and care
QCEC	Queensland Catholic Education Commission
QCT	Queensland College of Teachers
QCT Act	Education (Queensland College of Teachers) Act 2005
QLS	Queensland Law Society
QSPA	Queensland Secondary Principals' Association

Chair's foreword

This report details the committee's examination of the Education and Other Legislation Amendment Bill 2014.

The committee's task was to consider the policy outcomes to be achieved by the legislation and to ensure that fundamental legislative principles have been adhered to in the Bill – that is, whether it has sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

A number of issues were identified in submissions to the inquiry, which the committee considered in conjunction with evidence provided by the department. In general, support for the Bill was evident although there were matters raised about the sharing of criminal history information, regulation of special assistance schools, and parity between letters patent schools and other non-government schools. Some matters were raised which were outside the scope of the Bill, such as principals being empowered to suspend students who have been charged with a criminal offence; and the definition of 'director' of a school's governing body, in the context of broader issues about the governing body of schools established under letters patent. The department has advised that it is investigating the latter.

On behalf of the committee I thank those individuals and organisations who made written and oral submissions in respect of this Bill. I thank others who have informed the committee's deliberations: officials from the Department of Education, Training and Employment, the Parliamentary Library and our secretariat staff.

The committee has made a number of recommendations for the House to consider, including that the Bill be passed.

I commend the report to the House.

Rosemary Menkens MP
Chair

October 2014

Recommendations

Points for clarification

Point for clarification 1 **16**

The committee asks the Minister for Education, Training and Employment to explain exactly what information would be sought by the chief executive from the police commissioner; what information would be conveyed to the principal and how the chief executive would determine that; and who would have access to the information while it is in the department's possession.

Point for clarification 2 **27**

The committee asks that the government explain the definition of 'serious incident' and describe the process by which all persons who might be affected by the offence and penalty provisions will be clear on their reporting obligations.

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, and consists of government and non-government members.

The Education and Other Legislation Amendment Bill 2014 (the Bill) was referred to the committee on 26 August 2014, and the committee is required to report to the Parliament by 20 October 2014.

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 fundamental legislative principles to the Bill.

1.2 Inquiry process

The committee was briefed by officials from the Department of Education, Training and Employment (the department) in respect of the Bill, and received five written submissions from stakeholders (see Appendix A). The committee held a public hearing on 8 October 2014 at Parliament House, at which it took oral evidence from six witnesses representing three entities (see Appendix B).

An additional public briefing with department officials was also held on 8 October 2014, allowing committee members to seek further advice on matters raised in written and oral submissions.

Transcripts of briefings and hearing, and the submissions received and accepted by the committee are published on the committee's webpage at www.parliament.qld.gov.au/committees.

1.3 Policy objectives of the Bill

The primary objectives of the Bill, as stated in the explanatory notes to the Bill, are to:

- support school autonomy by enhancing localised decision-making
- support school safety
- improve educational outcomes
- reduce red tape.

The Bill is also designed to ensure the portfolio's legislation is contemporary and meets the current operational needs of the department and its education and training stakeholders.[1]

It aims to achieve the above by:

- strengthening powers for schools to deal with 'hostile persons'
- providing non-state school principals with the power to grant exemptions from compulsory schooling or compulsory participation phase requirements in certain circumstances
- restricting mature-age student enrolments to age-appropriate settings

[1] Explanatory notes, p1.

- permitting the Director-General (DG), Department of Education, Training and Employment (DETE), to obtain information from the Queensland Police Service about charges and convictions to assist principals with disciplinary decisions
- enabling the DG, DETE to delegate the power to commence prosecutions against parents for the offences of failing to comply with compulsory schooling and compulsory participation requirements
- providing that interstate students who live near a state school in their own state or territory are not entitled to free distance education in Queensland, and to clarify the ability of the DG, DETE to cancel enrolment in distance education if fees are not paid
- freeing international educational institutions from unnecessary regulatory burden by removing the requirement for these entities to be approved by Governor-in-Council before operating in Queensland
- creating clearer exemptions to confidentiality provisions in the EGPA for the release of information for research and law enforcement purposes.

1.4 Background

The Queensland Commission of Audit (the Audit) recommended that the Queensland Government "*adopt a strategic direction for education in Queensland that focuses on high achievement and increasing student performance in every school*".[2] The Audit also recommended that the government "*devolve resourcing and financial management responsibility to the school level and increase school autonomy to generate innovative school-based solutions to achieve the recommended strategic direction*".[3]

In response to these recommendations, one of the actions undertaken was a discrete review of the EGPA to identify opportunities to support school autonomy by enhancing local decision-making, supporting school safety, improving educational outcomes, and reducing red tape. The amendments to the EGPA proposed in the Bill are in part a result of this review.[4]

The Bill also proposes amendments to:

- the *Education (Accreditation of Non-State Schools) Act 2001* (Accreditation Act)to recognise and regulate special assistance schools and to provide a clear process for schools established under letters patent to modify the composition of their governing bodies and advise the Non-State Schools Accreditation Board (NSSAB) of changes
- the *Education (Queensland College of Teachers) Act,* (QCT Act) to reduce red tape by removing the requirement for the Queensland College of Teachers (QCT) to provide to the applicant police information that has previously been provided to the applicant, where it does not affect the QCTs decision in that instance
- the *Education and Care Services Act 2013* (ECS Act) to ensure consistency with the National Law which governs the majority of early childhood education and care services in Queensland in respect of requirements to report serious incidents

[2] *Queensland Commission of Audit, Final Report - February 2013*, pp1-40.
[3] Ibid.
[4] Explanatory notes, p1.

- the *Further Education and Training Act 2014* FET Act (along with the EGPA and the ECS Act) to remove duplication with the *Public Service Act 2008* in relation to the civil liability of staff.

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 also made three other recommendations and sought two points of clarification in relation to the Bill.

Recommendation 1

The committee recommends that the Education and Other Legislation Amendment Bill 2014 be passed.

2 Examination of the Education and Other Legislation Amendment Bill 2014

2.1 Directions to hostile persons (cls 105–118)

The Bill would amend the EGPA to give state and non-state principals the power to give a verbal direction to a hostile person to immediately leave and not re-enter the premises for 24 hours.[5]

Currently, a principal must give a direction in writing if the principal reasonably suspects the person:[6]

(a) has committed, or is about to commit, an offence at the premises or

(b) has used, or is about to use, threatening, abusive or insulting language towards another person at the premises or

(c) has engaged, or is about to engage, in threatening or violent behaviour towards another person at the premises or

(d) has otherwise disrupted, or is about to disrupt, good order at the premises or

(e) does not have a good and lawful reason to be at the premises.

The written direction must state:[7]

(a) the terms of the direction and

(b) the ground for the direction and

(c) an outline of the facts and circumstances forming the basis for the ground and

(d) the time during which the prohibited person may not re-enter the premises.

The Minister noted that the rationale for providing principals with the power to give a verbal direction is because "*requiring a written direction to be given can often be impractical when confronted with difficult and sometimes rapidly evolving situations*".[8] The department described it as 'counterproductive' to have to issue a written direction in emerging situations.[9]

The Bill would also amend the EGPA to give state and non-state school principals the power to give a written direction to prohibit a person from the premises for up to 60 days, rather than the chief executive of the department or non-state school's governing body, as is currently required.[10] A person given a directive in writing by a state or non-state school's principal in relation to their conduct at or access to the school for up to 30 days would have the ability to apply, within seven days of the prohibition notice being given, to the school's review body for a review of the decision; and the review must occur within five business days of the application.[11] For bans of more than 60 days and up to one year, the chief executive or school's governing body would issue the notice,

5 EOLA Bill 2014, cl 107; Explanatory notes, p4.
6 EGPA 2006, s 339(1).
7 Ibid.
8 Queensland Parliament, Record of Proceedings, 26 August 2014, p 2664.
9 DETE, public briefing transcript, 27 August 2014, p2.
10 EOLA Bill 2014, cls 110, 118; Explanatory notes, p4.
11 EOLA Bill 2014, cl 114; cl 117, new s 349B(5).

rather than the Queensland Civil and Administrative Tribunal (QCAT) as at present.[12] The current QCAT application requirement has been described as being time-consuming and costly.[13]

These bans are generally sought in circumstances where there has been significant physical or verbal abuse, threats or acts of harm to persons, damage to property, or disruption to the school's operation.[14] Decisions made by the chief executive or non-state school governing body on bans for up to one year would be reviewable by QCAT.[15]

It should be noted that verbal and written directions to hostile persons cannot be given to students of the school. Other disciplinary approaches for addressing student behaviour are available to the principal.[16]

The department advised that the proposed amendments are designed to ensure schools are safe places,[17] and also recognise that principals are best placed to manage their school community and make decisions that take into account the expectations of their local community.[18,19]

The Queensland Secondary Principals' Association (QSPA) and Queensland Catholic Education Commission (QCEC) support this amendment.

