EDUCATION AND INNOVATION COMMITTEE

REPORT No. 40 on the

EDUCATION AND OTHER LEGISLATION AMENDMENT BILL 2014

QUEENSLAND GOVERNMENT RESPONSE

INTRODUCTION

On 26 August 2014, the Education and Other Legislation Amendment Bill 2014 (the Bill) was introduced into Parliament.

The Bill was subsequently referred to the Education and Innovation Committee (the Committee) with a report back date of 20 October 2014.

On 20 October 2014, the Committee tabled its report (No.40) in relation to the Bill.

The Queensland Government response to the recommendations made by the Committee is provided below.

RESPONSE TO RECOMMENDATIONS

Recommendation 1

The Committee recommends that the Bill be passed.

Government Response

The Government thanks the Committee for its consideration of the Bill and notes the Committee's recommendation that the Bill be passed.

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.

Government response

The Government has carefully considered the Committee's recommendation; however, for the reasons outlined below does not support the recommendation.

State school principals have a duty to provide a safe learning environment for students and staff.

The student discipline provisions in the *Education (General Provisions) Act 2006* provide principals with the power to respond to situations where a student is charged with, or convicted of, a criminal offence. To exercise these powers the Director-General and principals need to know the exact details of charges and convictions to determine whether a ground exists to suspend or exclude a student. It is important for the principal to have all the necessary information to determine if the risk posed by a student can be managed by the school and to assess the potential impact the student's continued presence at the school will have on the broader school community. It is appropriate that the principal makes this assessment because they understand their community, and the resourcing and staff capability of their school.

The Committee's recommendation to limit the information that may be obtained from the police about the student to advise as to whether there is a potential risk to the school community and how to minimise or eliminate that risk, does not allow the principal to consider all relevant information to make an appropriate decision for both the student and the school community.

Further, it is not considered the role of the police to provide advice or an opinion on risk minimisation or elimination in schools.

I note that the Committee's report makes reference to section 26B of the *Education Act 1990* (NSW Act). The NSW Act does not allow for police to provide advice in respect of the potential risk posed by a student to the school community. The section operates to allow police to provide information to assist the Director-General and schools, who then in turn are required to assess the potential risk posed by a student.

Similarly, the intention of the Bill is for the Queensland Police Commissioner to provide factual information that will be used to inform assessments by principals of the risk posed by students.

Schools are unique learning environments and principals need to be able to weigh the rights of the individual to an education at a State school against the rights of other students, staff and the broader school community to access a safe learning environment.

The power to suspend a student based on a charge is only used rarely by principals. Only five charge-related suspensions have been recorded against Queensland State school students as at the end of Semester 1, 2014 and no students have been excluded on the basis of a conviction. Some principals have implemented strategies to manage the risk posed by the students and allowed them to continue to attend school and engage in learning.

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.

Government response

Recommendation 3 is supported in-principle.

The Department of Education, Training and Employment (the Department) acknowledges the concerns raised by the Queensland Catholic Education Commission as expressed in the Committee report that the proposed period of 95 school days may in some instances not allow sufficient time to finalise the intended application to the Non-State Schools Accreditation Board (Accreditation Board) to include the site as an attribute of their special assistance accreditation.

The 95 day period, including the possibility of an automatic extension of that period in circumstances where an application is made for the temporary site to be a new 'accredited' site (i.e. included as an attribute of their special assistance accreditation), were communicated by the Department to stakeholders during consultation on the Bill to assist in understanding the provisions of the Bill.

The Government's view is that the amendment proposed by the Committee is not required to be made to the Bill itself. This is because the Bill does not provide for the timeframes a special assistance school can operate from a temporary site. The Bill proposes that the time period which a special assistance school can provide special assistance at a temporary site and certain other matters to support the operation of the amendments in relation to special assistance schools will be prescribed in the *Education (Accreditation of Non-State Schools) Regulation 2001* (Accreditation Regulation).

The temporary site time period is therefore a matter for inclusion and consideration in developing the consequential amendments to the Accreditation Regulation.

