



Education and Other Legislation Amendment Bill 2016

Report No. 14, 55th Parliament

Education, Tourism, Innovation and Small Business Committee

August 2016

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Contents

Abbreviations and glossary	iv
Chair’s foreword	v
Recommendations	vi
1 Introduction	1
1.1 Role of the committee	1
1.2 Referral of the Bill	1
1.3 Committee inquiry process	1
1.4 Consultation on the Bill	1
1.5 Should the Bill be passed?	1
2 Examination of the Bill	3
2.1 The Education and Other Legislation Amendment Bill 2016	3
2.1.1 <i>Purpose of the Bill</i>	3
2.2 Prep as the compulsory first year of school	3
2.2.1 <i>Background</i>	3
2.2.2 <i>Amendment of the Education (General Provisions) Act 2006</i>	4
2.3 Regulation of the teaching profession	5
2.3.1 <i>Background</i>	5
2.3.2 <i>Amendment of the College of Teachers Act</i>	6
2.3.3 <i>Minor Technical Matters</i>	14
2.4 Government grants and a statutory debt recovery mechanism	14
2.4.1 <i>Background</i>	14
2.4.2 <i>Amendment of the Education (General Provisions) Act 2006</i>	15
2.5 Oversight of non-state schools	16
2.5.1 <i>Background</i>	16
2.5.2 <i>Amendment of the Education (Accreditation of Non-State Schools) Act 2001 (the Accreditation Act)</i>	16
3 Compliance with Legislative Standards Act	18
3.1 Fundamental legislative principles	18
3.1.1 <i>Background</i>	18
3.1.2 <i>Rights and liberties of individuals</i>	18
3.1.3 <i>Clause 137</i>	18
3.1.4 <i>Clauses 45 and 132</i>	19
3.1.5 <i>Clause 84 Power of PC&TC Committee to continue practice and conduct proceedings in absence of relevant teacher</i>	19
Appendices	21
Appendix A – List of Submissions	21
Appendix B – Witnesses at the public briefing and the public hearing	22

Abbreviations and glossary

AEA	<i>Australian Education Act 2014</i>
College of Teachers Act	<i>Education (Queensland College of Teachers) Act 2005</i>
EGPA	<i>Education (General Provisions) Act 2006</i>
IEU	Independent Education Union, Queensland and Northern Territory Branch
ISQ	Independent Schools Queensland
LSA	<i>Legislative Standards Act 1992</i>
PC&TC Committee	Professional Capacity and Teacher Conduct Committee
QAO	Queensland Audit Office
QCEC	Queensland Catholic Education Commission
QFCC	Queensland Family and Child Commission
QTU	Queensland Teachers' Union of Employees
The Accreditation Board	Non-State School's Accreditation Board
The Bill	Education and Other Legislation Amendment Bill 2016
The College	Queensland College of Teachers
The Department	Department of Education and Training

Chair's foreword

On behalf of the Education, Tourism, Innovation and Small Business Committee of the 55th Parliament of Queensland, I present this report on the committee's inquiry into the Education and Other Legislation Amendment Bill 2016.

The Bill was introduced into the Legislative Assembly by the Minister for Education and Minister for Tourism and Major Events, on the 24 May 2016. The committee was required to report to the Legislative Assembly by 2 August 2016.

In considering the Bill, the committee's task was to consider the policy to be given effect by the Bill, and whether the Bill has sufficient regard to the fundamental legislative principles in the *Legislative Standards Act 1992*. The fundamental legislative principles include whether legislation has sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

On behalf of the committee, I thank those who made written submissions about the issues in this inquiry, and those who briefed the committee or participated in its public hearing.

I commend the report to the House.



Scott Stewart MP
Chair

Recommendations

Recommendation 1

The committee recommends that the Education and Other Legislation Amendment Bill 2016 be passed.

Recommendation 2

The committee recommends that minor amendments be made to correct a cross reference in clause 115 and the application, in clause 133, of proposed section 288(6)(a).

1 Introduction

1.1 Role of the committee

The Education, Tourism, Innovation and Small Business Committee (the committee) was established as a portfolio committee by resolution of the Legislative Assembly on 27 March 2015. The committee consists of three government and three non-government members.

The committee's areas of portfolio responsibility are:

- education
- tourism and major events
- innovation
- science
- the digital economy and small business.¹

The *Parliament of Queensland Act 2001* sets out the role of portfolio committees, which includes consideration of Appropriation Bills, other Bills and subordinate legislation, public accounts and public works issues, and issues referred to it by the Legislative Assembly.

1.2 Referral of the Bill

The Education and Other Legislation Amendment Bill (the Bill) was referred to the committee on 24 May 2016, and the committee was required to report to the Legislative Assembly by 2 August 2016.

1.3 Committee inquiry process

The Department's officials briefed the committee on the Bill on 13 June 2016.

The committee invited submissions from interested stakeholders by advertising on its website. A call for submissions was also emailed to over 900 committee subscribers, and email invitations were sent to 30 stakeholders.

Eight submissions were received (see list at Appendix A).

Transcripts of the briefing provided by the Department on 13 June 2016 and the public hearing held on 15 June 2016 are published on the committee's webpage. Submissions received and accepted by the committee are also published on the webpage at:

<http://www.parliament.qld.gov.au/work-of-committees/committees/ETISBC/inquiries/current-inquiries/EduOtherLegAmBill2016>

1.4 Consultation on the Bill

The Explanatory Notes state that the Department of Education and Training consulted with education stakeholders on the Bill. These included: Independent Schools Queensland; Queensland Catholic Education Commission; the Queensland College of Teachers; the Accreditation Board; unions; parent and guardian associations; non-state school teacher employer associations; principal associations; early childhood and kindergarten representatives and universities.²

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed. The committee considered the Bill, information provided by the department and the information and views expressed in submissions. The committee considers that the Bill should be passed.

¹ Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly*, effective from 31 August 2004 (amended 17 July 2015)

² Explanatory Notes, p 13

Recommendation 1:

The committee recommends that the Education and Other Legislation Amendment Bill 2016 be passed.

2 Examination of the Bill

2.1 The Education and Other Legislation Amendment Bill 2016

2.1.1 Purpose of the Bill

The purpose of the Education and Other Legislation Amendment Bill 2016 (the Bill), as set out in the Explanatory Notes, is to implement the Queensland government's policy objectives of:

- making the Preparatory Year (Prep) the compulsory first year of school education in Queensland;
- improving the regulation of the teaching profession in Queensland, including by providing a contemporary and streamlined governance structure for the Queensland College of Teachers (the College) and improving the disciplinary framework and strengthening the ability of the College to protect the safety and wellbeing of Queensland students;
- introducing a statutory debt recovery mechanism to recover State and Commonwealth funding paid to non-state schools in excess of their entitlement; and
- strengthening the oversight of non-state schools by enabling the Non-State Schools Accreditation Board (the Accreditation Board) to disclose relevant information with law enforcement agencies and reduce red-tape for non-state schools by reducing requirements for the provision of school survey data.³

To achieve those policy objectives the Bill makes amendments to the following four Acts. These include the:

- *Education (Accreditation of Non-State Schools) Act 2001*
- *Education (General Provisions) Act 2006*
- *Education (Queensland College of Teachers) Act 2005*, and the
- *Working with Children (Risk Management and Screening) Act 2000*.

