

Review of the Education (General Provisions) Act 2006

Submission by Independent Schools Queensland



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About Queensland Independent Schools

Community confidence in the independent schooling sector remains strong with more than 130,000 students enrolled in 230 independent schools across Queensland. These schools educate more than 15 percent of the state's total school-age population and about 20 percent of all secondary students.

Independent schools are valued institutions and a pivotal part of Queensland's education system. They are valued schooling choices for families, hubs of human and community connection, places of intellectual, civic, and social development, employers and employment generators, education innovators and change-makers.

Independent schools are as unique as the communities they serve and offer parents a choice in the education of their children. Common to all independent schools is their commitment to strong student outcomes, high standards of behaviour, and the welfare and wellbeing of students.

Many independent schools educate international students or specialise in the education of students with disability. There has also been strong growth in the number of Special Assistance Schools for students who have disengaged from mainstream schools, and trade training schools that combine senior year studies with practical vocational education and training.

Over the past five years, enrolments at Queensland independent schools have increased by more than 11 percent. This growth is a clear indication that parents value an independent education and are prepared to invest their after-tax incomes in their child's schooling.

Independent Schools Queensland (ISQ) is the peak body representing Queensland's independent schooling sector. Independent Schools Queensland represents the interests of its member schools, fosters choice in education and protects the autonomy of independent schools. ISQ is a not-for-profit organisation and membership to ISQ is voluntary.

Review of the Education (General Provisions) Act 2006

Introduction

The Department of Education (DoE) released ten (10) Consultation Papers to assist relevant stakeholders to respond to a focused review of the *Education (General Provisions) Act 2006* (EGPA), to ensure it remains contemporary and fit for purpose. Independent Schools Queensland (ISQ) acknowledges the Consultation Papers and responds to those papers relevant to non-state schools in this submission.

Mandatory Reporting Obligations

ISQ acknowledges DoE's proposal that no changes be pursued in the EGPA at this time to create alignment between the various pieces of legislation of relevance to mandatory reporting. ISQ agrees with this approach, although future opportunities for alignment should be explored. ISQ would like to note that the current lack of alignment creates an inordinate burden on schools and decision-makers that puts both individuals and schools at risk of adverse outcomes.

The three pieces of legislation create a complicated framework that is immensely difficult for schools to implement through the creation of comprehensive policy, procedure, and training. A future implementation of the National Principles for Child Safe Organisations will only add to this burden and complexity.

The table on pages 9-11 of the consultation paper summarising the analysis of the main differences in mandatory reporting obligations for staff in education settings, omits three further differences that add to the complexity of the mandatory reporting framework. The additional differences are set out below.

1. Who is obligated to make the report

Excluding these differences understates the complexity of the legislation. At an operational level, this difference is notably problematic in providing training/professional development, as it impacts the accurate communication of each person's legislated reporting obligations.

EGPA – All staff (plus board directors for non-state schools)

CPA – Teachers, nurses and ECEC professionals

CC – All adults (all staff, volunteers and 18-year-old students)

2. When an individual's reporting obligation is enacted

An individual's reporting obligation is often not well understood by school staff, specifically in relation to the CPA obligations.

EGPA – in the course of a staff member's employment at the school; only a student attending the school

CPA – in the course of the person's engagement as a relevant person; a teacher is only a teacher when 'employed at a school'.

CC – any time with multiple caveats.

3. The information to be contained in the report is different across all three Acts. Operationally this is problematic from a policy perspective. The Non-State Schools Accreditation Board (NSSAB) expects these to be included in the schoolchild protection policy.

ISQ has observed numerous issues with implementing the provision as it stands. The definition of sexual abuse is unique to the EGPA and difficult to interpret. There is no guidance on what ‘sexual behaviour’ might refer to and a general lack of consensus on what falls within its scope and what does not. Under the definition, schools are required to report behaviour to QPS that often does not constitute a crime under the Criminal Code.

Schools in the non-state sector receive incredibly varied responses from police when making reports under the EGPA provisions. The inconsistent response from QPS provides evidence for how variable the understanding of the definition and provision can be.