Committee comment

The committee is supportive of the proposed amendment as a means of reducing red tape and improving the ability of schools to better respond to incidents as they occur. Members also see that the amendments will strengthen the authority of the principal to take necessary action including asking for police assistance where that is considered necessary.

2.2 Power to grant exemptions from compulsory schooling

Exemptions from compulsory schooling, or the compulsory participation phase, can be necessary for a student for medical, family or travel reasons, or because of a student's involvement in cultural or sporting activities at an elite, national or even international level. The EGPA provides for exemptions in such circumstances.[20]

Decisions regarding exemption can only be made by the DG or his or her delegate within the department. The ability to grant exemptions from compulsory schooling or compulsory participation in state schools is currently delegated to state school principals, however principals of non-state schools must apply to the departmental delegate of the department's chief executive who then makes the determination.

The proposed amendments to the Bill include empowering non-state school principals to grant exemptions for up to 110 school days, or approximately two school terms, in a calendar year.[21]

12 EOLA Bill 2014, cls 110 (state schools), 118 (non-state schools).
13 Explanatory notes, p4.
14 Ibid.
15 EOLA Bill 2014, cl 124.
16 Queensland Parliament, Record of Proceedings, 26 August 2014, p2664.
17 DETE, Public briefing transcript, 27 August 2014, p2.
18 Ibid, p3.
19 Explanatory notes, p4.
20 DETE, Public briefing, 27 August 2014, p3.
21 Ibid.

Applications for exemption for periods over 110 days will continue to be decided by the department's chief executive or their delegate.[22]

The Minister advised that safeguards will be retained over the use of the proposed exemption powers, including that the DG having the power to review a decision of a non-state school principal, and the requirement that non-state schools will have to maintain a copy of their exemption decisions and provide the DG with access to the decision on request.[23]

The amendment is described as enhancing local decision-making and acknowledging that principals are best placed to make these types of determinations, especially with their local knowledge of the student, their family and personal situation.[24]

QCEC is supportive of the general intent of this amendment, noting that exemptions will need to be registered and the register must be maintained for five years.[25] However the department points out that in fact a register is not required to be maintained for five years; rather, a record of the decision is required to be kept for five years.

QSPA is supportive, noting that principals are in the best position to grant any exemptions as they are aware of the personal circumstances of the student and his or her family.[26]

Committee comment

The committee sees that the proposed amendments relating to exemptions from compulsory schooling represent a common-sense approach, with approvals for non-state school students being processed in the same manner as approvals for state school students.

2.3 Enrolment of mature-age students (cls 68-71)

Mature-age students are currently able to enrol in any state school if they have a mature-age student notice. This notice declares the person to be suitable to be a student of the school, and is issued by the chief executive after consideration of the person's criminal history. The chief executive *may* ask the police commissioner for a report about a prospective or current mature-age student's criminal history.[27]

The Bill proposes amendments to the EGPA to restrict mature-age student enrolments to mature-aged state schools prescribed in a regulation, or to state schools of distance education if they do not have access to such a school. Fees would not apply at state schools of distance education in such instances.[28]

Prescribed mature-age state schools, also known as Centres for Continuing Secondary Education (CCSE), are specifically set up to cater to adult students via specifically tailored education programs and appropriate learning environments. Schools that may be prescribed include CCSEs in Kingston, Eagleby, Coorparoo and Townsville. As at 2013, 73 per cent of all mature-age students were enrolled

22 Explanatory notes, p4.
23 Queensland Parliament, Record of Proceedings, 26 August 2014, p2665.
24 DETE, Public briefing transcript, 27 August 2014, p3.
25 QCEC, submission 1, p5.
26 QSPA, submission 2, p2.
27 *EGPA 2006*, ss 32(2), 32(3), 32(4).
28 EOLA Bill 2014, cl 67; DETE, Public briefing transcript, 27 August 2014, p6.

in CCSEs.[29] An alternative to a CCSE or distance education are TAFE institutes, which offer vocational education and training courses as well as paths to tertiary education.

The Bill also provides that the principal of the mature-age school will consider the adult's suitability for enrolment, taking into consideration the adult's criminal history (if any). Principals will be required to request information about the applicant's criminal history from the police commissioner.[30] In addition to considering the criminal history, principals will consider enrolment applications in accordance with s 156 of the EGPA, which requires that the principal must refer the enrolment to the department's chief executive if the principal believes the prospective student would pose an unacceptable risk to the safety or wellbeing of members of the school community.[31]

Existing mature-age students will be able to continue their education at their current school, and students who turn 18 while enrolled at a state school, or who are 18 but return to attend a state school within 12 months, are not subject to the proposed new mature-age student enrolment regime.

The department briefed the committee that these amendments are designed to achieve two key objectives: firstly to provide an appropriate learning environment for adults, and secondly to empower local decision-making.[32] The minister, introducing the Bill to Parliament, advised that the amendments are designed to empower principals, improve educational outcomes for children and mature-aged students and create safe environments in state schools.[33]

Allowing mature-age students to enrol in any state school can cause issues for schools that are not appropriately equipped through their learning environment and pedagogy to provide education to adults. Enrolling mature-age students can potentially disrupt education and pose risks to the safety and wellbeing of other students at the school.[34] Mature-age schools specifically cater to adult students.[35]

Enabling principals of a mature-age school/CCSE to make decisions on the enrolment of a mature-age student is also designed to remove red tape by removing the requirement for a mature-age student to obtain a mature-age student notice.[36]

The reform is also designed to improve educational outcomes for mature-age students. Data from the former Queensland Studies Authority shows that in 2012 completion rates were higher for adult learners in CCSEs (approximately 80 per cent) than for those in mainstream schools (approximately 50 per cent).[37]

The explanatory notes identify a potential breach of fundamental legislative principle in terms of the rights and liberties of individuals, in limiting access by a particular group of people to a service. The government position is that the possible breach is ameliorated by ensuring distance education is

[29] Explanatory notes, p5.
[30] EOLA Bill 2014, cl 71, new s 175D.
[31] Explanatory notes, p5.
[32] DETE, Public briefing transcript, 27 August 2014, p2.
[33] Queensland Parliament, Record of Proceedings, 26 August 2014, p2665.
[34] Explanatory notes, p5.
[35] Queensland Parliament, Record of Proceedings, 26 August 2014, p2664.
[36] Ibid.
[37] Explanatory notes, p5.

still available if there is no mature-age secondary school nearby; along with access to TAFE and VET programs.[38]

The department advised the committee on 8 October 2014 that there will be more mature-age schools than the four initially advised:

> *Schools will be able to tender to provide education to mature-age students … at the time we had our last hearing it was understood that there would be four. It could increase.*[39]

Further:

> *…we are about to run an expression of interest in all state secondary schools to determine whether there are other schools who have an interest in enrolling mature-age students in terms of in terms of giving adults the capacity and the opportunity to enrol in our schools. Therefore, it is quite possible that there will be mature-age students in a lot of our schools.*[40]

Committee comment

The committee is satisfied that access to education by mature-age students will not be unduly limited by the amendments, as there are alternatives to school-based education services. School based services will better meet the needs of both mature-age and other students in the school under the proposed amendments.

Delegation of decision making and criminal history access

QCEC[41] and the QSPA are supportive of the proposal to allow principals to approve enrolments and be required to access any criminal history of a prospective mature-age student. The QSPA notes that, "*the enrolment of mature-age students in mainstream high schools can be problematic. When mature-age students are issued with a negative notice, this can place the school and school staff in a difficult position*".[42] The QSPA elaborated on this at the committee's public hearing on 8 October 2014, explaining that at present:

> *…the prospective student would get a negative notice in the mail, and we get notified at the same time… The person then has one course of redress from the student's point of view and that is the school. The student often vents his or her feelings to the school, and the people who cop it first are the office staff. I am speaking from firsthand experience. So this proposed change would be very welcome.*[43]

However the Queensland Law Society (QLS) expressed concern with the delegation of this decision to principals from the chief executive. It considers it inappropriate that principals would have access to criminal histories of potential and current mature-age students:

> *such information should rightly only be held by the chief executive, given the seriousness of accessing criminal history information… The chief executive is best placed to consider these criminal histories at an objective, whole of state level and then make decisions about enrolment.*[44]

38 Ibid, p14.
39 Ibid, p4.
40 Ibid, p5.
41 QCEC, submission 1, p5.
42 QSPA, submission 2, p2.
43 QSPA, Public hearing transcript, p2.
44 QLS, submission 4, p5.