Clause 2 of the Bill provides that some sections are to commence on proclamation with the remainder of the Education and Other Legislation Amendment Act 2016 to commence on assent.

The following sections of the report discuss the key provisions of the Bill, the main issues and views expressed by submitters and witnesses at public hearings and the information provided by the Department of Education and Training (the Department).

2.2 Prep as the compulsory first year of school

2.2.1 Background

Prep was introduced in Queensland schools in 2007 to provide a foundation in the early learning areas of literacy and numeracy prior to entry to Year 1. Since its introduction there has been a notable improvement in NAPLAN results for Queensland schools.⁴ According to the Explanatory Notes the long term benefits of participation in high-quality Prep and equivalent education programs include improved relationships, better educational and employment outcomes, and lower rates of mental illness.⁵ Despite the benefits there is currently no requirement in Queensland for a child to undertake a Prep year of learning. Whilst Prep enrolment and attendance in Queensland is very high there remains a small cluster of children who are not participating in Prep.⁶ In 2015 approximately 400 children in the state schooling sector did not attend Prep prior to enrolment in year one. Of those, approximately 17 per cent were Indigenous and 63 per cent were from metropolitan areas.⁷

³ Explanatory Notes, Education and Other Legislation Amendment Bill 2016, p 1

⁴ Hon Kate Jones, Minister for Education and Minister for Tourism and Major Events, Introductory Speech, 24 May 2016, p 1934

⁵ Explanatory Notes, p 1

⁶ Hansard, Public Briefing, 13 June 2016, p 1

⁷ Department of Education, Correspondence to the Committee, 17 June 2016, p 1

In January 2016 the Queensland Government made a commitment to make Prep compulsory from 2017 for all children in Queensland. The Bill implements this commitment by amending the *Education (General Provisions) Act 2006* (the EGPA).

2.2.2 Amendment of the *Education (General Provisions) Act 2006*

Clause 8 amends the enrolment provision in section 156 of the EGPA by inserting subsection (1A). The subsection provides the criteria about which the principal must be satisfied before a child is enrolled into Year 1.

(1A) The principal must not enrol a child in year 1 of schooling at the school unless satisfied the child –

- a) has undertaken a preparatory year at a State school or non-State School; or*
- b) has undertaken education in another State or country that is equivalent to the preparatory year; or*
- c) was registered, or provisionally registered, for home education in the year before the proposed year of the child's enrolment in year 1 of schooling at the school; or*
- d) is otherwise ready to be enrolled in year 1 of schooling at the school, considering the child's attributes.⁸*

Clause 16 defines 'attributes' of a child in the amended schedule 4 (Dictionary) to mean the child's aptitude and ability; social and emotional competence; physical development; and level of knowledge and understanding.⁹

The Department advised the committee that new section 156(1A)(d) does not relate to a child's readiness for entering into Prep, or for transitioning from Prep to Year 1, rather the proposed section:

.. provides for an exception to the requirement to undertake Prep prior to enrolling in Year 1. It allows a child to skip Prep and enrol directly into Year 1 where a principal considers that is appropriate having regard to the child's 'attributes' ...This allows children who are particularly gifted to be enrolled directly into Year 1 without first having undertaken Prep.¹⁰

The Bill does not alter the compulsory school commencement age of 6 years and 6 months, however, it provides parents with some flexibility in terms of the age at which they may enrol their child in Prep (from 4 and a half years of age). The Explanatory Notes describe a number of reasons why parents may decide to delay entry to Prep. They include that the child is not developmentally, behaviourally or emotionally ready for a school based education at Prep level; and circumstances where the child is required to travel long distances to school or to attend boarding school.¹¹

Clause 10 amends section 206 of the EGPA to amend the age a child is eligible to be registered, or provisionally registered, for home education to at least 5 years and 6 months on 31 December in the year of registration.¹² This reflects the standard age for eligibility to enrol in Prep in all Queensland schools. In this way the amendment ensures Prep is made compulsory for children registered or provisionally registered for home schooling.

Clause 15 inserts new section 542 to provide a transitional arrangement for some students. Student applications for enrolment in year one in state schools and non-state schools prior to the commencement of the amendments to the EGPA will be dealt with by the principal "as if the amendments had not been made."¹³

⁸ The Bill 2016, p 12

⁹ The Bill, pp 17-18

¹⁰ Department of Education and Training, Correspondence, 13 July 2016

¹¹ Explanatory Notes, p 4

¹² Explanatory Notes, p 4

¹³ Explanatory Notes, p 15

542

*(2) The school's principal must deal with the application under the Act as in force immediately before the commencement.*¹⁴

The introduction of compulsory Prep for all children in Queensland was supported by most submitters.¹⁵ Independent Schools Queensland (ISQ) believes the Bill provides enough flexibility for the schools they represent.

*...the current draft legislation provides scope for the breadth of member schools to continue to operate within their education philosophy....*¹⁶

The Queensland Teachers' Union (QTU) submitted that compulsory Prep would ensure students have a consistent learning experience going into year one.¹⁷

The amendments to keep the compulsory age of schooling at six years and six months were supported by the QTU and the Queensland Family and Child Commission (QFCC). QFCC submitted that:

*...prep is vital to provide each child with solid foundations of learning at the right developmentally appropriate age...*¹⁸

The only submitter to offer qualified support for the amendments was the Queensland Catholic Education Commission (QCEC). The QCEC raised concerns about funding issues for students from non-government schools who needed to repeat a year of Prep.

*It would be obviously unreasonable to make enrolment in the Preparatory Year compulsory, while at the same time not treating this year for funding purposes in the same manner as other compulsory years of schooling are treated. It is considered highly desirable that resolution of this issue be achieved prior to the implementation of amendments making enrolment in the Preparatory Year compulsory.*¹⁹

The Department advised the committee:

The funding issue raised by QCEC is not an impediment to the introduction of Prep...In Queensland the majority of eligible children currently participate in Prep. Also, a key feature of the compulsory Prep amendments is that there will be no change to the compulsory schooling age. This provides parents with the flexibility to enrol their child into Prep when they are developmentally ready, provided they are enrolled when they are of compulsory school age.

Accordingly, the proposed Prep reforms are not anticipated to result in a significantly greater number of children participating in Prep or repeating their Prep year.