Greater alignment in the wording of sections 366 and 366A of the Act and sections 68 and 69 of the Regulation would reduce the complexity of implementing the provisions by simplifying the writing of policies, procedures, and forms. NSSAB are particularly vigilant about the wording of these sections in school policies. This results in school policies that are unnecessarily complicated when the procedural outcomes are the same.

Further, the use of the term “*written report*” in sections 366(2) and (2A) and sections 366A (2) and (3) of the Act create unnecessary scope for risk of an adverse outcome for those who report under these provisions. ISQ is aware that DoE and State schools have an integrated school administrative system that sends written reports directly to QPS. The non-state school sector, however, does not have a system/s that streamline the reporting process and the creating and manual handling of written reports can result in the delay of information reaching its required location. Non-state schools are forced to rely on email to provide written reports to QPS. Enquiring about email addresses often requires a preliminary phone call at which point the report is provided to QPS. Often the result is that reports are made verbally, either in person and or over the phone, in order to fulfil the timeframe provision of “immediately”, followed up with written reports as soon as reasonably practicable.

ISQ’s recommends giving consideration to removing the word “*written*” from the provision to maintain the integrity of the obligation whilst removing the scope for an adverse outcome for reporters, due to the penalties attached.

Sharing of Child Safety Information

Clarifying the types of information to be shared – Transfer Notes

A lack of understanding by principals in both State and non-State schools, both of the ability to request a Student Transfer Note, with parent/student consent, and the obligation to respond within the appropriate timeframe, across sectors, currently exists. Increased general guidance for both sectors on the information sharing process would only serve to facilitate greater use of transfer notes.

The current prescribed information required in s25 of the *Education (General Provisions) Regulation 2017* provides sufficient scope for principals to make discretionary decisions about the information that can be included in a Student Transfer Note. However, ISQ is supportive of additional guidance based on considerations such as those outlined in the Northern Territory Information Sharing Guidelines, to further reinforce decision-making at the school level.

In developing further guidance, recognition must be given to the need to provide consistent, clear advice on the minimum prescribed data to be shared. Providing considerations for proportionate sharing of information to assist a receiving school to meet a student’s safety and wellbeing could engender further confusion as to what *must* be provided versus what *may* be provided.

Requiring more proactive information sharing at the state level

ISQ recognises the existing Queensland transfer note provisions are not proactive, as noted by the Royal Commission. ISQ acknowledges the need for legislative or policy related provisions, outside those of the Student Transfer Note, that would allow for proactive sharing of student information where “reasonably practicable”.

However, ISQ does not support provisions that would place obligations on principals of non-state schools to request or provide information via the Transfer Note. Obligations usually go hand-in-hand with penalties and the need for exemptions in order for the provision to work as it is intended. Rather, a separate provision could be established that enables proactive sharing where a principal believes it would be in the best interests of the student, or the staff and students at the relevant school, explicitly stating that the information “may” be shared, “where reasonably practicable”.

Principals at non-state schools have a duty of care to their existing students. This shouldn’t be extended to introduce liability for a situation that may arise after a student has moved on and enrolled at another school, as an obligation to share information might do. That same duty of care, in turn, works to ensure that principals are already motivated to both share and receive such information where appropriate, with no current avenue to do so.

Enrolment contracts in independent schools already require parents to provide full and frank disclosure of any relevant information for an enrolment to progress. An obligation on parents to provide details of a student’s previous school/s would therefore not be an additional limitation to the right to privacy. The benefit of such a provision would be additional clarity for schools and parents during enrolment, supporting a transparent process that is in the best interest of students and schools. ISQ therefore supports such an obligation on parents.

Enabling more proactive sharing of information on students transferring between jurisdictions

ISQ understands the review of the Interstate Transfer Note does not include changes to Commonwealth or any State legislation to require schools to participate. Queensland should not make adjustments to the EGPA prior to national work on a cross-jurisdictional student data transfer system being completed.

There is significant risk that without a Privacy Impact Assessment of each State’s privacy legislation, Queensland schools risk inadvertently breaching privacy legislation in the student’s place of residence.

