

Review of the *Education (General Provisions) Act 2006*

May 2022

The Queensland Catholic Education Commission (QCEC) welcomes the opportunity to provide a response to the consultation papers issued by the Review of the *Education (General Provisions) Act 2006* (the EGPA).

QCEC is the peak strategic body with state-wide responsibilities for Catholic schooling in Queensland. This submission is provided on behalf of the five Diocesan Catholic school authorities and 17 Religious Institutes and other incorporated bodies which, between them, operate a total of 313 Catholic schools that educate more than 156,000 students in Queensland.

Of the ten consultation papers published by the Review, this submission will focus on the below six consultation papers which have direct relevance to the non-state school sector.

Consultation Paper 1

Sharing of Child Safety Information

An important aspect of the EGPA is the legislative authority for collecting, recording, using and disclosing student information between state and non-state schools, as well as with parents/guardians and other government agencies.

QCEC supports the streaming and adjustment of the information sharing provisions of the EGPA for the purpose of promoting student safety and wellbeing. The three key issues for consideration to achieve this are addressed below:

1. Clarifying the types of information to be shared

A key mechanism for the sharing of information when students move between schools is the Transfer Note, as set out in Chapter 14 of the EGPA. Section 385 of the EGPA currently states that the purpose of a Transfer Note is to provide information that will help the principal of a state or non-state school:

- a) ensure continuity of the student's educational program
- b) meet the principal's duty of care obligations in relation to the student and the school community.

To improve the effectiveness of Transfer Notes, amendments are proposed to provide:

- greater clarification of the type of information to be included in Transfer Notes
- explicit reference that Transfer Notes should include information required to ensure child safety and welfare, and the safety of others in the school community.

QCEC Response

It is the overall experience of the Catholic school sector that Transfer Notes are not utilized as effectively as they could be in the interests of student safety and wellbeing.

QCEC agrees that a key change to improve their effectiveness would be the provision of greater clarification and guidance concerning both the central purpose that the Transfer Notes are intended to perform and the specific types of information to be included in the Transfer Notes.

The EGPA should explicitly specify that the purpose of the Transfer Notes is to provide information to protect the safety and welfare of the student concerned, or the students and staff at the student's new school (in addition to the current purpose of ensuring continuity of the student's educational program).

By making this overarching purpose clear, the type of information to be included in the Transfer Note will become more evident. Particular information should be specifically identified for inclusion, including at least:

- a) information regarding child safeguarding and reporting processes
- b) health care or support services being provided to the student
- c) attendance concerns, particularly with lengthy absences (unexplained or not adequately explained)
- d) learning or behavioral interventions being provided to the student.

In conjunction with the sharing of information on school absences, adjustments could be made to Chapter 9, Part 1, of the EGPA to formalize a consistent procedure for managing absences in non-state schools. This would assist in establishing a consistent process across Queensland where regional delegates ('authorised officers' who are Departmental employees) would have the ability to manage interaction/prosecution of parents where a young person is enrolled in a Catholic school but is not meeting attendance requirements (similar to the process they presently follow for state school students under the EGPA). Alternatively, the definition of an **authorised officer** could be extended to include the chief executive, an officer of the department authorised by the chief executive, **or** another person authorised by the chief executive (such as an officer employed by a non-government school or governing body).

As noted below, QCEC supports proactive approach to the sharing of this information between government and non-government schools.

2. Proactive information sharing at State level

Currently, the Transfer Note process is instigated only upon request by either the parent/student, or the principal of the receiving school. Therefore, the provision of Transfer Notes is not proactive.

To address this, it is proposed that provisions relating to Transfer Notes authorise the principal of a student's previous school to proactively transfer information, regardless of a request by the student's new school. To guard students' and parents' right to privacy, it is proposed that this authorisation be limited to circumstances in which a principal reasonably believes that sharing certain information is necessary to protect the safety and welfare of the relevant student, or other students, staff or persons at the student's new school.

