Queensland Law Society

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Office of the President

6 July 2015

Our ref Children's Law Committee - 19

The Hon Yvette D'Ath MP

Attorney-General and Minister for Justice and Minister for Training and Skills

GPO Box 149

BRISBANE QLD 4001

By post and email: [redacted]

Dear Attorney

Education (General Provisions) Act 2006

We write in relation to the previous government's amendments to the *Education (General Provisions) Act 2006* (The Act). These amendments were contained within the *Education (Strengthening Discipline in State Schools) Amendment Bill 2013*. We write to request that your department review the appropriateness of these amendments based on our submissions below.

2013 Amendments

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. A suspension or exclusion can adversely affect the student, especially if a charge is later dropped or the student is not convicted. We also express concern with s280A of the Act, which states that this 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.

Section 280C 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. 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 in question.

Further, 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 vital 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.

Section 280F 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 is 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 done within seven days. We suggest that within seven days is also a reasonable time frame for the chief executive to ensure the information is destroyed in this context.

Chapter 8A of the Act- criminal histories of mature age students

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

We also additionally note that effectively the legislation requires 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 requires that the principal **must** ask the police commissioner for a written report about the applicant's criminal history (proposed s175D(2)). Previously under the legislation the chief executive **may** ask the police commissioner about the criminal history of the person (s32). We consider that this should return to a discretionary power.

Thank you for the opportunity to raise these issues.

Should you wish to discuss these matters further, please do not hesitate to contact me. If you require clarification of any of the issues raised in our letter, please contact our Senior Policy Solicitor, Ms Binari De Saram on [redacted]

Yours faithfully

[redacted]

Michael Fitzgerald

President

Cc:
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