It is important to note that the Interstate Transfer Note minimum data set should not exceed that of the Intrastate (Queensland) data set. The development of any interstate information sharing provisions should consider the capacity of all schools to electronically share information, and record retention requirements should form the basis of the minimum data set. Any information shared under this process should ensure it addresses the recommendations of the Royal Commission.

Protecting school communities from online abuse

The proposed legislative provisions apply only to school staff, however, there may be circumstances whereby the definition of “staff” may need to be expanded to persons at the school who are not “staff” but due to the nature of their position at the school, may be susceptible to online abuse.

Examples include volunteers serving in leadership roles within the school, such as members of the governing body or school board and the president of the P&F. These types of roles are often unpaid

but instrumental in the operation of non-state schools. Consideration should be given as to whether the scope of the amendment should include these roles.

The inclusion of an appeal process following the issue of a direction ensures procedural fairness and counters the risk of over-use or inappropriate use of the proposed new provision.

There needs to be careful consideration of whether the review process under Chapter 15 of the EGPA is appropriate, given the nature of online abuse, and if referral to an external body with specialist knowledge may be more appropriate – for example, the eSafety Commissioner.

Referral to an external body may be particularly appropriate if the scope of the proposal is expanded to include board members of a non-state school.

Timeframes for compliance with the direction, including remedial action, such as removal of material from an online platform should be ‘as soon as reasonably practicable’, to reflect the nuances of varying occurrences of online abuse. In some circumstances, content could be removed sooner than a timeframe given in the Act and any attempt to specify a time may result in the post being online longer than required.

Nomenclature and technical amendments

Clarifying physical attendance requirements

During the COVID-19 lockdowns, independent schools implemented various forms of online/remote learning modes to provide continuity of education to their students. Many schools discovered significant benefits and opportunities to improve student learning outcomes through these learning modes and have since then been considering the creation of hybrid face-to-face and remote learning options, especially for senior students who are preparing to attend further education and training after Year 12.

Currently, a Queensland non-State school may only be accredited for classroom and/or distance education¹. Classroom education means education in which the teacher providing the education and the students receiving the education are in each other’s presence². Distance education means education provided where students and teachers are not regularly in the presence of each other for that purpose but communicate with each other in writing, by print or by electronic means³.

The EGPA currently defines attendance for a child in the compulsory schooling phase as complying with the school’s requirements about physically attending, at particular times, its premises, or another place⁴. For a young person in the compulsory participation phase, compliance with the provider’s attendance requirements for the program or course is necessary⁵.

Students enrolled in a program of distance education are taken to attend the school of distance education offering the program by completing and returning the assigned work for the program⁶.

The EGPA prescribes these attendance requirements in the context of parents’ obligations regarding compulsory schooling/participation. Hence, they do not directly place compliance obligations on

¹ Education (Accreditation of Non-State Schools) Act 2017, s. 13

² Education (Accreditation of Non-State Schools) Act 2017, schedule 1

³ Education (General Provisions) Act 2006, schedule 4

⁴ Education (General Provisions) Act 2006, s. 177

⁵ Education (General Provisions) Act 2006, s. 234

⁶ Education (General Provisions) Act 2006, s. 177 & 234

schools. However, obligations on parents do have an indirect effect on schools. For that reason, ISQ strongly supports a recognition of flexible/hybrid modes of learning in the EGPA, paving the way for further reform of accreditation and funding frameworks that will enable schools to make local decisions in the best interest of students and their learning progress.

The attendance requirements of the EGPA could include statements clarifying that attendance also includes compliance with the school's requirements about remote attending, at particular times and via appropriate technology.

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

Sections 180 and 251AB of the EGPA currently refer to the Chief Executive "asking" a non-state school principal for information, by notice. This nomenclature implies the principal has choice or discretion in responding to the request. Inclusion of reference in the EGPA to the *Privacy Act 1988* and the obligations of non-state schools under this Act, would provide principals with clarity as to the appropriateness of providing the requested enrolment or attendance information to the Chief Executive if requested. A reference to the *Privacy Act 1988* would provide reassurance that the provision of this information is not a contravention or breach of privacy legislation.