The department position on this is as expressed in the department response to submissions is that:

> *To support school autonomy and reduce red tape, the Bill will give principals of specific mature-age student schools to make decisions about enrolment of MASs. The Bill also removes the current requirement for a MAS to seek a positive notice from the chief executive.*
>
> *The proposed amendment ensures that the principal, as chief decision maker, has the authority and the obligation to request a criminal history check on a mature-age student applicant.*
>
> *It is considered appropriate for principals to be able to seek the criminal history information because MASs are adults in a school environment where there may be minors. A MASs criminal history will only be sought with their consent.*
>
> *It should be noted that if a principal decides a MAS poses an unacceptable risk to other students or staff, the enrolment decision is referred to the chief executive.*[45]

It might appear somewhat contradictory to the claim that principals are the chief decision makers when they can only make positive decisions (and consequently, it might be difficult to see how the change would make any difference to students 'venting' to schools when they are refused enrolment because of their criminal histories). However, the department at the hearing explained further:

> *the principal… may benefit from knowing the criminal history of a mature-age student, even when the decision is made by the principal to enrol that student, because the principal can read the criminal history and make the determination 'yes, I will enrol this person and give this person this opportunity, but I also know that I need to put certain provisions in place for the day-to-day management within the school'. I think it is that fine decision by the principal… That could be in relation to amenities or it could be in relation to the use of certain facilities within the school grounds, and certain areas of delineation, particularly around instances where there may only be a small number of mature-age students in the school.*[46]

The QLS also considers that the seeking of a report from the police commissioner about an applicant's criminal history should remain discretionary, and not be required of principals. On this, the department advises that the practice since 2006 has always been to obtain such a report in making enrolment decisions about mature-age students, so the amendment is formalising long-standing practice.[47]

Committee comment

The committee supports delegation of the ability to approve the enrolment of a mature-age student at a mature-age state school, from the chief executive to the principal. While noting the concerns of the QLS in respect of principals obtaining the criminal history of a prospective mature-age student, it is likely to prove more beneficial than not to prospective students. In addition the student's consent would be required before any criminal history was requested from the police commissioner.

The committee understands that the amendments would give principals the ability to approve an enrolment despite a criminal history, using their knowledge of the school community and facilities along with the criminal history information. This may enhance access to school-based education for mature-age students who have a criminal history.

[45] DETE response to submissions, p18.
[46] DETE, Public briefing transcript, 8 October 2014, p5.
[47] DETE response to submissions, p17.

The committee considers that the retention of power to decline an enrolment should stay with the chief executive on the basis of advice from the principal, as proposed in the Bill. This ensures a 'check' on the power of principals to make a decision that might negatively impact on a person's access to school-based education, while affording principals some 'distance' from the decision and any associated backlash from a student refused enrolment.

It seems to the committee that the proposed amendments appropriately balance the interests of all parties.

2.4 Criminal history information (cls 43-46)

The government's Education (Strengthening Discipline in State Schools) Amendment Bill 2013 amended the EGPA to provide that school principals may suspend students who have been charged with a serious offence or any other offence if the principal believes it would not be in the best interests of students or staff at the school for the student to attend the school while the charge is pending. This provision commenced at the start of 2014. Principals can also exclude students if they have been convicted of a criminal offence and the principal believes it would not be in the best interests of other students or staff for the student to be enrolled at the school.[48]

The current Bill would amend the EGPA to allow the department's chief executive to obtain confirmation from the police commissioner that a student has been charged with, or convicted of, an offence and to obtain "*information about the charge, including a brief statement of the circumstances of the charge or conviction*".[49] There must be reasonable suspicion that a student has been charged with or convicted of an offence, and the principal or the chief executive requires confirmation of the charge or conviction for the purpose of making a disciplinary decision under chapter 12, part 3 of the EGPA.[50,51]

The power to seek confirmation of a charge or conviction is only enlivened if it relates to an offence of a nature that would warrant suspension or exclusion in the first instance. It cannot be used in relation to minor offences, such as shoplifting – it is applicable to serious offences such as violent crime.[52] Serious offences include child abuse and exploitation, murder, grievous bodily harm, and drug trafficking.[53]

The department has advised that principals will only be given aspects of the police information required by them to make disciplinary decisions. The information can only be used to inform disciplinary decisions. It cannot be used to inform new student enrolment decisions.[54]

What information will be sought and provided, to whom, under what circumstances?

While reiterating its ongoing concerns that principals suspending students on the basis of a charge is inconsistent with the presumption of innocence and providing specific examples of problems with that aspect of the current legislation, the QLS raises a number of issues in respect of this provision of the Bill. Firstly, the Bill provides "*vague descriptors as to the exercise of the chief executive's power*

48 Explanatory notes, p5.
49 EOLA Bill 2014, cl 44, new s 280C(2).
50 Ibid, cl 44, new s 280C(1)(b).
51 Explanatory notes, p5.
52 DETE, Public briefing transcript, 27 August 2014, p4.
53 *Working with Children (Risk Management and Screening) Act 2000*, sch 2.
54 DETE, Public briefing transcript, 8 October 2014, p3.

to ask the police commissioner about student charge or conviction", citing the Bill's cl 77, proposed new s 280C which refers to the chief executive being able to seek "*information about the charge or conviction, including a brief description of the circumstances of the charge or conviction*" where the chief executive 'reasonably suspects' a student has been charged with or convicted of an offence. The QLS sees that these are "*difficult parameters to be met by the chief executive in terms of having a "reasonable suspicion*"; and for the police commissioner in terms of what information is provided.[55]

On this, the department advice to the committee is that 'reasonable suspicion' "*is an appropriate threshold test to ensure that the power to obtain limited criminal history information is not abused, and it limited to only those situations where information about a charge or conviction has come to the school's attention*".[56]

The department also emphasised in its response to submissions that only very limited information – a brief statement of the circumstances of the conviction – may be sought, to provide principals with information to assist them to make disciplinary decisions.[57]

The department at the public briefing advised that guidelines will be developed once Bill is passed, in respect of details about what information will be obtained, and how that information will be managed:

> *I guess the provisions in this Bill are about just giving a power for the director-general and only the director-general to have that information. As I said in my introductory speech, it is not a power that principals have. Principals will only be given information that they absolutely need to have. We are very aware that the information is sensitive and that these are children and that the information needs to be treated in a very private and confidential way. Our job, after the Bill goes through, will be to develop some internal policies about how we manage the information and how we make decisions.*[58]

The department response to submissions advises that:

> *There will be strict protocols around the storing and sharing of criminal history information obtained by the chief executive from the Queensland Police Commissioner. These protocols include an email address designated specifically for information requests to the chief executive from principals. Any relevant information obtained from the police would be placed in the sensitive case record section of the OneSchool system with access to the information limited to the principal of the school and the chief executive or delegated officer.*[59]

In response to a QLS recommendation that an external expert advise the principal about risk assessment, the department advised the committee that:

> *Rigorous processes will be put in place to:*
>
> *Identify whether information will be sought from the Police, this will only occur where a student is assessed as posing a risk to the safety and wellbeing of other students and staff;*
>
> *Ensure that information that is shared with the principal meets strict criteria to ensure the information only relates to behaviour that may put others at significant risk; and*

[55] QLS, submission 4, p4.
[56] DETE response to submissions, p11.
[57] Ibid.
[58] DETE, Public briefing transcript, 27 August 2014, pp8-9.
[59] DETE response to submissions, p14.

> *Support principals to make fair and consistent decisions in relation to the safety of the school community based on the information provided.*[60]

Natural justice

The QLS queries whether the student will be advised that an information request has been made to the police commissioner, or what information has been provided by the police commissioner, as the Bill is silent on this. It is essential to principles of natural justice (with which, under the *Legislative Standards Act 1992*, Queensland legislation must comply) that the student be given such advice.[61]

The department has confirmed that students and their parents will be aware of the criminal history provided by the police. The notice of the decision to suspend or exclude based on a charge or conviction gives reasons for the decision, and a brief statement of the reason why the decision was made; and during the decision making process the student is given the opportunity to consider the relevant evidence, discuss the allegation and respond if they choose to do so.

