

25 September 2014

Our ref 337/19

Research Director
Education and Innovation Committee
Parliament House
George Street
BRISBANE QLD 4000

By Post and Email to: eic@parliament.qld.gov.au

Dear Research Director

Education and Other Legislation Amendment Bill 2014

Thank you for the opportunity to provide feedback on the *Education and Other Legislation Amendment Bill 2014* (the Bill).

Please note that in the time available to the Society and the commitments of our committee members, it is not suggested that this submission represents an exhaustive review of the Bill. It is therefore possible that there are issues relating to unintended drafting consequences or fundamental legislative principles which we have not identified. The Society reserves the right to make further comment, particularly noting that there is a public hearing scheduled for 8 October 2014.

1. Clause 5 – insertion of s7AA – Meaning of director

The following views have been prepared with the assistance of our Not-for-Profit Law Committee regarding proposed amendments to the *Education (Accreditation of Non-State Schools Act 2001)*.

The insertion of proposed s7AA is designed to include a statutory definition of the term "director" of a schools governing body for the various governance control purposes of the Accreditation Act. Proposed s7AA states:

"7AA meaning of director

A director, of a school's governing body, is –

- (a) *if the governing body is a company under the Corporations Act – a person appointed as a director of the governing body; or*
- (b) *if the governing body is a RECI Act corporation –*
- (i) *a declared director of the governing body; and*
- (ii) *if all declared directors of the governing body, for the time being, nominate a person as a director of the governing body – the person; or*
- Note: the governing body must give the board a notice under section 167(4) within 14 days after a nomination.*
- (c) *otherwise – a person who is, or is a member of, the executive or management entity, by whatever name called, of the governing body."*

Paragraph (c) of proposed new section 7AA would apply to those schools which are owned by a church that has enabling legislation such as the Roman Catholic Archdiocese, the Anglican Diocese of Brisbane or the Uniting Church in Australia Property Trust (Q). Confusion is likely to arise in understanding what the governing body for these organisations is as referred to in paragraph (c), because that is what qualifies the expression "the executive or management entity".

With most of these churches, the people that could be responsible are:

- The local school board/parents committee/ advisory committee by whatever name called,
- The church committee at synod or diocese level that overviews all its school and education facilities/activities,
- The executive body/standing committee/church officer (bishop etc.) that the second committee reports to or advises.

So, for example, is the governing body of the Anglican Church Grammar School the Diocese of Brisbane or is it the school council, which has its own constitution and was crafted in such a way as to ensure it did not amount to an unincorporated association, as might otherwise give rise to issues of "entity" status for tax concession purposes in the Tax Act? We suggest that there needs to be clarity about where the legislative policy wants to place the responsibility.

We would suggest an amendment to the paragraph along the following lines:

'(c) otherwise – a person who is, or is a member of, the controlling body of a school, by whatever name called "

2. Clause 44- insertion of Division 1A- information about student charges and convictions

The following views have been prepared with the assistance of our Criminal Law and Children's Law Committees.

The Society made extensive submissions on the *Education (Strengthening Discipline in State Schools) Amendment Bill 2013*, which these amendments relate to.

The 2013 amendments empower a principal to make suspension and exclusion decisions based on behaviour that occurs beyond the school gates which may be entirely unrelated to conduct affecting the school. We are particularly concerned that these powers can be used when a student is charged with an offence, rather than on the basis of a conviction. This is inconsistent with the presumption of innocence. Frequently, for very cogent reasons, the student will be advised by his or her legal representative to decline to comment on matters that are before the court, taking away the child's ability to respond to the allegations raised by a principal. A suspension or exclusion can adversely affect the student, especially if a charge is later dropped or the student is not convicted.

Further, if the student is placed on a suspension pending the outcome of the charge, s329 of the Act prevents the student from enrolling at another school. This works against the efforts of the courts and the Department of Justice and Attorney-General to use Conditional Bail Programs to reconnect offending youths with education and to monitor school attendance in the courts. The resolution of criminal charges can involve lengthy time frames and this can be a most beneficial time for a young person who has an incentive to reengage with education, in order to demonstrate positive efforts for the sentencing judge. We anticipate that the effect of the sharing of information about offences will significantly increase the number of youths who disengage from school with the consequence that there will be an increase in crime in the community.

We also express concern with proposed s280A of the Bill, which provides that the particular division regarding information about student charges and convictions applies to a person despite the *Criminal Law (Rehabilitation of Offenders) Act 1986, section 5* to the extent as it relates to charges.

