

Submission to The Department of Justice and Attorney-General

Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019



September 2019

About Queensland Independent Schools

Community confidence in the independent schooling sector remains strong with more than 120,000 students enrolled in independent schools across Queensland. These schools educate approximately 15 percent of the state’s total school-age population and about 20 percent of all secondary students.

The strength of the independent schooling sector lies in the rich mix of education choices and opportunities Queensland independent schools provide families. Independent schools are as diverse as the students and parents who make up their close-knit communities. Of Queensland’s 208 independent schools: 184 educate children with disability; 110 cater for students for whom English is a second language or dialect; 194 enrol Indigenous students; 75 offer international education programs; 33 provide boarding services; and 18 cater specifically for students who have disengaged from mainstream education.

Common to all independent schools is their commitment to strong student outcomes, high standards of behaviour, and the welfare and wellbeing of students.

Over the past 10 years enrolments at Queensland independent schools have increased by 21 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. ISQ represents the interests of its 220 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.

Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019

Independent Schools Queensland (ISQ) accepts The Royal Commission into Institutional Responses to Child Sexual Abuse Criminal Justice Report (Criminal Justice Report) which makes 85 recommendations to reform the Australian criminal justice system to provide fairer and more effective responses to victims of child sexual abuse. In addition, ISQ acknowledges and supports the intention of the Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019 to fulfil recommendations 33, 34 and 36 of the Criminal Justice Report that relate specifically to third party offences in relation to child sexual abuse in an institutional context.

Amendment of Criminal Code

Insertion of new s229BA—Meaning of particular words for s229BB and s229BC

This section provides definitions of key terms vital to understanding the scope of those institutions captured and persons impacted by the proposed amendments. Clarity is sought in relation to a number of these terms in order for schools to adequately understand the impact and breadth of the proposed change. This is particularly pertinent as it is understood that duties under s229BB and s229BC are held in relation to any institution not only the one to which an individual is directly associated.

The definition of an *institution* is understood to include schools, early childhood education and care services, religious organisations and sporting clubs that are all highly likely to operate concurrently in an independent school setting. With this in mind it is important to highlight that within the independent schooling sector there are numerous governance structures that cross states and territories, often with complex hierarchical systems with varying degrees of ownership, affiliation and association. Clarity is required in relation to the scope outside of Queensland and reach with respect to organisations not directly responsible for the management of a school. The placement of ISQ as an organisation within the current definitions is unclear. In addition to the definition of institution being extremely broad, it is also inconsistent with the Civil Liability and Other Legislation Amendment Bill 2018 currently with Committee.

The definition of an adult *associated* with an institution raises further confusion in relation to scope due to its breadth and ill-defined terms. Clarification of the definition of *engaged by the institution* and who qualifies as a *volunteer* is sought. Schools would need a sound understanding of who is and who is not within scope in order to adequately support, potentially through education and resources, their associated individuals. A strength of many independent schools are their community partnerships and extensive networks across a broad range of industries and sectors. For example, membership of an alumni network potentially captures many thousands of individuals across Australia and the world. They also rely heavily on volunteers, largely made up of parents, that would number their *associated* adults to an unmanageable number.

In addition to the above concerns, current mandatory reporting laws capture a skilled workforce of individuals who have the professional capacity and appropriate systems to support them in fulfilling their reporting obligations. The scope of adults captured under this definition, with the additional requirement to report in relation to other institutions, significantly over-estimates individual capability to understand and act appropriately, in response to a complex piece of legislation with a multi-layered decision-making process. Having to inform year 12 students on the day they turn 18

that they are now criminally liable for a failure to report child sex offences is unreasonable. ISQ questions where the burden of educating and supporting these individuals will be met. Currently the *Education (Accreditation of Non-State Schools) Regulation 2017 (Qld)* s16 requires independent schools to train all staff annually on responding to allegations of harm. With the addition of a network of relief teachers, specialised sports coaches, music tutors and ancillary staff such as grounds keepers and cleaners, this number can extend into the thousands for a large P-12 school. Adding the additional burden of supporting an unqualified, transient and immeasurable network of *associations* is impractical, unfeasible and likely unnecessary to fulfil the intent of the recommendations from The Royal Commission.

