

SECTION 6**LEGAL MATTERS**

In the introduction to this Manual (section 1.7) there is reference to the various statutes and associated requirements that apply in the area of student protection. The details are repeated below so that this section 6 stands alone. Catholic school personnel should note that all Queensland legislation is available on the internet at <http://www.legislation.qld.gov.au/Legislation.htm>

Significant Queensland statutes are listed below with those listed in bold type having the most relevance:

Education (Accreditation of Non-State Schools) Act and Regulations 2001

Education and Other Legislation (Student Protection) Amendment Act 2003

Education (General Provisions) Act 1989

Education (Teacher Registration) Act 1988

Commission for Children & Young People & Child Guardian Act 2000

Education (General Provisions) Amendment Act 2003

Child Protection Act 1999

Workplace Health and Safety Act 1995

Industrial Relations Act 1999

Statutory Requirements Relevant to Student Safety

These have been detailed in Section 1, 1.7 of this Manual.

Legal Implications for Staff Members

(The following is adapted from the Catholic Education Archdiocese of Brisbane publication "Student Protection – Regulations, Procedures and Guidelines" 2002, page 14). Should other issues arise in relation to specific cases it is recommended further legal advice be sought and reference made to the ***Catholic School Authority***).

- The *Education and Other Legislation (Student Protection) Amendment Act 2003* amended the *Education (General Provisions) Act 1989* and 146B of that Act now requires 'the "first person" who becomes aware, or reasonably suspects, that a student under 18 years attending the school has been sexually abused by someone else who is a current employee of the school to immediately provide a written report the matter to the principal or a director of the school's governing body.' Failure to do so could attract penalty as outlined in the legislation.

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- Legislation i.e. *Education (Accreditation of Non-State Schools) Regulation 2001* requires non-government schools to have in place reporting processes for students and staff where harm to students is known or reasonably suspected.
- In reporting cases of reasonably suspected harm to students, school personnel notifying are not required to prove the case, they need only notify of their concern and the reasons for it.
- **School personnel should be very careful, however, to notify only those parties that need to know. The matter must remain highly confidential, should never become a topic of gossip and should never be spoken about freely with others. If the restricted and confidential notification is communicated to others with no right to know, the person suspected could take an action for damages for defamation.**
- Notifications should be made according to the procedures given in Section 2 to:-
 - The School Principal/Student Protection Contact/Director of Governing Body
 - Student Protection Officer (*Catholic School Authority*)
 - Department of Child Safety
 - Queensland Police Service, Child Abuse Investigation Unit
- Section 146 B (6) of the *Education (General Provisions) Act 1989* and Section 22 of the *Child Protection Act 1999* provide protection from any legal liability for persons who report their concerns about a child to either the Department of Child Safety or the Police Service. A person making such a report cannot be considered to have breached any code of professional conduct or ethics. This section also covers situations where information about a child is provided to the Department of Child Safety or the Police Service in the course of an investigation, e.g. officers may talk to relevant people or agencies who may be able to help provide information, such as the family doctor, or the child's school teacher.
- Section 186 of the same *Act* ensures that confidentiality of notifier information is maintained. The identity of people who contact the Department of Child Safety or the Police Service to report their concerns about a particular child is kept confidential. This section prohibits officers from disclosing notifier details except to others who need this information to perform their duties under the *Child Protection Act 1999* or if ordered to do so by a court or tribunal. The child's family will not be told who provided the information upon which the officers are acting.
- School personnel may be subpoenaed to attend court as a witness. In this instance the identity of the notifier cannot be kept confidential. (N.B. The Student Protection Officer (***Catholic School Authority***) and the ***Catholic School Authority*** Solicitor can be of assistance to personnel who are subpoenaed to attend court.)
- In the unlikely event of civil action being brought against school personnel as a consequence of reporting, the ***Catholic School Authority*** will accept responsibility to defend or settle claims against school personnel who have diligently and conscientiously endeavoured to carry out their professional duties. NB. School personnel who have not acted diligently and conscientiously and

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who have breached the requirements of confidentiality cannot expect to be offered this protection.

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- All this highlights the importance of a staff member being familiar with the processes in this Manual under which they could be called upon to act. Unless the staff member has a particular responsibility (eg as Student Protection Contact) these are to be found in Part 1 of Section 2 of this Manual.
- An information sheet titled *What Happens When There is a Report of Child Abuse* is available on the website of the Department of Child Safety www.families.qld.gov.au via the families button – child protection – publications.
- Additional information sheets made available on the Education Queensland website when the *Education and Other Legislation (Student Protection) Amendment Bill 2003* was published include the following:
 - General Information
 - Information for non-state schools
 - What it means for governing bodies of non-state schools
 - What it means for non-state school principals
 - What it means for school employing authorities
 - What it means for registered teachers at non-state schools
 - What it means for non-teaching staff at non-state schools.

Explanation of the term ‘serious offence’

Section 16 of the *Education and Other Legislation (Student Protection) Amendment Act 003* amends the Section 2 (the definition section) of the *Education (Teacher Registration) Act 1988*.

Section 2 of the *Education (Teacher Registration) Act 1988* as amended now defines a ‘**serious offence**’ as follows:

- (a) an offence against a provision mentioned in the schedule to the *Penalties and Sentences Act 1992*; or
- (b) an offence against a provision of the Criminal Code mentioned in the schedule; or
- (c) an offence of counselling or procuring the commission of, or attempting or conspiring to commit, an offence mentioned in paragraph (a) or (b); or
- (d) an offence against a law of another jurisdiction that substantially corresponds to an offence mentioned in paragraphs (a) to (c).

¹ *Penalties and Sentences Act 1992*, schedule (Serious violent offences)

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Section 2 of the *Education (Teacher Registration) Act 1988* as amended now also includes a schedule of the serious offence provisions found in the Criminal Code of Queensland.

SCHEDULE
SERIOUS OFFENCE PROVISIONS OF THE CRIMINAL CODE

section 2, definition "serious offence", paragraph (b) - see above from s16.

1. Section 211 (Bestiality)
2. Section 219 (Taking child for immoral purposes)
3. Section 211 (Conspiracy to defile)
4. Section 228 (Obscene publications and exhibitions)
5. Section 238 (Contamination of good)
6. Section 239 (Hoax contamination of goods)
7. Section 240 (Dealing in contaminated goods)
8. Section 300 (Unlawful homicide)
9. Section 307 (Accessory after the fact to murder)
10. Section 308 (Threats to murder in document)
11. Section 309 (Conspiring to murder)
12. Section 311 (Aiding suicide)
13. Section 314 (Concealing the birth of children)
14. Section 324 (Failure to supply necessities)
15. Section 327 (Setting mantraps)
16. Section 355 (Deprivation of liberty)
17. Section 359 (Threats)
18. Section 359E (Punishment of unlawful stalking)
19. Section 363 (Child-stealing)
20. Section 363A (Abduction of child under 16)
21. Section 364 (Cruelty to children under 16)
22. Section 415 (Demanding property, benefit or performance of services with threats)
23. Section 416 (Attempts at extortion by threats)
24. Section 417 (Procuring execution of deeds etc. by threats)
25. Section 417A (Taking control of aircraft).

DISCLAIMER

This section is intended to provide you with relevant information on legal issues. If you have a legal problem, you should seek legal advice from a lawyer. QCEC believes that the information provided is correct as at 14 May 2004 and does not accept any responsibility for any errors or omissions.