QCEC Response

QCEC supports the introduction of:

1. An obligation for the principal of the student's previous school to share information that is reasonable believed to be necessary to protect the safety and welfare of the student, or students and staff at the student's new school.
2. An obligation for the principal of a student's new school to request a Transfer Note where the details of the student's previous school are known, and where student information is not otherwise available (with the principal still to be required to notify the parents/student that a Transfer Note has been requested, and to provide on request a copy of the Transfer Note).

3. Proactive information sharing between jurisdictions

Where students are transferring interstate to or from a state school - the Interstate Student Data Transfer Note Protocols require parent/student consent.

Interstate transfers between non-state schools - do not require parent or student consent where the previous school has a data collection notice which complies with guidelines in the relevant non-state school *Privacy Compliance Manual*.

To facilitate interstate transfers of information when students relocate, consideration is being given to amendments to the EGPA to provide a statutory basis for the use of interstate Transfer Notes. This could provide for interstate sharing of information to operate in a similar manner to intrastate sharing. While the EGPA could require Queensland schools to share student information with schools in other States, corresponding obligations could not be imposed on schools operating in other jurisdictions.

QCEC Response

As with intrastate information sharing, QCEC supports proactive interstate information sharing for the purpose of enhancing student safety and welfare. Changes in this area should take into account agreed procedures developed in relation to the Interstate Student Data Transfer Note and Protocols.

As noted by the Review, interstate information sharing between non-state schools can already be appropriately managed via a data collection notice which complies with guidelines in the *National Catholic Education Commission and National Council of Independent Schools' Associations Privacy Compliance Manual*.

For interstate state school to non-state school transfers, parental consent is required in accordance with Interstate Student Data Transfer Note and Protocols. While QCEC would support changes to the EGPA to foster proactive interstate information sharing, as has been noted provisions in the EGPA will not bind other jurisdictions. Therefore, a cooperative and consensual approach is needed to establish agreed upon procedures and protocols for information transfers between different jurisdictions.

Consultation Paper 6

Mandatory Reporting Obligations

Consideration is being given to how mandatory reporting obligations in the EGPA could be framed, with a view to creating greater alignment with other Queensland Acts incorporating mandatory reporting obligations, particularly the *Child Protection Act 1999* and the Queensland *Criminal Code* 'Failure to Report' provision.

Currently there is a broad range of differences in mandatory reporting obligations across these pieces of legislation, including:

- a) Types of abuse to be reported
- b) Trigger for mandatory reporting
- c) When a report must be made
- d) Who the report is made to
- e) Who the report is about
- f) Penalties and offences
- g) The Act focuses on sexual abuse or likely sexual abuse
- h) The *Child Protection Act 1999* focuses on physical and sexual abuse
- i) The *Criminal Code* focuses the obligation on a child sexual offence.

The consultation paper notes that it may be difficult to achieve better alignment without impacting on the purposes of each of the Acts, and given the relative newness of the 'Failure to Report' offence it may be too early to properly assess its impact.

QCEC Response

QCEC has consistently advocated for improved alignment and harmonisation of mandatory reporting requirements as they apply to schools. Currently, four pieces of legislation specify mandatory reporting in non-state schools:

Education (General Provisions) Act 2006

Child Protection Act 1999

Queensland Criminal Code

Education (Accreditation of Non-State Schools) Regulation 2017

As noted by the Review, the result of the above legislative regime results in different school staff members having to report different matters to different receiving bodies. This is a complex arrangement and can be confusing for school staff. Effective compliance with mandatory reporting requirements is greatly enhanced if staff members feel they have a clear understanding of when and what needs to be reported.