*However, the Department will write to the Australian Government highlighting QCEC's concern that the funding treatment of repeat Prep students is different to the funding of students repeating other years of schooling.*²⁰

2.3 Regulation of the teaching profession

2.3.1 Background

It is a legal requirement that all teachers in Queensland are registered with the Queensland College of Teachers (the College). The College is also responsible for regulating the teaching industry in Queensland, ensuring teachers' professionalism, competency and suitability.

¹⁴ See Clause 15 (2) of the Bill

¹⁵ For example QTU, ISQ, QFCC, QTC

¹⁶ ISQ, Submission 3, p 2

¹⁷ QTU, Submission 1, p 2

¹⁸ QFCC, Submission 7 p 3

¹⁹ QCEC, Submission 6, p 2

²⁰ Department of Education, Correspondence, 13 July 2016, p 3

A 10 year review of the *Education (Queensland College of Teachers) Act 2005* (College of Teachers Act) highlighted the need for improvements in the College's governance structure; teacher disciplinary framework; and areas of the regulation of the teaching profession that deal with the notification of allegations of child harm and recency of practice requirements for teachers.²¹

2.3.2 Amendment of the College of Teachers Act

The Bill makes amendments to the College of Teachers Act to implement the above improvements.

The amendments will:

- change governance arrangements for the College
- enable the College internal disciplinary committee to deal with a teacher who may have an impairment that affects their conduct
- broadens the information on which the College may act to determine whether a ground for disciplinary action exists; and
- increases the powers of the College to suspend a teacher where there is a risk to children, along with other amendments to enable the College to protect children where a teacher poses an unacceptable risk of harm.

The Bill also makes a number of minor technical amendments to reduce the regulatory burden to the College including removing the requirement to issue a registration card. One submitter contended that the registration card provided numerous member discounts for teachers and that removing the card would equate to a be a personal substantial loss of between \$300 and \$500 per year.²²

Due to the significant amendments to the College of Teachers Act, the ISQ proposes a 12-month post-amendment review to assess the impact and efficacy of the legislative changes across the sector.²³

Queensland College of Teachers – governance arrangements

The Explanatory Notes state that amendments about the composition of the board of the College balance “retaining a representative board comprised of a majority of teacher representation, with promoting the Board's corporate governance capacity.”²⁴ Currently the College's governing body is a board consisting of 17 members appointed by Governor in Council under section 239 of the College of Teachers Act. Clause 116 of the Bill reduces the board to 15 members by removing provision for a nominee of the Queensland Public Sector Union, and providing for one nominee of the Minister instead of two.

Other amendments to section 239 (in clause 116) specify that the nominees of the Minister and the chief executive will be people “who have skills and experience relevant to the College's corporate, strategic or regulatory functions.” Other minor amendments made by clause 116 update the way that the nominee of university vice-chancellors is described and the name of the parents' body of independent schools.

The Department described the election process for the Board as follows:

*...once the election and nomination happens, all appointments are made by the Governor in Council under the legislation. That means that the Minister takes it to Governor in Council and it goes through our government processes. The legislation prescribes eligibility and disqualification provisions. All of that is applied. We get criminal history checks on all applicants, and if they are disqualified their appointment is not proceeded with.*²⁵

²¹ Explanatory Notes, p 2

²² Amanda Bartle, Submission 2.

²³ ISQ, Submission 3, p 4

²⁴ Explanatory Notes, p 4

²⁵ Hansard, Briefing, 13 June 2016

The proposed amendments to the board of the College are broadly supported by submitters.²⁶ The QCEC supports the changes to the Board from 17 to 15 and endorses the maintenance of parent representation. The QCEC sees the representation of the three major school employing authorities on the Board as vital.²⁷ The QTU strongly supports current practicing teacher majority representation but cautions against further changes:

*While we recognise that the rationale behind the proposed changes to the governance structure is streamlining operations, we believe that the capacity of the college to uphold the profession is critically dependent on widespread consultation, and caution against any further reduction of practitioner representation on the board and committees.*²⁸

The ISQ contends that further reductions to the Board will be required in the future. “We would suggest that over time there be a reduction in size to better reflect current research on ‘good’ governance which cites 7-10 members as the optimal number of directors, with the smaller number favoured as more flexible and effective.”²⁹

The Department addresses the issue as follows:

*There are no current proposals to further reduce the size of the Board or the committees beyond that proposed under the Bill. Proposed changes to governance were widely consulted and the possible scenarios were considered in response to key stakeholder feedback, including from the College, parent groups and teacher unions. The changes in the Bill represent the strong support from the majority of stakeholders for streamlining the Board of the College, while maintaining the representative (as opposed to corporate) structure and a majority representation of teachers.*³⁰

Recency of practice

The Bill removes the mandatory requirements for the College to impose specific ‘returning to teaching conditions’ on teachers wishing to renew their registration, and instead ensures teachers meet nationally agreed recency of practice requirements under its general condition power in the College of Teachers Act.³¹ The Explanatory Notes state that the amendment provides the College with greater flexibility and discretion.³² The amendment is supported by QCEC, QTU and ISQ.

The QTU states that there are “other relevant provisions in the Act that allow the college to apply conditions to any registration. It is very much about removing that issue of mandation and providing some flexibility.”³³

Disciplinary framework : Teacher practice and conduct bodies

The College’s internal disciplinary committee is renamed as the Professional Capacity and Teacher Conduct Committee – the PC&TC Committee by clause 73, which amends section 113. The PC&TC Committee is to be comprised of three members of the Board of the College, two of whom must be registered teachers.³⁴

The PC&TC Committee will continue to consider minor disciplinary matters and the Queensland Civil and Administrative Tribunal (QCAT) will continue to consider serious disciplinary matters.

²⁶ QTU, QFCC, ISQ, QCEC

²⁷ QCEC, Submission 6, p 2

²⁸ QTU, Submission 1, p 4

²⁹ ISQ, Submission 3, p 4

³⁰ Department of Education and Training, Correspondence, 13 July 2016

³¹ Explanatory Notes, p 7, p 16

³² Explanatory Notes, p 17

³³ Hansard, Public Hearing, 15 June 2016, p 5

³⁴ Department of Education and Training, Correspondence, 13 July 2016

The QFCC recommended that Aboriginal and Torres Strait Islanders be represented on the PC&TC Committee, in appropriate circumstances. According to the Department no issues had been raised previously with the College regarding membership of the internal disciplinary committee.

