

## COMMENTS ON AMENDMENTS TO LEGISLATION REGARDING CHILD ABUSE IN SCHOOLS

### 1. Amending legislation

Education Minister Bligh introduced the *Education and Other Legislation (Student Protection) Amendment Bill 2003* into parliament on 14 October 2003.

### 2. Purpose

The government is tightening various elements of the processes for registration of teachers, screening of employees and reporting abuse.

### 3. Teacher registration

The legislation dealing with registration of teachers (*Education (Teacher Registration) Act 1988*) will be amended significantly. The broad policy is reflected in the following new Section 5A:-

*In performing its functions relating to the registration of persons as teachers, the welfare and best interests of children are to be primary considerations of the Board.*

This statement of policy reflects the principle expressed in Article 3 of the United Nations Convention on the Rights of the Child and is an underlying principle in all child protection legislation. Some legislation states that the interests of the child are "paramount": *Child Protection Act 1999* s.58, *Commission for Children and Young People Act 2000* s.6(1)(b).

The principle has stark effect in circumstances where a person is accused of abusing a child and the question arises as to whether the alleged abuser should be removed from contact with children. Where there is any risk, the best interests of the child are to be primary considerations and this will usually mean that the alleged perpetrator is removed from contact until the allegations are resolved.

### 4. Police history

In considering an application for registration or restoration to registration as a teacher, the Teachers Registration Board will be required to ask the Commissioner of Police for information about the applicant which may include:-

- details of convictions and charges
- description of the circumstances of a conviction or charge
- information about any investigation relating to the possible commission of a serious offence by the applicant.

These are dangerous areas under the normal legal principles protecting people's reputations and livelihood. The amending legislation talks in terms of an investigation leading to "a reasonable suspicion that the applicant committed a serious offence".

Bearing in mind that the Registration Board is required to operate under the principle that the best interests of children are to be primary considerations, the normal presumption of innocence and procedures of natural justice will apply but only subject to the primary considerations.

The drafters of the legislation have been aware of this problem. They have included an obligation to disclose the information to the applicant and to allow them a reasonable

opportunity to make representations to the Board about the information. The Board is required to make guidelines for dealing with information received by the Board. These provisions are clearly intended to take account of principles of natural justice but the Board is always subject to the primary consideration of having regard for the best interests of the children.

#### **5. Notification by employers**

Under the existing legislation (s.44A) employing authorities are required to notify the Teachers Registration Board about allegations of a sexual nature involving a teacher in certain circumstances. The circumstances are, broadly, if the employing authority gives notice to a teacher that it is dissatisfied with the teacher and within 6 months of the notice the teacher is dismissed or resigns from the staff.

There are in practice serious difficulties with the current reporting obligation and in particular the obligation to give notice of dissatisfaction to the teacher. Often, in these circumstances, events move very quickly and teachers resign before the employing authority has any opportunity to give them notice of dissatisfaction, if they wish to do so.

The current notice requirement gives fair warning to the teacher because notification by the employer could damage or ruin the career of the teacher.

The requirement for notice will be removed under the amending legislation.

The amending legislation also widens the notification obligation to allegations of "harm" instead of "sexual allegations". The definition of "harm" will be that contained in the *Child Protection Act 1999*. That is a broad definition covering "any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing".

The extension of the obligation to allegations of "harm" is a very significant expansion of the obligation, particularly bearing in mind that the livelihood of the teacher will be at stake.

#### **6. Protection from liability**

It has always been a problem that an employing authority who made a report under the Act could be liable, particularly in defamation. The amending legislation applies a defensive absolute privilege for publishing the information contained in the report.

This defence of "absolute privilege" is much wider than the defence against defamation contained in another mandatory reporting provision in the Health Act (s.76K(v7)).

#### **7. Suspension of registration**

The Board may decide to suspend a teacher's registration if it reasonably believes at any time that the teacher poses an imminent risk of harm to children and the action is necessary to protect children.

A teacher affected by such a decision has rights of appeal.

#### **8. Notice to interstate authorities**


The Teachers Registration Board will be required to notify interstate authorities about decisions or orders made under the Queensland legislation. The Board may also give written notice to foreign regulatory authorities, an employer of the person or any other entity relevant to the person's practice of the teaching profession. This may be done only if the Board reasonably believes the entity needs to know about the decision or order.

3.

The Board will also be able to notify the Commissioner for Children and Young People about decisions of the Board if the Board reasonably believes the information is relevant to a consideration by the Commissioner as to whether a person is a suitable person for child-related employment.

Information given by the Board to the Commissioner must not contain information that identifies a particular child who is the subject of the relevant conduct. This indirectly creates further problems for the person who is the subject of the information. It is often very important that the identity of a victim of reprehensible conduct is identified in order for the alleged perpetrator to defend themselves.

#### 9. "Blue Cards"



The legislation will amend the *Commission for Children and Young People Act 2000* to allow the Commissioner to take into account any teacher registration information about the person. The Commissioner is presently limited to taking into consideration convictions and charges against the applicant.

#### 10. Continuing employees

Exemptions from obtaining blue cards that apply to existing employees under the current legislation will be removed where the employment is related to education.

#### 11. Reporting sexual abuse – non-State schools

The *Education (Accreditation of Non-State Schools) Regulation 2001* currently requires schools to have in place processes for reporting "harm" to authorities within a school and processes for the authorities to report the harm to police or Department of Families. This amending legislation will amend the *Education (General Provisions) Act 1989* and include an obligation for non-State schools to report sexual abuse of students under 18 years.

The provision is a direct mandating provision. The accreditation regulation indirectly required reporting by requiring each school to have a policy that required reporting.

The amendment will apply to a "staff member" who becomes aware or reasonably suspects that a student under 18 years attending the school has been sexually abused by someone else who is an employee of the school.

The staff member must give a written report to a school authority and will be penalised up to \$1,500.00 if they fail to do so.

The authority to whom the staff member reports the sexual abuse must themselves give a copy of the report to a police officer. The penalty for failing to do so is up to \$1,500.00.

The amendments allow a defence of absolute privilege for publishing information contained in a report about sexual abuse given under the obligations of the section.

**Flower & Hart**

**30 October 2003**

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