Determining the appropriate time period which a special assistance school can operate a temporary site requires a balancing of considerations. This includes providing sufficient time for the special assistance school to consider the merits of, and make, an application to formalise the temporary site as an attribute of accreditation.
The Department proposes to consult on the ensuing Accreditation Regulation amendments, including the time period which a special assistance school may operate at a temporary site.

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.

Government response

The Government supports the Committee's recommendation.

Under the proposed amendments, governing bodies established by letters patent under the repealed *Religious Educational and Charitable Institutions Act 1861* would be permitted to nominate additional directors for the purposes of the *Education (Accreditation of Non-State Schools) Act 2001* (Accreditation Act), other than those recognised by their governing documents. No other type of governing body will

nominate additional directors in this way – because other types of governing bodies are able to change their directors using the mechanisms provided for in their incorporating legislation.

Importantly, the written notification under section 167 will be the only record required to show that an additional director has been nominated. It is therefore appropriate that a penalty apply if the governing body fails to notify the Accreditation Board within 14 days of the nomination.

In contrast, the Accreditation Act does not currently impose a penalty if a governing body fails to notify the Accreditation Board of changes to its directors where those changes are made in accordance with the incorporating legislation, for example the *Corporations Act 2001* (Cwlth). In the same way, the Bill does not impose a penalty if bodies established by letters patent fail to notify the Accreditation Board of changes to the declared directors (those named in the letters patent or their successors) through the ordinary process of succession.

The Accreditation Act requires all non-state school governing bodies to notify the Accreditation Board within 14 days of a range of other matters, such as if the school closes, or the governing body is affected by control action under the Corporations Act. Failure to notify is an offence carrying a penalty of 20 penalty units. The new notification requirements are consistent with this. This timeframe of 14 days is appropriate where the best interests of children is a consideration.

The Accreditation Act is currently under review. In this context, the Government will give consideration to whether all governing bodies should be required to notify of changes to the directors of a governing body, where these changes to directors are made in accordance with relevant incorporating legislation. The Government will also consider whether a corresponding penalty provision for failing to notify is appropriate.

RESPONSE TO POINTS FOR CLARIFICATION

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.

Government response

What information will be sought by the Director-General?

Principals will only be able to request that the Director-General seek information about charges or convictions to inform disciplinary decisions relating to serious offences (such as sexual or violent offences) or other offences where it would not be in the best interests of other students and staff at the school for the student to attend the school.

Policy guidance will be provided to principals in both the revised *Safe, supportive and disciplined school environment procedure* and in a fact sheet outlining the process for obtaining criminal history information.

An example of an offence, that is not a 'serious offence', but where the student may pose an unacceptable risk to other students, could be a student who has been charged with a number of counts of arson and the charges involved setting fire to buildings while significant numbers of people were inside. In this instance, a principal may not be able to manage the potential risk the student poses to the safety of students and staff.

The Director-General will not seek information about minor offences such as stealing, breaking and entering, shoplifting or graffiti as the commission of minor offences is unlikely to pose a risk to the safety and wellbeing of other students and staff.

What information is provided to the principal and how will this be determined?

The Director-General will only provide the principal with information obtained from the Queensland Police Commissioner that the Director-General deems is relevant to allow the principal to make an informed decision about a suspension or exclusion.

The Department has developed an internal process for the Director-General to assess a principal's request for information. This process is based on a consideration of whether the student has been charged or convicted of a serious offence, or of another offence but the nature of the charge or conviction raises concerns as to whether the student's continued attendance at the school would not be in the best interests of other students or staff.

Additionally, principals will be provided with a risk assessment tool to support their decision-making in evaluating the information provided about a student's charges and or convictions by the Director-General. This tool will help principals in weighing up the likelihood and level of risk a student may pose to other students and staff.

Who may access the information while it is in the Department's possession?