The Department advised:

*The recommendation to consider Aboriginal and Torres Strait Islander membership, as part of the Committee, will be a matter for the College to consider, and dependent upon the composition of the Board from time to time.*³⁵

Practice and conduct agreements and teacher impairment

Clause 60 enables the College to enter into voluntary practice and conduct agreements with teachers for PC&TC matters³⁶ that require minor disciplinary actions.³⁷ The Department advised that in many minor disciplinary matters the teacher recognises that the behaviour was wrong and accepts the proposed disciplinary action. “This reform therefore allows minor disciplinary matters to be dealt with more efficiently without going through a full disciplinary hearing.”³⁸ The QTU strongly supports these changes.³⁹ ISQ also supports this amendment as it allows for the “early resolution of disciplinary matters by a voluntary written agreement between the College and the teacher.”⁴⁰

A number of clauses in the Bill rename ‘disciplinary proceedings’ as ‘practice and conduct proceedings’, and a ‘disciplinary body’ becomes a ‘practice and conduct body’. Also, a ‘disciplinary matter’ is changed to ‘practice and conduct matter’. The changes in terminology reflect new provisions which will enable the College to deal with minor disciplinary matters where a teacher’s practice or conduct may have been caused by, or contributed to, an impairment.⁴¹ Submitters supported changes in terminology that reflect a less punitive approach to minor disciplinary matters.⁴²

Clauses 71 to 82 of the Bill propose amendments to the College of Teachers Act in relation to the PC&TC Committee. Some clauses make the changes in terminology mentioned above, and the substantive amendments provide for the PC&TC Committee to consider a teacher’s impairment. The Explanatory Notes state that the amendments:

*...support the PC&TC Committee to take a more supportive, rather than a punitive approach to minor disciplinary matters, where the teachers’ behaviour is affected by impairment, for example a mental illness or substance abuse. QCAT currently has similar powers in relation to serious disciplinary matters.*⁴³

Clause 74 amends section 114 to require that the PC&TC Committee must have an additional member who is drawn from a health practitioner panel when the Committee considers a practice and conduct matter that involves an impairment.

The PC&TC Committee will be empowered by new section 119A (inserted by clause 81) to give notice to a teacher, either before or during practice and conduct proceedings, to undergo a health assessment. A health assessment may be required if the PC&TC Committee reasonably believes the teacher may have an impairment and the impairment may have caused or contributed to behaviour that is the basis for the proceedings. A definition of ‘impairment’ (inserted in the Dictionary by clause 138) is: “... a physical or mental condition or disorder (including substance abuse or dependence).”

³⁵ Department of Education, Correspondence, 13 July 2016, p 5

³⁶ Cl 53 amends s 95 of the College of Teachers Act that details provisions for PC&TC matters, which are minor disciplinary matters.

³⁷ Explanatory Notes, p 19

³⁸ Hansard, Public Briefing, 13 June 2016, p 2

³⁹ QTU, Submission 1, p 3

⁴⁰ ISQ, Submission 3, p 3

⁴¹ See Explanatory Notes p 5

⁴² For example QTU, QCT, QFCC

⁴³ Explanatory Notes, p 5

It is important to note that the amendment does not compel a teacher to undergo a health assessment. The Department explains that “if the teacher does not consent to the health assessment, the committee will deal with the matter as an ordinary minor disciplinary matter without the benefit of the assessment.”⁴⁴

A health assessment, paid for by the PC&TC Committee, is conducted by a registered health practitioner. New section 119B (inserted by clause 81) sets out the contents of a health assessment report, which may include an assessment of any adverse impact the teacher’s impairment has, or is likely to have, on the teacher’s ability to practice as a teacher. Importantly clause 127 inserts new section 284A which limits the use of health assessments in proceedings. Other than the practice and conduct proceeding in relation to which the report was prepared, the assessment can not be produced in another proceeding without the consent of the registered health practitioner assessor who prepared the report and the person to whom the report relates.⁴⁵ The IEU supports this amendment as it alleviates any concerns that the health assessment would be utilised elsewhere without the consent of the relevant teacher.⁴⁶

Submitters supported proposed amendments that enable the PC&TC Committee to seek a health assessment if they believe a teacher has an impairment that caused the behaviour, or the conduct, that led to minor disciplinary issues.⁴⁷ QCT believes the amendments enable teacher impairment “to be dealt with in a supportive and non-punitive manner”.⁴⁸ The QTU describes the proposed amendments as:

*...a positive change...the purpose of such proceedings is not to punish but to ensure the welfare of students. This is particularly evident in the recognition of the potential for an individual’s health to affect practice and conduct without subsequent action being, or being characterised, as punitive.*⁴⁹

Information on which the College may commence practice and conduct proceedings

The Bill enables the College to consider a broader range of information to decide if a ground for disciplinary action exists⁵⁰. To achieve this, clause 50 omits section 91 of the Collge of Teachers Act, which defines ‘disciplinary information’. Omission of the definition will enable the College to consider any information as a basis for practice and conduct proceedings. The College for example, will be able to investigate disciplinary issues or child safety concerns reported about a teacher in the media. However the Department advised the committee that “the college must still have a reasonable belief that a ground for disciplinary action exists before taking disciplinary action against a teacher. This prevents the College from acting on rumour or innuendo.”⁵¹

The QCEC’s submission cautions that increased reporting may result from the amendment and that principals will need to be equipped with the appropriate information and processes.

*Appropriate briefing documents and processes for principals detailing the meaning and intent of the changes will be essential to maximise the effectiveness of the change and minimise any unintended consequences.*⁵²

The Department acknowledged that:

It is possible the amendments could result in increased reporting of harm-related incidents by schools. To minimise the risk of increased reporting that does not meet the new threshold, the

⁴⁴ Hansard, Public Briefing – 13 June 2016, p 3

⁴⁵ Explanatory Notes, p 22; The Bill, pp 63-64

⁴⁶ IEU, Submission 4, p 2

⁴⁷ QFCC, QCT, QTU

⁴⁸ QCT, Submission 5, p 6

⁴⁹ QTU, Submission 1, p 2

⁵⁰ Explanatory Notes, p 4

⁵¹ Hansard, Public Briefing, 13 June 2016, p 2

⁵² QCEC, Sub hamstring, p 3

*College will provide guidance to the state and non-state schooling sectors to assist employing authorities to understand the reporting requirements under section 76.*⁵³

Additional disciplinary actions by PT&TC Committee

Clause 86 expands the actions that may be taken by the PC&TC Committee if it establishes that there are grounds for disciplinary action, including the ability to impose or remove conditions on a teacher's registration. A decision to impose conditions is subject to internal review by the College's Internal Review Committee and external review by QCAT.⁵⁴

In its submission, the QCT suggests this amendment needs to be reflected in the definition of 'minor disciplinary action' in section 95 of the College of Teachers Act, which details those matters that the College can refer to the PC&TC Committee.⁵⁵

The Department responded as follows:

It is unnecessary to make the amendment suggested by the QCT as changing the definition of a 'minor disciplinary action' to include one where a condition is a likely outcome, could result in unintended consequences in that it would inadvertently increase the scope of matters referred to the internal committee.

Also, as both the PC&TC Committee and QCAT will be able to impose conditions, the College's proposal will provide no guidance to the College or teachers as to whether a matter, for which a condition is a likely outcome, ought to be referred to the internal disciplinary committee or QCAT.