Yet it is acknowledged that the different legislative mandatory reporting requirements all serve particular and specific purposes in creating an overarching comprehensive child protection framework that addresses a range of circumstances. Therefore, QCEC is of the view that the greatest possible alignment should be sought between terms used to describe harm to children, thresholds for reporting and the type of staff members that are required to report, while retaining this overall comprehensiveness and multi-

purpose design. Such increased alignment and coherence will aid in promoting confidence and understanding of how mandatory reporting works and what is required of each staff member.

While such alignment may not be achievable in the context of this review given it only addresses one of the relevant Acts (i.e. the EGPA), QCEC would be interested in government looking at this issue separately.

Consultation Paper 4

Protecting School Communities from Online Abuse

The Review has identified the need to respond to inappropriate online or electronic communications that impact detrimentally on the health, wellbeing and/or reputation of Queensland school staff (both state and non-state).

It is proposed that a legislative power be created to enable state and non-state school principals, delegated departmental staff, and school governing bodies (for non-state schools) to issue a direction requiring that a person cease cyber abuse of school staff and/or to direct how they may communicate with staff of the school.

This legislative intent could be achieved through an expansion of the current hostile person directions. Sections 346, 348, 349 and 349A of the EGPA allow non-state school principals, school governing bodies, or the chief executive of the Department of Education to issue directions about a person's movement or conduct on school premises or to prohibit a person from a school premises for between 24 hours and up to one year. These sections could be expanded by adding to the circumstances or grounds for which a direction could be issued (e.g. cyber abuse), or a new section in the legislation created.

Guidelines could also be developed to assist principals, departmental staff and school governing bodies in issuing the new directions.

QCEC Response

QCEC is supportive of extending the current hostile person direction powers in the EGPA to cover online and cyber matters. This is an issue that schools continue to grapple with, given the vulnerability of schools and school staff to negative impacts from inappropriate use of social media and other online platforms.

As with the existing hostile person directions, these powers may only be used infrequently by schools. Yet it is important to ensure that schools are empowered to establish standards of acceptable behaviour and interactions within their school communities and have the appropriate power to act to enforce these standards for the safety and wellbeing of their staff.

It is agreed that it would be important for guidelines to be developed to assist with the practical implementation of these new powers, given the complexities involved in balancing the protection of school staff verses the right to free expression of views. Additionally, training could be provided for principals and other school leadership staff to effectively manage the issuing of directions in this area.

Consultation Paper 7

State Special Schools and Special Education

It is proposed that authority be provided to the Chief Executive, rather than the Minister, to approve the policy setting out the criteria to be considered in deciding whether a person is a person with a disability for the purpose of non-state school students and children below compulsory school age accessing special education.

QCEC Response

Many students/children access services provided through Early Childhood Development Programs (ECDPs) across Queensland, including many children who subsequently attend Catholic schools. Many children with disability attending ECDPs who are not eligible for a National Disability Insurance Scheme (NDIS) package still require the intervention and support offered through the ECDP programs. The Services provided in ECDPs are highly valued by schools because they often assist with a smoother transition into schooling and provide the incoming school with vital information.

Therefore, confirmation is sought that there is not an intention to remove the support of ECDP as part of the proposed changes.

Without clarity being provided concerning the proposed eligibility criteria for students with disability, and taking into account the move away from the Education Adjustment Program (EAP), the implications of this change are uncertain. Additionally, the status of the resource allocation regarding the review for student with disability (SWD) is unknown at this stage.

Therefore, further clarification is required in this area before any proposed changes can be supported.

Consultation Paper 9

Home Education

Section 205 of the EGPA defines home education as the education of a child provided by one or both of the child's parents or a registered teacher, primarily at the child's usual place of residence).

A number of changes are proposed to how home education is treated in the EGPA. These include:

- Streamlining of application process
- Greater clarity in regards to what constitutes a high-quality education for home education purposes
- More focused reporting requirements
- Streamlining review of written reports
- Removing requirement to issue a Certificate of Registration
- Changing calculation of time periods for internal review decision
- Expanding grounds for cancellation of registration

QCEC Response

While the EGPA requires parents undertaking home education to ensure their child will receive a high-quality education and submit a report that demonstrates a high-quality education has been provided, it does not define what constitutes a high-quality education in the context of home education.

