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Our ref RMD:AEK:102691

15 March 2013

Queensland Child Protection Commission of Inquiry
PO Box 12196
GEORGE STREET QLD 4003**BY EMAIL: info@childprotectioninquiry.qld.gov.au****Submission by Queensland Teachers Union and Independent Education Union of Australia – Queensland Northern Territory Branch.**

This letter is written by us as a joint submission by the two bodies identified above in response to the invitation issued by the Commission for interested persons to do so. Our clients thank the Commission for the opportunity to make this submission. The terms of the submission have been approved by appropriate officers of both of the Unions.

This submission is limited to the question of mandatory notification of suspected abuse.

The submission is made in relation to matters raised in two of the submissions already on the Commission's website; namely:

- (a) The submission by the Department of Communities, Child Safety and Disability Services dated December 2012; and
- (b) The submission of Associate Professor Ben Matthews, of Queensland University of Technology Faculty of Law, dated 12 September 2012.

In particular, it is noted that on page 3 of Associate Professor Matthews' submission dated 12 September 2012 the following appear as recommendation 1 and recommendation 2:

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'Amending the *Child Protection Act 1999* and related statutes by placing all Queensland legislative duties to report suspected child abuse and neglect in the one statute'

and

'Queensland legislative duties to report suspected child abuse and neglect should be harmonised across the relevant professions'.

If this recommendation were to be adopted, presumably the provisions specific to school staff which presently appear in the *Education (General Provisions) Act* (please see below) would be repealed and the relevant obligations of school staff would appear in the general provision recommended to be included in the *Child Protection Act*.

Interestingly it is noted that the recommendation of the Department of Communities, Child Safety and Disability Services dated December 2012 at the top of page 33 as 2.2 excludes references to the mandatory reporting requirements imposed on school staff by the *Education (General Provisions) Act* and reads

'Consolidating mandatory reporting requirements currently contained in the *Public Health Act 1992* and the *Commission for Children Young People and Child Guardian Act 2000* into the *Child Protection Act 1999*'.

The submission by the Unions is that it is respectfully submitted that the schools-specific mandatory reporting regime in the *Education (General Provisions) Act* is appropriate in principle, and further that the provisions of that legislation (as it will stand by 25 November 2013 when all amendments which have been passed by the Parliament come into effect) is more appropriate to that environment than would be a general provision, especially if similar to that in the *Public Health Act*.

Health Professionals

Section 191 of the *Public Health Act* imposes an obligation on a 'professional' who becomes aware, or reasonably suspects, during the practice of his or her profession, that a child 'has been, is being, or is likely to be harmed', to notify as required by the section.

Section 158 defines 'professional' as a doctor or registered nurse.

Section 158 defines 'harm' as follows:

'harm, to a child, means any detrimental effect on the child's physical, psychological or emotional wellbeing –

- (a) that is of a significant nature; and
- (b) that has been caused by –
 - (i) physical, psychological or emotional abuse or neglect; or
 - (ii) sexual abuse or exploitation.'

Though qualified (appropriately) by the word 'significant', this is a wide definition.

School Staff

The relevant provisions are sections 365, 365A, 366 and 366A of the *Education (General Provisions) Act 2006*. Those provisions have a number of features which are significantly different to those in the *Public Health Act*. These provisions have been developed over a decade by persons familiar with, and giving consideration to, the circumstances of schools. It is submitted that has resulted in a more appropriate statutory regime than that in the *Public Health Act*, which has been developed in relation to the obligations of health professionals.

Particular features of the provisions 365-366A are as follows:

- Limited to 'sexual abuse' as defined in section 364;
- The legislation as it will stand by 25 November 2013 makes an important distinction between the legal consequences of failure to comply with the statutory obligation in respect of the sexual abuse which is known or reasonably suspected to have occurred or be occurring and sexual abuse which is known or reasonably 'likely'.

In relation to sections 365A and 366A (imposing the obligation where sexual abuse is 'likely', the *Education Legislation Amendment Act 2012* (Number 25 of 2012 inserts the following:

'To remove any doubt, it is declared that a person does not commit an offence against this or another Act only because the person omits to do an act required under this section'.

Accordingly, failure to discharge the statutory obligation in respect of sexual abuse which is 'likely' as distinct from having occurred or occurring remains a serious matter but cannot be the subject of prosecution. Clearly a failure to comply with a legislative

obligation would have elevated significance in employer discipline and professional registration contexts.

It is submitted that this is an appropriate outcome, specific to the schools situation, and taking into account that the fear of prosecution can result in excessive over-reporting which tends to undermine the reliability of the effectiveness of the mandatory notification of the reporting system.

The Unions also submit that the limiting of the statutory obligation in respect of school staff to sexual abuse rather than the much wider definition of harm in *The Public Health Act* is appropriate bearing in mind both the fact that school staff are primarily focused on education responsibilities and that a focused obligation is much more likely to be effective than a much wider one.

It is noted that the Commission, at page 2 of its 'Emerging Issues' paper dated September 2012, observes

'Many would agree that mandatory reporting leads to the over-reporting of incidents....'

This is further reinforced in the Union's submission by the fact that all educational employers impose wide obligations on their staff in respect of child protection reporting to the employer.

Conclusion

It is respectfully submitted that the existing mandatory reporting regime for school staff reflects school experience, and by being appropriately focussed, is likely to be effective in achieving the relevant public policy objectives.

Yours faithfully

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