The QLS notes that young offenders will frequently be advised not to respond to allegations, which limits their ability to defend themselves against a suspension. If they do respond, they may prejudice their court case. Further, during the charge stage the police information is often incomplete and no decisions about the facts of the allegations have actually been made. Consequently the chief executive, and the principal, would be relying on potentially inaccurate information to make a decision about suspension.[62]

Information retention

The QLS notes that the Bill would require the information obtained by the chief executive from the police commissioner to be destroyed as soon as practicable after it is no longer required; and suggests that a specific timeframe should be provided.[63] The *Youth Justice Act 1992* provides that 'identifying' information obtained under a court order must be destroyed within seven days, and the QLS suggests that as well as for consistency with that Act, this is a reasonable timeframe for the chief executive officer to ensure the information is destroyed.

The department advises that the information should be kept for longer than that because students have the right to make a submission against the decision of a principal to exclude a student, or suspend for more than ten days. The EGPA provides that excluded students may make one submission to the chief executive against the exclusion each year, until the year in which they turn 24 years. Consequently the information used to make the original decision to exclude would need to be retained for that period.

A submission must be considered by the chief executive or his or her delegate, and the disciplinary decision reviewed.

An external adviser?

The QLS submits that the sharing of information should only occur in the context of an assessment as to whether the student poses an unacceptable risk to the safety or wellbeing of the student or of staff.[64] Obtaining the criminal information would not be limited to that context as the Bill is

[60] Ibid, p15.
[61] Ibid.
[62] Ibid.
[63] EOLA Bill 2014, cl 44, proposed new s 280F.
[64] QLS, submission 4, p4.

presently drafted: it can be sought for the purposes of suspending a student solely on the basis that he or she has been charged with an offence.[65]

Further to this, the QLS suggests that the determination about safety or wellbeing is better made by a behavioural scientist (eg a psychologist or social worker) external to the school. The behavioural scientist could perform a confidential risk assessment and have access to the police information instead of the principal. This would increase the expertise, objectivity and uniformity of these decisions. The student's communications with the expert could be privileged, thus reducing the potential for those communications to impact on court proceedings. The QLS advises that this is a standard practice in other areas of law.

In relation to the specific proposal that a behavioural scientist be part of the process the department notes that "*principals have a detailed understanding of their school context and of individual students in their school, and are therefore best placed to assess the likely risk that a student may pose to other students*".

Committee comment

The committee notes that the amendments are to support principal's decisions about discipline (and duty of care) – not enrolment applications (there is a separate provision about criminal histories for mature-age student enrolments), and that the Bill would empower the DG, not the principal, to obtain the information from the police commissioner.

In October 2013 the committee considered and reported on the Education (Strengthening Discipline in State Schools) Amendment Bill 2013, the enactment of which created the current provisions whereby principals can exclude or suspend based on charges and convictions. In its report, the committee recommended:

> *The committee recommends that the Minister for Education, Training and Employment ensures adequate guidance is provided to support state school principals to make a decision about suspending or excluding a student for criminal behaviour, including what information might be relevant, and how to manage any implications for the criminal justice system.*[66]

The committee's recommendation was made in the context of advice from the QLS and others about the potential for school decisions to impact on and potentially duplicate the roles of the courts and police; and considerations about the lack of information a principal would have on which to make a decision on whether to suspend a student they suspect has been charged with a serious or other offence.

The department earlier advised that principals will not be given any more information than they need to make a decision about discipline.[67] It further advised that it does not consider the term 'a brief description of the circumstance of the charge or conviction' is vague, as the QLS had submitted. However, the Bill actually reads:

> *The chief executive may ask the police commissioner whether the student has been*

[65] EGPA, s 282(1)(f).

[66] Parliament of Queensland, Education and Innovation Committee, 2013. *Report no. 24 Education (Strengthening Discipline in State Schools) Amendment Bill 2013* p7.

[67] DETE, Public briefing transcript, 27 August 2014, p9.

charged with, or convicted of, the offence and, if so, for information about the charge or conviction, ***including*** *(author's emphasis) a brief description of the circumstance of the charge or conviction.*[68]

[68] EOLA Bill 2014, cl 44, new s 280C(2).

Although the department advised that only very limited information – a brief statement of the circumstances of the conviction – may be sought, the committee notes that the Bill does not actually provide that **only** a brief description is to be sought and agrees that there is some vagueness in the description.

The department emphasised that the criminal history information can only be sought where there is a reasonable suspicion about the student being charged with or convicted of a 'serious offence'. The department has used several times the example of shoplifting as an offence which would not warrant suspension or exclusion.[69] However the EGPA does not appear to confine the basis for suspension or exclusion to serious offences. It actually provides that principals may suspend for other than serious charges where they are "*reasonably satisfied it would not be in the best interests of other students or of staff for the student to attend the school while the charge is pending*"[70] and exclusion can occur on the basis of a student being 'convicted of an offence' where the principal is reasonably satisfied that it is not in the interests of students or staff for that student to be enrolled at the school.[71]

This seems somewhat broader than the department's advice indicates.

The department advice about what information will be available, to whom it will be available, and under what circumstances, has varied. The Bill as drafted gives fairly broad powers to principals. Further, the delegation provisions within both the department and the Queensland Police Service mean that it is unlikely to be only the chief executive (as advised by the department)[72] and the police commissioner exchanging this sensitive information. The committee notes that the chief executive or his or her delegate is the reviewing officer for suspension and exclusion decisions, so the EGPA does provide that it may be people other than the chief executive who have access to this information.

The policy and procedures about what specific information is sought from the police, given to the chief executive, and of that, what is given to principals or other delegates of the chief executive – is not known. How it will be managed while in the department's possession has not yet been determined.

The committee did give consideration to the suggestion by the QLS that a behavioural scientist be engaged to make a confidential assessment and determination about the safety or wellbeing of others in the school community posed by the student who has been charged with an offence. However it leans away from this approach because:

- It would add another layer of bureaucracy and an additional cost
- It would detract from a principal's ability to add to the assessment his or her knowledge of the school and its community to determine whether there might be particular risks posed by the student's presence and whether they might be readily mitigated so that the student can remain at school.

It is understood by the committee that in New South Wales, the relevant legislation enables a request to be made to police for information to assess whether the enrolment of a particular student is likely to constitute a risk to the health and safety of any person, and to help to develop and maintain strategies to eliminate or minimise the risk.[73]

[69] DETE, Public briefing transcript, 27 August 2014, pp4, 9.
[70] EGPA, s 282(2)(b).
[71] Ibid, ss 292(2)(a), 292(2)(b).
[72] DETE, Public briefing transcript, 27 August 2014, p.8.

The committee considered whether the advice from the police in respect of criminal charges should be limited to whether or not charges have been laid, and whether the police believe there is a significant risk posed to other students or staff at the school by the student's ongoing presence. At the public hearing on 8 October, the QLS pointed out that the position of the police is somewhat conflicted in that regard, as they are the prosecutors of the student where charges have been laid. It also pointed out that in effect the decision that the young person does not pose a risk to the community has already been made by the police and a judicial officer, if the person is not in custody. That decision implies that the young person is considered able to remain in community and participate in all aspects of community life. The school environment, offering as it does supervision by trained adults, is more appropriate than many of the other community settings the student might be in. However the committee points out that a student released on bail for some serious offences – drug offences for example – does not necessarily mean that no risk is posed to a community of children. A court granting bail is not necessarily aware of the context a particular school has; and nor does it have the responsibility to assess the relative duties of care held by a principal to the student and to the school community.

The committee considers that decisions based on advice from the police could be premised by the assumption that the student has been determined to be appropriately in the broader community (though not explicitly the school), any risk having been balanced with broader community safety needs by a judicial officer. There would be a rebuttable presumption that the student will have ongoing school attendance; and police advice could include advice to the department about risk mitigation with a view to promoting the student's continued school attendance. This would be discussed with the principal by the chief executive to inform the principal's decision.

The committee notes the advice of the QLS that its concern with the Bill was less about the information sharing provisions, particularly given much of the information will be in the public domain in any event since open court proceedings and publication of names commenced under recent changes to the *Youth Justice Act 1992* for other than first offenders. The QLS concern was more about the suspension or exclusion from school of people who are charged with offences.[74]

The current Bill is focused on the information sharing provisions. The ability for principals to suspend and exclude students who have been charged and convicted with offences where their presence is a risk to the wellbeing of other staff or students, having commenced at the start of 2014.

Recommendation 2

That the government consider limiting the advice obtained from the police to whether there is a potential risk to the school community, and extended to include advice as to risk minimisation or elimination.