Explanation of provisions - depending on the type of matter, disciplinary matters are either referred to the PC&TC Committee or QCAT.

Section 95 of the Education (Queensland College of Teachers) Act 2005 outlines when a matter is appropriate for the internal disciplinary committee. It provides a matter should be referred to the internal disciplinary committee when a 'minor disciplinary action' is the likely outcome.

'Minor disciplinary action' is defined (in section 95) to mean issuing a warning or reprimand to a relevant teacher or accepting an undertaking from a relevant teacher.

*All other matters are referred to the QCAT. Accordingly, matters where suspension or cancellation of a teacher's registration is a possible outcome will always be referred to QCAT.*⁵⁶

The committee is satisfied that no amendment to clause 86 is required.

Child protection –powers to suspend a teacher

Strengthening the ability of the College to protect the safety and wellbeing of Queensland students is a policy objective of the Bill. "Harm" is defined in section 7 of the College of Teachers Act as "...any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing."

The Department advised that "there have been concerns that there are some circumstances where the current Act does not allow the college to act soon enough to protect the interests, safety and wellbeing of children in schools."⁵⁷

Currently a teacher's registration may be suspended if the College reasonably believes the teacher poses an "imminent risk of harm to children".

Clause 18 of the Bill clarifies that harm can be caused by a single act, omission or circumstance or a series or combination of acts, omissions or circumstances.

⁵³ Department of Education and Training, Correspondence, 13 July 2016

⁵⁴ Explanatory Notes, p 20

⁵⁵ QCT, Submission 5, p 2

⁵⁶ Department of Education and Training, Correspondence, 13 July 2016

⁵⁷ Hansard, Public Briefing, 13 June 2016, p 3

Clause 33 makes a small but important amendment to section 49 of the College of Teachers Act by changing the threshold for suspension from an “imminent risk” to a lower threshold of an “unacceptable risk” of harm to children. Lowering the threshold for suspension allows the College to suspend a teacher’s registration immediately where the College reasonably believes that the teacher poses an unacceptable risk of harm to children. Essentially the amendment provides the College with the ability to act earlier.

The Explanatory Notes describe the policy intent of the amendment and section 49 as follows:

The main purpose of a section 49 suspension is to ensure children are protected while the College progresses disciplinary action to the relevant disciplinary (now practice and conduct) body, which will make the final decision in relation to the teacher’s registration. The new threshold for suspension of teacher registration is intended to strengthen the ability of the College to act in the best interests of children to protect the safety and wellbeing of Queensland students.⁵⁸

In considering the suspension of teachers the QTU maintains that the welfare and the best interests of children is the paramount concern and has no objection to lowering the threshold. The QTU believes the amendment to section 49 is balanced by the ability of the teacher to appeal the suspension of registration.⁵⁹

The ISQ supports lowering the threshold for suspension but believes clarification is needed with regards to the term ‘harm’ in section 7. “...the section may be enhanced by a clearer definition of ‘unacceptable harm’ and how it links to the definition of harm and ‘significant harm’ in current Child Protection Act 1999.”

In response to the ISQ’s submission the Department advised that:

It is unnecessary to define the term ‘unacceptable risk of harm’. The term is used in other legislation. For example, it is consistent with the term used in the early childhood sector under the Education and Care Services National Law (Queensland) and the Queensland Education and Care Services Act 2013...The Explanatory Notes provide some guidance around the types of factors that might be considered in determining what is an unacceptable risk of harm – for example, considerations could include the number of allegations against a teacher, the type and severity of the harm being alleged, the nature and degree of the risk and possible harm that would flow in a particular case.

The term ‘significant harm’ is not used in the Education (Queensland College of Teachers) Act 2005. However, by the definition of ‘harm’ in section 7 of Act, harm must be significant. Section 7 defines ‘harm’ to a child for the purpose of the Act (including reporting requirements under section 76) as any detrimental effect of a significant nature on the child’s physical, psychological or emotional wellbeing. This definition aligns with the definition of ‘harm’ in the Child Protection Act 1999.

A small amendment is proposed to the definition of ‘harm’ in section 7 to clarify that harm can be caused by a single act, omission or circumstance, or a series of acts, omissions or circumstances. This also accords with the definition of ‘harm’ in the Child Protection Act 1999.⁶⁰

ISQ recommends that a “targeted professional development program” for teachers be implemented to determine what constitutes “unacceptable harm”; this will also provide consistency in reporting harm to the College.⁶¹

⁵⁸ Explanatory Notes, p 17

⁵⁹ QTU, Submission 1, p 3

⁶⁰ Department of Education and Training, Correspondence, 13 July 2016

⁶¹ ISQ, Submission 3, p 3

QFCC also supports the timely provision of information, training and advice on the proposed amendments to the College of Teachers Act and notifications of child harm to all schools in Queensland.⁶²

The Department advised that:

*The amendments will commence on a date to be set by Proclamation and employing authorities will have time to become familiar with the reporting requirements before the amendment commences.*⁶³

Clause 51 amends the grounds for disciplinary action when a person connected with the teaching profession or otherwise, behaves in a way that does not satisfy the standard of behaviour expected of a teacher (section 92 (1)(h) of the College of Teachers Act). QTU and IEU support the amendment.

In relation to clause 51 the QTU stipulates that “in supporting the change...the QTU maintains the strong view that the expected standard of behaviour is not one of perfection. Rather the expected standard primarily relates to the capacity to competently perform the duties of a teacher and to ensuring the welfare and safety of students.”⁶⁴

The Department states that the College must notify the Working with Children Screening Agency, which administers the Blue Card system, of the suspension of the teacher’s registration. In this way the risk of the teacher sector hopping is minimised.⁶⁵

Clause 34 amends section 50 (Requirement to give notice of suspension) of the College of Teachers Act. The amendment removes from the notice of suspension that the College will refer a disciplinary matter to QCAT, and inserts that QCAT will review the continuation of the suspension and decide if the teacher poses an unacceptable risk of harm to children. If QCAT determines the suspension needs to be continued then the College will authorise an investigation, or refer the matter to a practice and conduct body about whether a ground for disciplinary action against the teacher is established.⁶⁶

The Department explained the process for progressing disciplinary action against a teacher suspended under the proposed lower threshold as follows:

- *if, after reviewing the teacher’s suspension, QCAT confirms the suspension, the College must as soon as practicable either:*
 - *Authorise an investigation to determine if a ground for disciplinary action against the teacher exists; or*
 - *Refer the matter to the relevant disciplinary body, where the College reasonably believes there is a ground for disciplinary action (cl 39);*
- *where the College determines there is no ground for disciplinary action, following an investigation, the College must cancel the suspension (cl 35); and*
- *if the matter is progressed to QCAT as a serious disciplinary matter, QCAT must hear the matter at least 14 days after giving notice of the hearing to the teacher. (cl 93)*⁶⁷