It is noted that state and non-state schools are required to deliver educational programs based on the Australian Curriculum or an equivalent curriculum approved by the Australian Curriculum, Assessment and Reporting Authority (ACARA).

While it is acknowledged that parents choose home education for a variety of reasons, and as a distinct alternative to the existing school sectors, it is QCEC's view that a 'high-quality' education should be defined for home education in relation to the education program quality that schools are mandated to deliver. That is, for a home educational program to be considered 'high-quality' it should be based on the Australian Curriculum or an equivalent curriculum approved by the Australian Curriculum, Assessment and Reporting Authority (ACARA). In this way, students undertaking home education will be able to access similar educational opportunities as other students attending schools, while at the same time experiencing the tailored approach of home education.

Consultation Paper 10

Nomenclature and Technical Amendments

Clarifying physical attendance requirements

Consideration is being given to providing greater clarity concerning physical attendance requirements, in light of increased virtual attendance and other flexible arrangements.

Clarifying a non-state school principal's protection when providing information

The EGPA authorises the chief executive of the Department of Education to seek information from a non-state school principal about a student attending their school. The EGPA also protects non-state school principals from incurring civil liability in complying with such a request or from forwarding a Transfer Note to a student's new school.

The *Privacy Act 1988* (Cwlth) prohibits a non-state school from disclosing personal information about an individual collected for a particular purpose for another purpose, unless the individual has consented, or the disclosure is permitted under an Australian law. While the EGPA provides that the chief executive may ask the principal of a non-state school for certain information, it does not expressly require or authorise the principal to provide this information.

It is proposed to clarify the interaction between the EGPA provisions and the *Privacy Act 1988* in relation to this matter.

QCEC Response

Clarifying Physical Attendance Requirements

While it is recognized that flexibility in education delivery methods is required, QCEC is of the view that a clear distinction should be maintained between actual school attendance and what is in fact the provision of distance education.

School attendance, including the incorporation of flexible delivery methods, requires that particular criteria be met in a sustained and comprehensive manner. These criteria include physical attendance as one major method of education program delivery and ongoing pastoral care of students, monitoring and assessment. Distance education, on the other hand, involves the distribution of education materials, whether online or in hard-copy form.

This distinction between school attendance and distance education is critical to delineate, even with the increasing incorporation of hybrid/flexible models into actual school attendance routines.

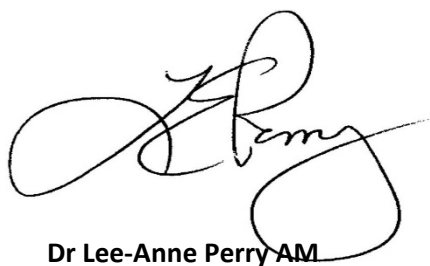
The existing legislation around physical attendance contemplates the school's requirements about physically attending, at particular times (which may include remote learning by schools during recent 'lockdown' periods). This matter would require further consultation and consideration when knowledge of what may be intended in terms of specific legislative change is further understood.

Clarifying a non-state school principal's protection when providing information

Sections 180 and 251AB of the EGPA provide for the chief executive to ask a non-state school principal for certain information about a child or young person relevant to considering any alleged contravention of the compulsory schooling obligation or exemptions from the compulsory participation obligation. Although these sections do not expressly require or authorise the non-state school principal to provide the requested information, it could be construed the authorisation is implied.

QCEC supports further clarification of the wording of the relevant provisions to remove any ambiguity concerning the protection of non-state school principals from incurring liability when providing information to the chief executive under sections 180 or 251AB.

Thank you for your consideration of this submission. Should you wish to discuss further any aspect of the submission, please contact Mr Chris Woolley, Chief Operating Officer, QCEC.



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