Point for clarification 1

The committee asks the Minister for Education, Training and Employment to explain exactly what information would be sought by the chief executive from the police commissioner; what information would be conveyed to the principal and how the chief executive would determine that; and who would have access to the information while it is in the department's possession.

[73] *Education Act 1990* (NSW) s 26B.
[74] QLS, Public hearing transcript, p12.

2.5 Power to commence proceedings against parents (cl 41)

The EGPA allows for parents to be prosecuted for failing to ensure their child is enrolled and attending school in the compulsory schooling phase in accordance with s 176, or meeting the requirements of the compulsory participation phase in accordance with s 239.[75] Currently, it is only the DG or with the DG's consent that prosecutions can be commenced.[76]

The Bill would allow the department's chief executive (the DG) to delegate the power to commence prosecutions, and to consent to the bringing of prosecutions, to appropriately qualified officers within the department.[77] It is intended that the power will be delegated to regional directors as it is advised that they, in consultation with principals, have access to the detailed knowledge about the student and family circumstances that impact on school attendance.[78]

It is noted that prosecutions are an action of last resort to facilitate student attendance, and that prior to the commencement of prosecutions, there will still be a requirement that parents are notified in writing of their obligations, with the intention of holding a meeting with parents to discuss their child's absenteeism.[79] The option of commencing proceedings is one of a number of strategies the department uses; other strategies to re-engage children in schooling include intensive case management and student attendance officers.[80]

Only the QSPA commented on this amendment, noting its support, and that *"principals will continue to deploy a wide range of targeted strategies through a variety of people and agencies, to ensure students are engaged in schooling*".[81]

Committee comment

The committee notes that prosecution is one of a broad range of strategies to facilitate school attendance, and is aware that it is used as a strategy of last resort. The committee is undertaking its own review of state school student attendance rates which includes consideration of some of those strategies, the report of which will be published in the near future.

The committee is satisfied that the delegation of the power to commence legal proceedings from the chief executive to the regional level is appropriate.

2.6 Distance education – fees and cancellation of enrolment (cls 65–68, 127)

The current fee provisions in the EGPA have a loophole where the department cannot charge interstate students for accessing distance education even when they live near a state school in their own jurisdiction. As the committee would be aware, students from beyond Queensland may study through Queensland's schools of distance education. Students who live in a remote area do not have to pay a fee for distance education.[82] A remote area is defined in the Act in relation to distance from the nearest Queensland state school. Almost all interstate students of Queensland schools of

[75] Explanatory notes, p 6; EGPA, s 242.
[76] DETE, Public briefing transcript, 27 August 2014, p3.
[77] EOLA Bill 2014, cl 41.
[78] Explanatory notes, p6.
[79] Explanatory notes, p6.
[80] DETE, Public briefing transcript, 27 August 2014, p3.
[81] QSPA, submission 2, p3.
[82] Explanatory notes, p7.

distance education, including city-dwellers, would live sufficiently far from a Queensland state school to meet the 'remote area' criteria and thus avoid paying fees.

To close this loophole, the Bill would amend the definition of 'nearest applicable school' to mean, for a person, the nearest state school, or equivalent of a state school under a corresponding law, with the required year level for the person.[83] The rationale for the change is that the existing arrangements put 'interstate students on a different footing from Queensland students'.[84] Therefore interstate students who live near a state school in their own state or territory will not be entitled to free distance education in Queensland, but those who meet the definition of 'remote area' under the EGPA will still be entitled to free distance education.

The Bill also makes a technical amendment regarding a person's enrolment if the fee for distance education is not paid. Currently, the provision of distance education can be ended if the fee is not paid, but the student remains officially enrolled at the school of distance education and is marked as absent, as the EGPA does not provide for the enrolment to be cancelled. The Bill would amend the EGPA so that the DG can cancel the enrolment if the fees are not paid.[85] It is advised that parents and the student will be notified of their obligation to pay before such a power would be exercised.[86]

The proposed change is described as assisting the department in the monitoring and re-engagement of these students into other parts of the education system.

The QPSA noted its support for the proposed amendments, particularly in the light of the 'high reputation' enjoyed by Queensland SSDEs and their consequent attractiveness to students from beyond Queensland.

Committee comment

The committee is supportive of the amendments in respect of distance education fees and enrolment.

2.7 International educational institutions (cl 61)

The Bill would repeal chapter 18 of the EGPA, which provides that Governor-in-Council approval is required for a person to operate an international educational institution.[87] International educational institutions are private businesses that offer a primary or secondary school curriculum of another country. There are no international educational institutions operating in Queensland at this point in time. However the explanatory notes advise that:

> *only one approval of that nature has been made and it is understood the entity is no longer providing international education. The entity will be advised about the effect of this Bill.*[88]

The reason given for repealing the chapter is that "*international educational institutions should be free from unnecessary regulatory burden to operate as commercial entities, particularly as their courses have no bearing on educational outcomes for Queensland and overseas students*".[89]

[83] Explanatory notes, p7; EOLA Bill 2014, cls 65-66.
[84] Explanatory notes, p6.
[85] EOLA Bill 2014, cl. 127.
[86] Explanatory notes, p7.
[87] EOLA Bill 2014, cl. 53.
[88] Explanatory notes, p2.
[89] Ibid, p7.

The QSPA supports this amendment.

Under questioning from the committee at the public briefing on 8 October 2014 as to the rationale for removing reference to international educational institutions from the amendments, the department advised that:

> *…we are removing the red tape around this because we do not regulate these entities. We have arrangements that regulate our state schooling and non-state schooling system. We have CRICOS*[90] *– the Commonwealth and state based collaborative approach to dealing with international students who are coming out here doing the Australian Curriculum – but we do not regulate these entities providing a curriculum of another country... we are not ensuring the quality of the education that these entities are providing.*[91]

The department also confirmed that international education institutions do not impact on educational outcomes for Queensland students, because it is compulsory for Queensland students to be enrolled at a school delivering the Australian curriculum in their compulsory schooling years. An international education institution is not an alternative. It was also pointed out that student visa requirements would also preclude overseas students studying at an international education institution because these bodies are not registered with CRICOS as education providers.

Committee comment

During the public briefing on 8 October, the department agreed that the following statement from a committee member was accurate:

> *…this decision really is a commercial decision for the provider, given that provision of the education curriculum that they ultimately will be providing has no accreditation here in Queensland or in this country, ergo the department is stepping away from this… Because there is no relevance to our system, there is no jurisdiction for us to monitor it. It really is a commercial decision for the provider to want to provide that. I dare say at a fee to someone who meets those short-term circumstances…*[92]

The committee supports the amendment to remove chapter 18 of the EGPA.

2.8 Confidentiality (cl 58)

Currently it is an offence for a person who has either gained, or has access to, personal information to make a record of, use or disclose the information to anyone, subject to exceptions such as where disclosure is in the public interest or is necessary to assist in averting serious risk to the life, health or safety of a person.[93]

When disclosing information requested by individuals and organisations for research purposes, or personal information requested by law enforcement agencies, the department has primarily relied on the public interest exception in s 426 of the EGPA, which allows information sharing where it is in the public interest, with the written consent of the chief executive.[94] However, it has been advised

[90] The Commonwealth Register of Institutions and Courses for Overseas Students.
[91] DETE, Public briefing transcript, 8 October 2014, p6.
[92] Mr Latter MP, Public briefing transcript, 8 October 2014, p7.
[93] EGPA, s 426; Explanatory notes, p8.
[94] EGPA, s 426(4)(e)(ii).

that principals have found the application of a public interest test to such requests problematic and difficult to apply.[95]

The Bill amends s 426 of the EGPA to provide two specific exceptions modelled on the Information Privacy Principles (IPP) contained in the *Information Privacy Act 2009*. The two exceptions allow:

- disclosure of personal information for research, or the compilation or analysis of statistics, where the use does not include the publication of all or any of the personal information in a form that identifies any particular individual
- disclosure of personal information to law enforcement agencies if satisfied on reasonable grounds that the disclosure is necessary for the prevention, detection, investigation, prosecution or punishment of criminal offences.[96]

It is proposed that by aligning with the IPPs there will be greater consistency in decision-making and it will allow decision-makers to utilise the guidelines on interpretation published by the Office of the Information Commissioner.[97]

QPSA supports the amendment, noting that "*secondary schools are increasingly requested to be the source of research – both at a staff and student level. QPS in carrying out their duties, often seek student/family personal information as a matter of process*."[98]

Committee comment

Fundamental legislative principles

The committee gave consideration to whether the information sharing as proposed is warranted: it permits sharing of information that may typically be expected to be private and confidential. It could be argued that this impacts on a person's reasonable expectation of privacy – that is, it could be a breach of an individual's rights and liberties (contrary to a fundamental legislative principle under the *Legislative Standards Act 1992*).