There will be strict protocols around the storing and sharing of information obtained by the Director-General from the Queensland Police Commissioner. Information in relation to a student's charges or convictions will be requested from the Director-General by a principal via an email to a designated email mailbox with restricted access. If the Director-General decides to request information from the Queensland Police Commissioner, the relevant information will be placed in the sensitive case record on the student's individual OneSchool profile where access can be restricted.

To ensure this information is only accessible to the principal for the purposes of the suspension or exclusion decision, the OneSchool incident record will be classified as Level 1 (FR Principal). Only the principal can access information protected by the FR principal classification in the OneSchool system. The *Safe, supportive and disciplined school environment procedure* will require that the principal does not keep a hard copy of the letters.

To comply with the requirements of the *Public Records Act 2002*, the information will be classified as highly protected as described in the Department's *Information Management* procedure and will only be retained in the sensitive case record on the student's individual OneSchool profile with access restricted to designated officers until it is no longer required as part of the disciplinary process.

In order to process a suspension, exclusion or subsequent appeal, it may be necessary for a small number of designated and properly trained and instructed departmental officers to have access to the information. For example, the Regional Director would need access to the information in order to consider an appeal, as the information forms part of the facts relied upon by the principal for their suspension or exclusion decision.

The delegated officers are likely to be restricted to the Director-General's delegate in Central Office, the Regional Director for an appeal, the principal/senior lawyer if legal advice is required and the principal. However, the Director-General will make the decision to delegate as per section 432 of the *Education (General Provisions) Act 2006*.

Any designated departmental officers who have access to the information will be provided with a written process and training and will be warned that disclosure of the information may lead to disciplinary consequences or criminal charges. The process will be subject to audit.

There will likely also be reference to the charges or convictions, and information about such charges and convictions, in any subsequent suspension or exclusion letter to the student. This letter is sent to the student and an electronic copy is retained on the student's OneSchool sensitive case record.

Any information obtained in relation to a student's charges or convictions will only be used for the purpose for which it was obtained, as specified in the legislation.

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.

Government response

'Serious incident' for the purposes of section 127 of the *Education and Care Services Act 2013* (ECS Act) is clearly defined in section 22 of the *Education and Care Services Regulation 2014* (ECS Regulation). The following are prescribed as serious incidents:

(a) the death of a child—
  (i) while a QEC approved service provides regulated education and care to the child; or
  (ii) following an incident while a QEC approved service provides regulated education and care to the child;
(b) any incident involving serious injury or trauma to, or illness of, a child while a QEC approved service provides regulated education and care to the child—
  (i) which a reasonable person would consider required urgent medical attention from a medical practitioner; or

Examples—
whooping cough, broken limb, anaphylaxis reaction

(ii) for which the child attended, or ought reasonably to have attended, a hospital;

(c) any incident where the attendance of emergency services at the QEC service premises was sought, or ought reasonably to have been sought;

(d) any circumstance where a QEC approved service provides regulated education and care to a child and the child—

(i) appears to be missing or can not be accounted for; or

(ii) appears to have been taken or removed from the QEC service premises in a way that contravenes this Act; or

(iii) is mistakenly locked in or locked out of the QEC service premises or any part of the premises.

As noted in the Department's advice to the Committee in the context of its inquiry into the Education and Care Services Bill 2013, section 127 of the ECS Act is modelled on the *Education and Care Services National Law*, which defines serious incident in the *Education and Care Services National Regulation*. Prescribing the definition in the ECS Regulation ensures that the Department is able to respond quickly to any changes made to the corresponding definition in the National Regulation or in the event that an unforeseen type of serious incident arises.

Should a future change be required to the ECS Regulation including, for example, to the definition of serious incident, the Department would use existing mechanisms to consult with Queensland Education and Care (QEC) services about these changes. These include the Department's website and an electronic newsletter, the *ECS e-bulletin* which is distributed to all QEC services and providers.

In regard to clarifying reporting obligations, the Department would also advise services using these communication mechanisms. In addition, due to the small number of services it would not be onerous for the Department to write to each provider advising of any changes to reporting obligations.