Timeframes for QCAT hearings

The Bill amends the College of Teachers Act that prescribes the timeframes for when the College is required to progress disciplinary action to QCAT. Clause 93 removes the requirement for QCAT to hear a matter referred to it within 14 days of the teacher’s suspension.⁶⁸

The Explanatory Notes explain that removal of the time restrictions will:

⁶² QFCC, Submission 7, p 4

⁶³ Department of Education and Training, Correspondence, 13 July 2016

⁶⁴ IEU, Submission 4, p 1

⁶⁵ Hansard, Public Briefing, 13 June 2016, p 3

⁶⁶ The Bill, p 25

⁶⁷ Department of Education and Training, Correspondence, 17 June 2016

⁶⁸ The Bill, p 36

*...allow some finality in the suspension but it also gives the College time to investigate the behaviour of the teacher to determine whether there is a ground for discipline. It will enable the College to, where necessary, await the outcome of school or police investigations before progressing disciplinary action via QCAT to finalise the matter.*⁶⁹

During government consultation on the Bill the Department advised that:

*...the maximum 14-day period was dissuading the college from acting under that suspension provision because they are not ready in 14 days to have all the evidence available to them. We are trying to give that flexibility in these limited circumstances where there is serious risk of harm, but we have balanced that by ensuring that the college progresses its investigation or progresses disciplinary action as soon as possible. It is a balancing act. We appreciate that there is an impact on an individual, but also we are talking about situations where we are trying to protect children.*⁷⁰

The QTU supports the replacement of the 14 day QCAT review period for suspended teachers with a more realistic process that takes into account the capacity for both the College to investigate the matter and for the teacher to build a defence.⁷¹ While supportive of the amendment, QTU believes that timeliness is important in relation to suspensions as delays and the impact on teachers is significant. As a matter of principle, the QTU believes that:

*any allegations or complaints should be investigated and determined as quickly as possibly consistent with thorough investigation and natural justice for the teacher, many of whom will be innocent. This should not be delayed by a failure to commit adequate resources to the investigation.*⁷²

The QFCC contends that current legislation impacts on the College's preparation of quality evidence to QCAT and supports the amendments that remove the time restrictions. The QFCC suggests "policies and procedures detail a 'best practice' approach which includes swift and timely responses to QCAT".⁷³

Child protection –notification to the College of child harm matters, information sharing

Section 76 of the College of Teachers Act requires an employing authority to notify the College about certain allegations of child harm. Notification to the College allows it to assess whether it needs to take action to protect children from harm. Amendments in the Bill expand the information sharing requirements between employing authorities and the College. Clause 45 amends section 76 to clarify the time at which an employer must notify the College so that the timing of a notification will no longer be linked to the time the employer starts an investigation.

The Bill also expands the ability of the College to enter into information sharing arrangements with the Accreditation Board (clause 132). According to the Explanatory Notes the ability of the College to obtain the information "is essential to ensure the safety of children in schools and confidence in the teaching profession."⁷⁴

The personal information to be shared about an individual between agencies is likely to be highly sensitive. The Bill provides safeguards to protect the misuse of the notification provision and to protect individual rights. Safeguards for clause 45 are summarised in the Explanatory Notes as follows:

- *harm is defined to be significant harm so that only serious child harm matters should be reported to the College*

⁶⁹ Explanatory Notes, p 6

⁷⁰ Hansard, Public Briefing, 17 June 2016, p5

⁷¹ QTU, Submission 8, p 1

⁷² QTU, Submission 8, p 1

⁷³ Submission 7, p 4

⁷⁴ Explanatory Notes, p 11

- *there are threshold tests which the College must meet before they can take any registration action as a result of the notification (suspension of registration or referral to a practice and conduct body)*
- *any subsequent decision by the College to suspend registration to protect children is reviewed by QCAT*
- *the College must maintain confidentiality of particular information, including personal information; and the College must develop guidelines about dealing with personal information.*⁷⁵

Safeguards for information sharing arrangements under clause 132 are summarised in the Explanatory Notes as follows:

- *existing confidentiality provisions of the QCT Act and the College must have guidelines for dealing with personal information; and*
- *only information relevant to the College's and the Accreditation Board's functions can be exchanged.*⁷⁶

The Bill also allows the College greater access to evidentiary material and other information when making decisions for teacher renewals and applications. Clause 20 of the Bill inserts a new section 15AA which allows the College to request additional information from the Commissioner of Police if the College becomes aware that an applicant for registration has been charged with or convicted of an offence. The College may request evidentiary material, and if a charge was not proceeded with, a summary of the reasons.

Clause 47 of the Bill amends section 80 to require the prosecuting authority to inform the College of the way that a prosecution ends if the person is not convicted.⁷⁷

2.3.3 *Minor technical matters*

Two submissions brought to the committee's attention possible technical errors in the Bill.

The Bill contains a reference in the proposed clause 115 (ea) to "Chapter 5 part 2A". The IEU suggests this should be a reference to "chapter 5 part 2".⁷⁸

The QCT suggested that clause 133, which includes proposed subsection 288(6)(a) regarding the removal of information from the register, applies only to a person whose registration is cancelled, and suggests it should also apply to "a person whose permission to teach is cancelled in the relevant circumstances."⁷⁹

The Department advised that the Bill will be corrected to make the technical amendments.

Recommendation 2:

The committee recommends that minor amendments be made to correct a cross reference in clause 115 and the application, in clause 133, of proposed section 288(6)(a).

2.4 Government grants and a statutory debt recovery mechanism

2.4.1 *Background*

State and Commonwealth governments provide financial assistance to eligible non-state schools in Queensland in the form of recurrent and capital grants which help to pay for teaching, general staff salaries, professional development, curriculum development and implementation, maintenance and

⁷⁵ Explanatory Notes, p 12

⁷⁶ Explanatory Notes, p 11

⁷⁷ Explanatory Notes p 23

⁷⁸ IEU, Submission 4, p 2

⁷⁹ QCT, Submission 5, p 3

general operations. The Department administers the funding to more than 480 eligible non-state schools in Queensland.⁸⁰

In the 2014-15 financial year accredited non-state schools received \$693.1 million in grants from the Queensland Government and \$2.1 billion from the Australian Government. These grants are calculated based on the non-state school's annual student numbers. For Queensland Government grants, student numbers are assessed annually via a school census conducted by the Non-State Schools Accreditation Board on the last Friday of February. Federal funding is also determined in a census of student numbers conducted by the Australian Government in August each year.⁸¹

In 2014 the Queensland Audit Office (QAO) conducted a performance audit of the oversight of the state recurrent funding program for non-state schools and estimated that \$1.5 million in funds were overpaid to some non-state schools due to the over counting of student numbers.⁸²

A primary objective of the Bill is to introduce a formal statutory process for the recovery of State and Commonwealth Government funding made to non-state schools in excess of their entitlement.⁸³ The Bill implements this by making amendments to the *Education (General Provisions) Act 2006* (the EGPA).