The committee believes that aligning the EGPA with the *Information Privacy Act 2009* will result in better and more consistent decision making; and that it will not result in any significant change to current practices or to any expectations that might be held by individuals.

The proposed amendments are supported.

2.9 Special assistance schools (cls 12-22)

Special assistance schools are non-state schools that have been established for children and young people who have disengaged or exited from mainstream education and are not participating in vocational education and training or work. The department has advised that the demand for special assistance schools is growing, with another three schools to join the 20 existing schools in Queensland in January 2015.[99]

Introducing the Bill to Parliament, the Minister advised that the rationale for the changes regarding special assistance schools is to improve educational outcomes for disengaged youth by providing

[95] Explanatory notes, p8.
[96] Ibid.
[97] Ibid.
[98] QPSA, submission 2, p3.
[99] DETE, Public briefing transcript, 27 August 2014, p4.

flexibility to respond to the needs of such students.[100] The amendments are also designed to "*enhance the ability of Queensland's independent Non-State Schools Accreditation Board to ensure that special assistance schools comply with accreditation criteria and deliver a quality education program"*.[101]

Currently, special assistance schools are not recognised in the Accreditation Act. The Bill makes amendments to the Accreditation Act to recognise the existence and operation of special assistance schools, and to streamline the existing arrangements for a school to be recognised.[102]

The amendments enable the Non-State Schools Accreditation Board (NSSAB) to specifically recognise and approve the establishment and operations of special assistance schools.[103] The criteria regarding the delivery of education in a special assistance school setting will be prescribed in a regulation, including criteria for the operation of temporary sites and the limits on provision of education at temporary sites.[104]

Before a school can apply for special assistance status, schools must be at least provisionally accredited and have commenced operating. Special assistance status generally entitles a school to a higher level of state government funding. Currently, it is the minister who considers applications for recognition of a school as a special assistance school, once it is provisionally accredited by the NSSAB, has commenced operations and made an application for such recognition. The minister's decision is based on criteria prescribed in policy.[105] The amendments would enable the NSSAB to make the decision instead of the minister, and the minister then recognises the school as a special assistance school based on the board's accreditation. The Bill provides that the accreditation criteria will be prescribed in regulation.

It currently stands that a special assistance school must operate for the sole and specific purpose of a special assistance school. A mainstream, non-state school cannot comprise one special assistance school campus and one conventional campus. The amendments allow non-state schools to continue to operate existing offerings and establish another campus for special assistance.[106]

The Bill also provides for special assistance schools to operate for up to 95 consecutive school days (or one school semester) from temporary sites to re-engage disengaged youth from the local community into education and training. After that time an application must be lodged for accreditation of the site. Governing bodies will be required to notify the Accreditation Board of the operation of temporary sites.[107]

In its written and oral submissions to the committee, QCEC has suggested that the Bill should provide for a one-off extension to an approval to operate a special assistance school from a temporary site:

> *It is really to cater for unexpected delays, particularly around getting building approvals from councils or various things that can occur. It would be a shame if the whole operation, which is helping those children, had to be closed down because there is no mechanism to extend the time in unforeseen circumstances. In talking to the operators*

[100] Queensland Parliament, Record of Proceedings, 26 August 2014, p2665.
[101] DETE, Public briefing transcript, 27 August 2014, p4.
[102] EOLA Bill 2014, cls 12-22; DETE, Public briefing transcript, 27 August 2014, p4.
[103] Explanatory notes, p9.
[104] EOLA Bill 2014, cl 15; Explanatory notes, p9.
[105] DETE, Public briefing transcript, 27 August 2014, p4.
[106] Queensland Parliament, Record of Proceedings, 26 August 2014, p2666.
[107] Explanatory notes, p9.

> *of these schools, it is often said that it takes about a year to get these schools up and running and get some connection with the community and the children. Then they are in a position to formalize a school more. We see that as a bit of a safeguard. It might not be required in every instance.*[108]

While the Accreditation Act does not presently deal with special assistance schools, in determining whether to recommend accreditation of any school the NSSAB advises that it does take into account whether the school is intended to cater specifically for disengaged students. Relevant considerations include the suitability of the site, facilities, number and types of staff, and appropriateness of the proposed educational programs to be delivered. The NSSAB is therefore supportive of special assistance, as an accreditation attribute, being recognised in the Accreditation Act. It is also supportive of the provisions to allow flexibility to those schools in operating from a temporary site for a limited period of time and under certain circumstances, noting the role of the NSSAB in having oversight of that provision.[109]

QCEC has queried whether non-state schools other than special assistance schools would be able to operate for a limited time from temporary sites, and seeks advice as to the reasoning.[110] The department response is that these schools are targeted to a particular cohort of young people with unique needs. Flexibility is required in order to establish a first response where a need is identified in some locations; and while time is taken to establish trust between the provider and the student, and demonstrate the value of engaging in education and training.[111] No capital assistance can be provided for temporary sites.

QCEC raises a query about the possibility of special assistance schools being accredited, but not in receipt of recurrent funding.[112] The department response confirms that while the NSSAB will be the decision maker in terms of accreditation, the minister is the decision maker in terms of funding. Both make decisions against criteria relevant to each function. While it is possible that a situation could arise where a school was accredited but not funded, the applicant "*would need to satisfy the NSSAB that the school would be financially viable in the absence of government funding in order to be granted provisional accreditation*".[113] This is the case at present. The school being a 'special assistance school' could impact on assessment of school against the government funding criteria, for example the minimum enrolment numbers criteria.[114]

QCEC would like a strong consultation process to occur in respect of the operational details relating to recurrent funding for special assistance schools from the state and commonwealth governments. The department advises it intends to consult.[115]

The Bill contains transitional provisions to cater for situations where a school assessed as a special assistance school under the current policy arrangements, will be taken to be provisionally accredited, or accredited at the site for which the school operated immediately before the commencement of the provisions in this Bill.[116] Where an application is undecided on commencement of the provisions

[108] QCEC, Public hearing transcript, p7.
[109] NSSAB, submission 3, p2.
[110] QCEC, submission 1, pp4-5.
[111] DETE response to submissions, p2.
[112] QCEC, submission 1, p4.
[113] DETE response to submissions, p4.
[114] Ibid.
[115] DETE response to submissions, p6.
[116] EOLA Bill 2014, cl 21, new s 254.

in this Bill, the Minister can continue to make the decision under policy, as he does now. If he approves the application the school is taken to be provisionally accredited. The Bill makes it clear that in both situations, there is no assumed change in accreditation, and no impact on eligibility for government funding.

Committee comment

Fundamental legislative principle

The department advised that the accreditation criteria for special assistance schools will be prescribed in regulation, rather than in the Accreditation Act. Fundamental legislative principles require that Queensland statutes show sufficient regard for the institution of Parliament, and that administrative power not be delegated inappropriately.[117] In the explanatory notes to the Bill, the government justifies a potential breach of fundamental legislative principles in that prescribing accreditation criteria by regulation is consistent with the accreditation regime generally; and provides flexibility as the scheme is implemented to respond to emerging issues regarding operation of special assistance schools not identified at the time of drafting.[118]

The committee accepts the appropriateness of prescribing the accreditation criteria for special assistance schools in regulation and not in an Act of Parliament.

Temporary sites

The committee accepts that there may well be reasons for a school to require an extension to the 95 days they may operate from a temporary site. It notes that the granting of such an extension would be a separate decision from the accreditation process, which governs matters such as curriculum, staff numbers, minimum enrolments; and thus sees that that an extension is relatively low risk and offers potentially significant benefit to students.

Recommendation 3

The committee recommends that the Education and Other Legislation Amendment Bill 2014 be amended to provide a mechanism for the governing body of a special assistance school to seek, and for the Non-State Schools Accreditation Board to approve, a once-only extension of a further 95 school days for the school to operate from a temporary site.

2.10 Letters patent schools (cls 5-11)

'Letters patent' are a legal instrument under which a head of state may establish a particular status or office on a person or organisation. In the context of the Bill, this refers to bodies such as church trusts and corporations who operate schools (for example, the Corporation of the Trustees of the Roman Catholic Diocese of Brisbane), for schools established under the *Religious Education and Charitable Institutions Act 1861*.