Proposed s280C contains vague descriptors as to the exercise of the chief executive's power to ask the police commissioner about student charge or conviction:

- The chief executive can use this power where he or she "reasonably suspects that a student enrolled at a State school has been charged with, or convicted of, an offence," and
- The chief executive can ask for "information about the charge or conviction, including a brief description of the circumstances of the charge or conviction."

The Society is concerned that these are difficult parameters to be met by the chief executive in terms of having a "reasonable suspicion" of a charge or conviction, and also for the police commissioner in terms of providing information or a brief description of the charge or

conviction. The language of "reasonably suspects" may infer that the chief executive may have to investigate the matter, which can have repercussions for the student where they are in a parallel process before the courts. Involvement in the criminal law system may hinder a student's ability to respond to the allegations for the purposes of maintaining his or her ability to remain in school, and conversely responding to the allegations may prejudice his or her court case. Further, if it is during a charge stage, the information the police commissioner may have is unlikely to be complete and there have been no decisions on the facts of any allegations made by the court. Therefore, the information being relied upon by the chief executive may be inaccurate, again having serious repercussions for the student.

The legislation does not make clear whether the student will be informed that the information request has been made to the police commissioner. It is essential that the student and his or her legal representative is informed of the request, and of any information provided by the police commissioner. This is particularly important in light of s3(b) of the *Legislative Standards Act 1992* which provides that legislation should be consistent with principles of natural justice.

The Society is concerned that the provision of a charge and brief description to a principal will likely lead to the suspension of a student. If the suspension is beyond 10 days then the student will be entitled to make submissions about the suspension to the principal. The substance of these submissions would inevitably require the student to provide a defence to the charge thus reversing the burden of proof. This will lead to a circumstance wherein the student will be seeking to prove that they are innocent, rather than the usual criminal law onus and standard. It is also concerning that the decision maker considering these submissions will not be legally trained and will effectively be acting in the role of a judicial officer.

Proposed s280F states that the chief executive must ensure that the information obtained from the police commissioner is destroyed as soon as practicable after it is no longer needed for the purpose for which it may be used under s280E. In order for this to be an effective safeguard to protect the student's criminal history information, a strict time frame should be in place for the destruction of the information. For the sake of consistency we note that s27 of the *Youth Justice Act 1992* provides that the destruction of identifying particulars taken under court order must be undertaken within seven days. We suggest that seven days is also a reasonable time frame for the chief executive to ensure the information is destroyed in this context.

The need to protect the school community against risks to their safety and well-being should be balanced against the benefits to the community of an offending child attending school. We suggest 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 well-being of the student or of staff." We also suggest that the information could be provided to a behavioural scientist who is external to the school rather than the principal. Such a behavioural scientist could perform a risk assessment in a confidential way, having access to the police materials, and it could be legislated that the child's communication with that person is privileged, to prevent such communications impacting upon court proceedings. Such a person would have the

relevant expertise to assess whether the student in fact poses a risk to the school community and is a position to make such an assessment on an objective and uniform basis and considering the relevant information. These kind of assessments are regularly performed in other areas of law. Mechanisms should be explored to how this may occur.

3. Clause 71 – insertion of Chapter 8A- criminal histories of mature age students

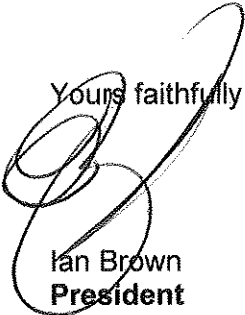
The Society also expresses concern regarding the proposed changes to allow access to criminal histories of mature age students, similar to the concerns expressed above.

We also additionally note that effectively the legislative change will now require the principal, not the chief executive, to mandatorily obtain a criminal history for each mature age student before enrolment. This is problematic for two reasons:

- Such information should rightly only be held by the chief executive, given the seriousness of accessing criminal history information about a mature age student. The chief executive is best placed to consider these criminal histories at an objective, whole of state level and then make decisions about enrolment; and
- The legislation now requires that the principal **must** ask the police commissioner for a written report about the applicant's criminal history (proposed s175D(2)). Currently under the legislation the chief executive **may** ask the police commissioner about the criminal history of the person (s32). We consider that this should remain a discretionary power.

Thank you for the opportunity to provide these comments. Please contact our policy solicitors for further inquiries.

Yours faithfully



Ian Brown
President