2.4.2 Amendment of the *Education (General Provisions) Act 2006*

Clause 11 inserts a definition of 'overpayment' for the purposes of chapter 13 of the EGPA.

overpayment means an amount, or part of an amount, paid to the governing body of a non-State school under section 368(1)(b) to which the governing body was not entitled under an approved policy.⁸⁴

Clause 12 relates to the recovery of State Government recurrent funding. The clause amends section 368 to provide that it is a condition of funding that non-state schools must repay overpayments to the State. New section 398 (2B) stipulates that the overpayment is a debt owed by the governing body to the State. Importantly the debt is repaid in accordance with an approved policy rather than defined in legislation.

The Bill provides a head of power for the Minister's policy to retrieve overpaid funding. Clause 13 amends section 369 and enables the Minister to approve a policy for the collection of funds that the Minister considers an overpayment. The policy may include:

- (i) A thing required to be done by an overpaid governing body in relation to repaying the overpayment to the State; and
- (ii) A process to be followed by the State to recover an overpayment from an overpaid governing body.⁸⁵

The Department advised that the funding policy will include:

*processes for ensuring natural justice and resolving disputes about whether there is an overpayment and the amount of any overpayment. The policy will be finalised in consultation with the non-state sector prior to the amendments taking effect.*⁸⁶

Clause 14 relates to the recovery of Commonwealth recurrent funding. Under the Commonwealth *Australian Education Act 2014* (AEA), the Australian government contributes funds to the State for eligible non-state schools in Queensland. Whilst the AEA mandates a debt recovery arrangement be put into place as a condition to the provision of funding to non-state schools there is currently no

⁸⁰ Queensland Audit Office (QAO), Report 12:2014-15 - Oversight of recurrent grants to non-state schools, pp1-4

⁸¹ QAO, pp1-7

⁸² QAO, p 11

⁸³ Explanatory Notes, p 1

⁸⁴ The Bill, p 14

⁸⁵ The Bill, clause 13, p 15

⁸⁶ Hansard, Public Briefing, 13 June 2016

formalised debt recovery arrangement in Queensland.⁸⁷ Without such an arrangement the State could be liable for a debt owed to the Australian government by a non-state school.⁸⁸ To this end the Bill inserts new section 369A. The amendments provide for a statutory debt recovery arrangement that meets the conditions of the AEA and assigns the right of recovery of debt to the Commonwealth minister.⁸⁹

While acknowledging that it does not represent the non-state school sector, QTU supports the introduction of a debt recovery mechanism to recover overpayments to non-state schools and is satisfied that the “Ministerial policy will ensure natural justice and provide adequate dispute resolution processes.”⁹⁰

2.5 Oversight of non-state schools

2.5.1 Background

The Non-State Schools Accreditation Board (the Accreditation Board) works with the governing bodies of non-State schools for accreditation and funding purposes. School survey data, as outlined in Schedule 3 of the Accreditation Act, is provided by the governing bodies to the Accreditation Board. Some of the data that is currently provided to the Accreditation Board is not necessary to the calculation of funding or for accreditation, and places an unnecessary requirement on schools. The Explanatory Notes state that the amendments in the Bill will help to streamline the data collection process imposed on non-state schools by removing the provision of unnecessary school data.⁹¹

The Explanatory Notes also state that the oversight function of the Board needs to be strengthened to provide the Accreditation Board and its auditors with the ability to report suspicions of criminal activity such as “fraud (e.g. over-claimed enrolments); use of school funds for non-educational purposes; or siphoning of funds outside of Australia.”⁹² Currently the Accreditation Act does not allow for the Accreditation Board and its auditors to report their suspicions to the Queensland Police Service.

2.5.2 Amendment of the Education (Accreditation of Non-State Schools) Act 2001 (the Accreditation Act)

Reducing school survey data requirements

Clause 6 has the effect of removing the definition of school survey data from Schedule 3 (Dictionary) of the Accreditation Act and clause 4 amends s 166 to provide that school survey data be defined in a regulation. Together these amendments remove the requirement for schools to provide data to the Accreditation Board that is not required for the calculation of state recurrent funding or for accreditation purposes.⁹³

Enabling the disclosure of confidential information

Clause 5 amends section 173 of the Accreditation Act (Confidentiality of information) allowing for the disclosure of confidential information to a law enforcement agency or a court.

(da) the information is disclosed to a law enforcement agency and the person is reasonably satisfied the disclosure is necessary for the prevention, detection, investigation, prosecution or punishment of a criminal offence or a breach of a law imposing a penalty or sanction;
or

⁸⁷ Explanatory Notes p 13. See also section 25 of the *Australian Education Act 2014* (AEA)

⁸⁸ Hon Kate Jones, Minister for Education and Minister for Tourism and Major Events, Introductory Speech, Education and Other Legislation Amendment Bill 2016, Hansard, p 1935

⁸⁹ Explanatory notes, p 15

⁹⁰ QTU, Submission 1, p 1

⁹¹ Explanatory Notes, p 3

⁹² Explanatory Notes, p 3

⁹³ Explanatory notes, p 14

*(db) the information is disclosed to a court for the purposes of the prosecution of a person for an offence in any jurisdiction.*⁹⁴

The ISQ supports the amendments and submits that they have no significant practical impact on ISQ's member schools.⁹⁵

⁹⁴ Explanatory notes, pp 14-15

⁹⁵ ISQ, Submission 3, p 2

3 Compliance with Legislative Standards Act

3.1 Fundamental legislative principles

3.1.1 Background

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
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill and brings the following to the attention of the Legislative Assembly.

3.1.2 Rights and liberties of individuals

The Bill contains a number of provisions which could be seen to breach section 4(2)(a) of the *Legislative Standards Act 1992* (LSA), which provides that sufficient regard should be had to the rights and liberties of individuals.

Clauses 45, 84, 132 and 137 contain potential breaches of fundamental legislative principles, and are discussed below.

3.1.3 Clause 137

Clause 137 inserts new chapter 12, part 5, including new sections 364 and 365, into the College of Teachers Act.

Section 364(1) provides that the section applies to a person who, immediately before the commencement, held an appointment as a member of the Board under section 239(1)(f) or 239(1)(k). Pursuant to section 364(2), on commencement, the term of the person’s appointment ends. Section 364(3) provides that no compensation is payable to any person for anything done under this section.

Section 365(1) provides that a person who, immediately before the commencement, held an appointment as a member of the Board other than under section 239(1)(f) or 239(1)(k) continues as a member of the Board on the same conditions as the conditions of the person’s appointment immediately before the commencement. Pursuant to section 365(2) the section applies despite amended section 239.