As non-state schools, the schools are accredited by the NSSAB. However, "*letters patent cannot be amended so letters patent schools cannot change the officeholders of their governing body to reflect changes in arrangements over time*".[119] In practice, this has lead to an uncertain legal status when

[117] *Legislative Standards Act 1992,* s 4(4)(a).
[118] Explanatory notes, p20.
[119] Explanatory notes, p3.

changes in directorship occur over time. The Bill would address this by providing that persons who are named as officeholders in the letters patent, or their successors, would be able to nominate additional persons as directors of the governing body of a non-state school for the purpose of the Accreditation Act. The governing body of the school will have to advise the Accreditation Board of any nominated directors so that their suitability can be monitored. However, any governing body that is established by letters patent can choose to maintain its existing directors and not nominate additional persons as directors.[120, 121]

An offence would be created, and a penalty would apply, to governing bodies of letters patent schools who fail to notify the NSSAB if they do nominate additional directors.

QCEC submitted that this new requirement and associated penalty is applicable only to boards governing letters patent schools and not to the governing bodies of other schools who might nominate new directors, and does not support the provision.[122] It notes that s 167(2)(e) of the Accreditation Act applies to non-government schools generally, and requires that the governing body must within 14 days notify the NSSAB of "*any other change in the governing body's, or school's, circumstances prescribed under a regulation*." The relevant regulation does not currently prescribe change in directorship as requiring notification to the NSSAB.[123]

The department advises that the offence and penalty provision is warranted because the Bill is providing that letters patent schools be allowed to "*vary their governance structure outside of the processes provided for in the incorporating legislation*". Further, it advises that the proposed penalty is in fact consistent with the penalties that apply to other non-government schools for failing to advise the Accreditation Board of changes in the circumstances of the governing body, at s. 167 of the Accreditation Act.

Notifying of changes to the composition of the governing body is not listed as one of the circumstances that must be advised for other non-government schools, because they are established as corporate entities, generally under the *Corporations Act 2001* (Cwlth) (the Corporations Act). That Act provides a mechanism for varying the governance structure of a corporation.[124]

Committee comment

The committee notes the rationale provided by the department for the proposed offence and penalty.

Recommendation 4

The committee recommends that the government ensure that there is consistency in offence and penalty provisions between letters patent schools and other non-state schools.

Definition of director

The QLS observes that the definition of 'director' in the Bill is unclear and that (c) as currently worded at cl 5 of the Bill is likely to be confusing. It defines a director as, among other definitions:

[120] EOLA Bill 2014, cl 9.
[121] Explanatory notes, p9.
[122] QCEC, submission 1, p3.
[123] Education (Accreditation of Non-State Schools) Regulation 2001.
[124] Corporations Act (Cwlth), s 205B.

Otherwise – a person who is, or is a member of, the executive or management entity, by whatever name called, of the governing body.[125]

The QLS believes confusion may arise as the section applies to schools owned by churches that have enabling legislation establishing them, such as the diocese of a church. In those circumstances it is not always clear what the 'executive or management entity' is (ie whether it is the school council, or the diocese itself), the QLS suggests, and there needs to be a clear decision made and expressed as to where the responsibility is placed.[126]

The committee understands there are differing views about this matter.

The department notes that the definition of director as in paragraph (c) is not actually being amended by this Bill. That definition of director is contained in the current schedule 3 of the Accreditation Act. The department is currently considering how to address some issues raised by a small number of governing bodies that are statutory corporations not established by letters patent or under the Corporations Act. That issue is not the subject of this Bill. The NSSAB and QLS have both suggested some further amendments to the Accreditation Act which they believe would clarify the issue.[127]

Committee comment

The committee notes that the definition of director is not the subject of the Bill, and the department's advice that it is progressing work towards resolving issues identified by a small number of schools in respect of the definition. The department further advised at the public briefing on 8 October 2014 that it "*will consider the operation of the paragraph to which the Law Society referred to ensure it continues to operate as intended".*

The issue raised with the committee appears to be about what body is considered to be the governing body of a school, with the definition of 'director' dependent on that.

On the face of it, and notably without the benefit of the outcomes of the department's further work on this matter, the committee agrees that if there is any doubt as to where responsibility for school governance sits, the definition should be clarified and responsibility set clearly at either a school or a diocese level.

2.11 Civil liability indemnity (cls 25, 139)

Amendments are proposed for existing civil liability indemnity provisions in the ECS Act, the EGPA and the FET Act to remove duplication with the civil liability indemnity arrangements under the *Public Service Act 2008* (Public Service Act).[128] The Bill will remove references to persons who are state employees from the civil liability indemnity provisions in these Acts. Where the department's legislation provides protection from civil liability for categories of persons who may or may not be state employees, depending on the circumstances, the Bill will provide that the indemnity provision in the relevant departmental Act does not apply if the person is a state employee. The arrangements under the Public Service Act provide primary and standardised protection to 'state employees' in a broader range of circumstances, and ensure that civil liability does not attach to state employees

[125] EOLA Bill 2104, cl 5, new s 77A(c).
[126] QLS, submission 4, p2.
[127] NSSAB, submission 3, pp4-5.
[128] EOLA Bill 2014, cls 25, 139.

when they are acting in an official capacity and performing duties in good faith and without gross negligence.[129]

Committee comment

Fundamental legislative principles

The committee notes that the *Legislative Standards Act 1992* requires that immunity from proceedings or prosecution should not be conferred without adequate justification.[130]

The proposed amendments do not change the status of state employees: the Bill removes reference to state employees from these two Acts to prevent duplication and possible confusion. State employees are protected from proceedings by the Public Service Act.[131]

The committee supports the amendment to remove duplication between the Acts regulating civil liability of employees of education statutory bodies.

2.12 Queensland College of Teachers disclosure of police information (cls 130-132)

Under the QCT Act, the QCT must obtain police information to determine the suitability of an applicant for teacher registration or permission to teach, or for renewal or restoration of registration or permission to teach. The QCT must then disclose the police information to the applicant before using the information to decide whether the person is suitable to teach in accordance with s 16 of the QCT Act. The applicant can then make representations in relation to the information before the QCT makes its decision.[132]

The proposed amendments remove the need for the QCT to disclose police information to the applicant in circumstances where it has been previously disclosed and will not impact on the QCT's decision about the applicant's suitability to teach. It is argued that current arrangements impose a resource burden on QCT and raise anxiety for applicants, without there being a benefit for either party. The QCT will only have to disclose police information that has been previously provided by police if the QCT proposes to refuse the application or impose conditions on the teacher registration or permission to teach and the police information is relevant to that decision.[133]

The amendments will only apply to applications for renewal and restoration of a teacher's registration or permission to teach. They do not affect the disclosure requirements in relation to initial applications for teacher registration or permission to teach, or for renewal or restoration where there is police information that has not been previously obtained by the QCT and disclosed to the applicant.[134]

Committee comment

The committee is supportive of the proposed amendments to the QCT Act in respect of advice to students about police information.

[129] Explanatory notes, p10.
[130] *Legislative Standards Act 1992,* s 4(3)(h).
[131] *Public Service Act 2008,* s 26C.
[132] Explanatory notes, p10.
[133] EOLA Bill 2014 cls 131-132, Explanatory notes, p10.
[134] Explanatory notes, p10.

2.13 Notice of incidents at Queensland education and care services (cl 24)

There are currently a small proportion of services, known as Queensland education and care (QEC) services, which are regulated under the ECS Act. QEC services include limited hours care services funded by the Queensland Government, occasional care services, education and care services that are also disability services and Budget Based Funded services.[135] The ECS Act requires these providers to notify the department's chief executive of certain incidents within a particular time after the provider becomes aware of the incident.[136] The Bill proposes amending the ECS Act to ensure consistency with the National Law, which regulates the majority of education and care services, so that QEC services are required to notify the department within 24 hours of any incident that results in the approved provider having to close or reduce the number of children attending the service for a period, on top of existing requirements to notify about 'serious incidents' and complaints about child safety, health or wellbeing. There is proposed to be a maximum penalty of 20 units ($2,277) for failure to comply with this requirement.[137]

Committee comment

Fundamental legislative principle

While no submissions to the committee raised any concerns with this element of the legislation, the committee has identified as a matter of fundamental legislative principle that the legislation does not define 'serious incident'. Rather, the definition would be prescribed in regulation. Given that a penalty is attached to non-compliance with the requirement to report a serious incident, the committee believes it is important that a person is readily able to ascertain an authoritative definition of 'serious incident'.

Although the proposed amendment mirrors the situation in existing legislation, the Bill (and Act) offers no guidance at all to a person as to what might constitute a serious (and thus reportable) incident. Instead they would be required to keep up with what types of incidents may be prescribed as serious by a regulation.

Point for clarification 2

The committee asks that the government explain the definition of 'serious incident' and describe the process by which all persons who might be affected by the offence and penalty provisions will be clear on their reporting obligations.

2.14 Disqualification and criminal history screening (cls 6-8, 134-135)

The Bill proposes amendments to the QCT Act and the Accreditation Act to standardise provisions relating to criminal history checks and the criteria for disqualification from membership of the department's portfolio statutory bodies. The amendments provide that a person is disqualified from becoming or continuing as a member of the board if convicted of an indictable offence where a conviction is recorded and is not spent under the *Criminal Law (Rehabilitation of Offenders) Act 1986*.[138]

[135] NB. The majority of early childhood education and care services are regulated under a national legislative framework – the *Education and Care Services National Law (Queensland) Act 2011*.
[136] Explanatory notes, p10.
[137] EOLA Bill 2014, cl 24; Explanatory notes, p11.
[138] EOLA Bill 2014, cls 6-8 and 134-135.

Committee comment

Fundamental legislative principle

These and other clauses in the Bill relating to criminal histories give rise to the question of whether the Bill satisfies the fundamental legislative principle contained in the Legislative Standards Act, that the rights and liberties of individuals must be given sufficient regard in Queensland legislation.[139]

These provisions permit disclosures of information that may typically be expected to be private and confidential, and so could impact on a person's reasonable expectation of privacy.

However, the committee notes there are safeguards in place, in that the member or prospective Board member must give consent to police information being sought; the report must be destroyed once it is no longer needed for the purpose for which is was obtained; and unauthorised disclosure would be an offence.

The committee is satisfied the rights and liberties of individuals are given sufficient regard; and supports the proposed amendments to standardise criminal history checks and the criteria for disqualification from membership of the education portfolio statutory bodies.

[139] *Legislative Standards Act 1992* s4(2)(a).

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 several issues. These are addressed in the 'committee comment' sections of this report, as noted below.

3.1 Rights and liberties of individuals

Enrolment of mature-age students (cls 68-71)

The committee considered whether the rights and liberties of individuals are breached in restricting the provision of a service to a particular group of people (in this case, on the basis of age). This is discussed in section 2.3 of this report. The proposed amendments are supported.

Confidentiality (cl 58)

The committee gave consideration to whether information sharing as proposed under this clause of the Bill is warranted. This is discussed in section 2.8 of this report. The proposed amendments are supported.

Civil liability indemnity (cls 25, 139)

The committee examined the proposed amendments to ensure that immunity from proceedings or prosecution is not conferred by the legislation without adequate justification. This is discussed in section 2.11 of this report. The proposed amendments are supported.

Notice of incidents at Queensland education and care services (cl 24)

The committee seeks a point of clarification from the government with respect to the lack of definition of 'serious incident' in the proposed amendment to the *Education and Care Services Act 2013* (the Act providing for 'serious incident' to be defined in regulation) and the potential for that to infringe on the rights and liberties of individuals who might be subject to the offence and penalty provisions. This is discussed in section 2.13 of this report.

Disqualification and criminal history screening (cls 6-8, 134-135)

The committee considered the Bill's amendments which would standardise provisions relating to criminal history checks and the criteria for disqualification from membership of the education portfolio statutory bodies, in respect of any infringement on a person's reasonable expectation of privacy. This is discussed in section 2.14 of this report. The amendments are supported.

3.2 The institution of Parliament

Special assistance schools

The committee considered whether the prescription of accreditation criteria for special assistance schools in regulation rather than in primary legislation represented an appropriate delegation of administrative power and whether it demonstrated sufficient regard for the institution of Parliament. This is discussed in section 2.9 of this report. The proposed amendments are supported.

3.3 Explanatory notes

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

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and 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.

Committee comment

Whilst it would be helpful if the explanatory notes identified the specific clause(s) being discussed when identifying the fundamental legislative principles, the department should be commended for the quality of the fundamental legislative principles section of the explanatory notes, which discusses at length virtually all potential breaches of FLPs and offers comprehensive explanations as to why the potential breaches may be considered to be justified.

Appendix A – List of submissions

Sub #	Submitter
1	Queensland Catholic Education Commission
2	Queensland Secondary Principals' Association
3	Non-State Schools Accreditation Board
4	Queensland Law Society
5	Queensland Family and Child Commission

Appendix B – Witnesses at public briefings and public hearing

Witnesses at public briefing, 27 August 2014
Department of Education, Training and Employment • Mr Stuart Busby, Executive Director, Portfolio Services and External Relations • Mr Bevan Brennan, Assistant Director-General, State Schools - Operations • Dr Pat Parsons, Executive Director, Strategic Policy and Intergovernmental Relations • Ms Annette Whitehead, Deputy Director-General, Policy, Performance and Planning

Witnesses at public hearing, 8 October 2014
• Mr Andrew Pierpoint, President, Queensland Secondary Principals Association
Queensland Catholic Education Commission • Mr Mike Byrne, **Executive Director** • Mr Patrick MacDermott, Executive Officer, Research and Policy
Queensland Law Society • Mr Damian Bartholomew, Deputy Chair, Children's Law Committee • Mr Michael Fitzgerald, Deputy President • Mr Paul Paxton-Hall, Member, Not-for-profit Law Committee, Queensland Law Society

Witnesses at public briefing, 8 October 2014
Department of Education, Training and Employment • Mr Bevan Brennan, Assistant Director-General, State Schools—Operations • Mr Stuart Busby, Acting Executive Director, Portfolio Services and External Relations, • Dr Pat Parsons, Executive Director, Strategic Policy and Intergovernmental Relations • Ms Jean Smith, Director, State Schools—Operations

Statement of reservation

DR ANTHONY LYNHAM MP

SHADOW MINISTER FOR EDUCATION

SHADOW MINISTER FOR SCIENCE, INFORMATION TECHNOLOGY AND INNOVATION

SHADOW MINISTER FOR PRIMARY INDUSTRIES AND FISHERIES

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Statement of Reservation

The Opposition supports the general intent of the *Education and Other Legislation Amendment Bill 2014* and the recommendations of the Education and Innovation Committee report however there are a small number of issues which we believe require further clarification.

Enrolment of Mature Age Students

The Opposition appreciates and supports the legislative intent of requiring mature age students to attend a prescribed secondary school or to access secondary education through a school of distance education or TAFE. While adults should be assisted and encouraged to improve their education; it is not always consistent with the duty of care schools have to the children enrolled to allow mature age students to study at the facility. Many Queensland secondary schools, particularly small ones, do not have the capacity to provide appropriate services to mature age students.

I am concerned that the legislation as currently drafted may unduly restrict the ability of mature age students to access education, particularly in light of the exorbitant increase in TAFE fees as a result of the Newman Government's policies. It will be problematic if the policy decisions of this Government both increase the number of adults seeking access to TAFE and make it harder for those people to afford that education.

The Opposition also seeks clarification from the Minister on the process that will be followed for secondary schools to become a prescribed mature age school. Information provided to the committee by the Department of Education, Training and Employment initially suggested just four schools would meet the criteria but subsequent advice indicates this number is likely to increase after an expression of interest process is conducted. I would ask the Minister to provide further information on this process during his second reading speech.

Criminal History Information

The *Education (Strengthening Discipline in State Schools) Amendment Bill 2013* received the support of the Opposition when it was debated in October 2013. Labor's reservations on allowing principals to suspend or exclude students on the basis of criminal charges were assuaged when the Department provided draft guidelines on the use of those powers. While we continue to support the existing provisions, during the committee inquiry into the current bill it was not evident that the disciplinary guidelines have been widely disseminated or communicated to school principals. I invite the Minister to provide a copy of the current guidelines for the use of the existing powers and to give an overview of how the current procedures have been communicated to principals.

The Opposition understands that the amendments contained within the current bill improve the system by enabling principals to receive accurate information through allowing the Chief Executive to request information on charges from the Police Commissioner. We agree with the Education and Innovation Committee's recommendation that the Government should consider limiting the advice obtained from the police to advice as to the existence of a potential risk to the school community, and extended to include advice as to risk minimisation or elimination.

Conclusion

The Opposition substantially supports the *Education and Other Legislation Amendment Bill 2014* subject to the Minister's clarification of the issues raised in this statement of reservation and the committee's report. We reserve the right to raise other important issues during parliamentary debate.

Yours sincerely

Dr Anthony Lynham
Member for Stafford