The Explanatory Notes provide further information on the operation of the sections:

The Bill reduces the membership of the Board of the College from 17 to 15 members. The new Board structure will commence on a date fixed by proclamation and government will be able to choose when to commence the new structure. Upon commencement, any member whose position is ceased will not be entitled to be compensated over and above that permitted under the terms and conditions of their appointment. If amendments commence prior to the members’ statutory appointments expiring (31 December 2018), this could impact on individual rights.⁹⁶

Potential FLP issues

Section 4(2)(a) of the LSA provides that legislation should have sufficient regard to the rights and liberties of individuals. The reduction in Board numbers pursuant to clause 137 will see two current Board members lose their positions. It may be argued that these Board members’ rights and liberties will be adversely effected as they have a legitimate expectation that their tenure would continue up until 31 December 2018 when their appointment expires, and not before. However, any compensation

⁹⁶ Explanatory Notes, p 11.

they could receive for being removed from their position would depend on the terms and conditions of their appointment.

The Explanatory Notes provide the following justification for the clause:

These amendments are justified given people appointed to statutory bodies or boards do not have a right to expect to remain in office and it is not expected that Board members will suffer severe financial hardship as a result of any early termination.⁹⁷

The Committee noted that the reduction in Board members under clause 137 may potentially affect the tenure of two current members whose term was set to expire on 31 December 2018.

3.1.4 Clauses 45 and 132

Clause 45 amends section 76 of the College of Teachers Act.

Pursuant to clause 45(3), an employing authority must report to the College an allegation of harm caused to a child by a teacher. Clause 132(1) provides that the College can share information with the Accreditation Board.

The College of Teachers Act at section 284(1) currently provides that the College must make guidelines about dealing with relevant personal information. Pursuant to section 284(2)(a)-(c), the purpose of the guidelines is to ensure:

- (a) natural justice is observed in relation to a person to whom the relevant personal information relates;*
- (b) only relevant information is used for deciding whether a person is suitable to teach;*
- (c) decisions made under this Act about whether a person is suitable to teach, based on the information, are made consistently.⁹⁸*

Section 284(3) provides that the College must give a copy of the guidelines, on request, to an applicant for the grant, renewal or restoration of registration, or permission to teach.

Potential FLP Issue

Both clauses 45 and 132 expand the information sharing requirements of both the employing authority and the College. The personal information to be shared about an individual between these agencies will most likely be of a highly sensitive nature whereby the misuse may potentially effect the rights and liberties of individuals pursuant to section 4(2)(a) of the LSA.

The Explanatory Notes provide justification for clauses 45 and 132, and suggest “there are sufficient safeguards to protect misuse of the notification provision and protect individual rights.”⁹⁹

The committee noted the expansion of information sharing requirements in the Bill. The committee considered these clauses to be appropriate, given the safeguards in place and the guidelines required.

3.1.5 Clause 84 Power of PC&TC Committee to continue practice and conduct proceedings in absence of relevant teacher

Clause 84 inserts new section 121A into the College of Teachers Act.

Presently, section 121(1) of the College of Teachers Act provides that the section applies if the relevant teacher does not:

- (a) make a written submission about the ground for disciplinary action as stated in a notice given to the relevant teacher by the PP&C committee under section 118; or*
- (b) give information as required under section 120.*

⁹⁷ Explanatory Notes, p 11.

⁹⁸ College of Teachers Act, pp 177-178

⁹⁹ Explanatory Notes, pp 11-12. See pp13-14 of this report for a summary of the safeguards.

Pursuant to section 121(2), the PC&TC Committee may:

- (a) *continue the disciplinary proceedings; and*
- (b) *make a decision about whether the ground for disciplinary action is established.*

New section 121A provides that at a hearing, a PC&TC Committee may proceed in the absence of the relevant teacher the subject of the conduct proceedings, if the committee reasonably believes the relevant teacher has been given notice of the hearing.

Potential FLP issues

A teacher must be advised of the specific grounds for the disciplinary action taken, in accordance with the principles of natural justice. The service of a notice on a teacher setting out the grounds for the proceedings is an essential part of the disciplinary process.

New section 121A will allow the PC&TC Committee to continue proceedings in the absence of the teacher, the subject of the proceedings, if the committee 'reasonably believes' the teacher has been provided notice of the hearing.

The Explanatory Notes (at page 10) acknowledge that for the PC&TC Committee to reach this view, they would need evidence that the teacher has received the notice. The provision potentially breaches section 4(3)(b) of the LSA if the evidence provided to the committee does not unequivocally show that the teacher in question has been served with the notice.

Legislation should be consistent with the principles of natural justice which include: (1) something should not be done to a person that will deprive them of some right, interest, or legitimate expectation of a benefit, without the person being given an adequate opportunity to present their case to the decision-maker; (2) the decision maker must be unbiased; (3) procedural fairness should be afforded to the person, meaning fair procedures that are appropriate and adapted to the circumstances of the particular case.¹⁰⁰

The Explanatory Notes provide the following justification for the new section:

It is arguable that this provision is inconsistent with natural justice particularly as it may impact on the right of the individual teacher to be heard and procedural fairness. However, any breach of this FLP is justified because the Committee has to have a reasonable belief that the teacher has been given the notice of the hearing. To form the reasonable belief the Committee would need evidence that the teacher has received the notice. Further decisions of the Committee are reviewable by QCAT. This provides an additional safeguard for an affected teacher. If the Committee was not able to proceed with its consideration of the disciplinary matter this may impact on the Committee's role in regulating the teaching profession.¹⁰¹

The committee noted that a decision of the PC&TC Committee is reviewable by QCAT, providing a safeguard for a teacher who is the subject of disciplinary proceedings, and considers that sufficient regard has been given to the fundamental legislative principles.

¹⁰⁰ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 25.

¹⁰¹ Explanatory Notes, p 10.

Appendices

Appendix A – List of Submissions

Sub No.	Submitter
001	Queensland Teachers' Union of Employees
002	Amanda Bartle
003	Independent Schools Queensland
004	Independent Education Union, Queensland and Northern Territory Branch
005	Queensland College of Teachers
006	Queensland Catholic Education Commission
007	Queensland Family and Child Commission
008	Queensland Teachers' Union of Employees – Supplementary Submission

Appendix B – Witnesses at the public briefing and the public hearing

Public briefing –13 June 2016
Department of Education and Training
Stuart Busby, Director, Legislative Services Unit, Department of Education and Training
Amanda O’Hara, Director, Early Years and Schooling, Department of Education and Training
Annette Whitehead, Deputy Director-General, Policy, Performance and Planning, Department of Education and Training

Public hearing – 15 June 2016
Kevin Bates, President, Queensland Teachers’ Union of Employees
Leah Mertens, Research Officer, Professional Issues, Queensland Teachers’ Union of Employees