Use of the term *child sex offence* in relation to reportable conduct is inconsistent with terminology in use under current legislation that mandates reporting obligations within the non-state schooling sector. Currently the *Child Protection Act 1999 (Qld)*, *Education (General Provisions) Act 2006 (Qld)*, *Education (Accreditation of Non-State Schools) Act 2017 (Qld)*, *Working with Children (Risk Management and Screening) Act 2000 (Qld)* and *Education (Queensland College of Teachers) Act 2005 (Qld)* use varying terms. Including an additional definition to the exhaustive list of harm related terms contributes significantly to the complex reporting framework and increases the risk of misunderstanding of responsibilities and consequent over-reporting. ISQ recommends an approach that works towards harmonisation in relation to terminology.

Insertion of new s229BB—New offence of failure to report belief of offence of sexual nature committed in relation to child

Independent schools currently operate within an expansive and complex regulatory framework that provides extensive safeguards to keep children protected from institutionalised abuse. ISQ would like to acknowledge that independent schools have existing reporting obligations under the following Acts and their subsequent Regulations:

- *Child Protection Act 1999 (Qld)*
- *Education (General Provisions) Act 2006 (Qld)*
- *Education (Accreditation of Non-State Schools) Act 2017 (Qld)*
- *Working with Children (Risk Management and Screening) Act 2000 (Qld)*
- *Education (Queensland College of Teachers) Act 2005 (Qld)*

Additionally, for schools offering Early childhood Education and Care Services

- *Education and Care Services National Law (Qld)*

Within this legislation there are currently reporting pathways for all staff through to the Queensland Police Service, the Queensland College of Teachers, Blue Card Services and Child Safety. These reporting pathways require staff to understand definitions of harm and sexual abuse. In addition, they require an understanding of the undefined terms, physical abuse, likely sexual abuse and inappropriate conduct. The lack of harmonisation between these reporting pathways and associated terms creates complex multi-layered and concurrent decision-making that must be reflected in school policy, procedures and training. In order to effectively integrate the proposed requirements into existing policy, procedures and training, schools would require a significant investment in support and time to ensure accuracy and implementation. ISQ supports its member schools with their current policy and training requirements and raises significant concern over the additional burden and cost this will have on schools.

ISQ is concerned the threshold for reporting under this section is too complex. A five-step decision making process is required for an individual to adequately fulfil the criteria needed to be protected

from liability. The number of elements that must be satisfied exceeds those in other reporting pathways. These are required to be considered by a significantly expanded group of individuals who lack an appropriate supportive framework to inform their decision-making. There is concern that the implementation of this section may become onerous and pose unintended consequences.

Additionally, all school staff and governing body members face existing penalties for failure to report under the *Education (General Provisions) Act 2006 (Qld)*. With proposed changes to the *Civil Liability Act 2003 (Qld)*, both this section and s229BC, place individuals at risk of significant personal liability. The outcome of the increased seriousness and variety of measures to incur a penalty will undoubtedly result in over-reporting, unnecessarily burdening Queensland Police. ISQ also raises concerns over the impact this may have on schools' relationships with law enforcement.

Insertion of new s229BC—New offence of failure to protect child from child sex offence

The current legislative framework outlines provisions for the reporting of, and written processes associated with, harm and/or abuse or likely abuse. The specific provisions of these statutes are generally focused on reporting rather than preventing harm or abuse. The proposed amendment is very broad in definitions of responsibility and accountability but will introduce increased expectations of preventative actions by individuals without defining what these actions should be. The Amendment will require supporting documentation of expected actions to assist schools with providing pathways for individuals to take action, other than through reporting, to prevent abuse or harm from occurring.

Amendment of *Working with Children (Risk Management and Screening) Act 2000*

ISQ notes the amendment to the *Working with Children (Risk Management and Screening) Act 2000* and supports the inclusion of s228I (Producing or supplying a child abuse object) and s228J (Possessing a child abuse object) as disqualifying offences under this Act. ISQ supports the inclusion of s229BC Failure to protect child from child sex offence as serious offences under this Act.

Summary

ISQ appreciates the opportunity to provide feedback on the proposed amendments, acknowledging that they will have a significant impact on independent schools and their related organisations.

Below is a summary of key points:

- Clarification is sought about the scope of the term *institutions* and its applicability in other jurisdictions.
- Clarification is sought in relation to the definition of *engaged by the institution* and who qualifies as a *volunteer*.
- ISQ expresses concern generally over the definition and breadth of an adult *associated* with an institution, believing the scope is too broad.
- ISQ questions who will be responsible for supporting this additional group of individuals to understand and enact their reporting obligations.
- ISQ raises concern over use of the term *child sex offences* as it is inconsistent with current reportable conduct terms in use under legislation
- It is recommended consideration should be given to the increased burden and significant time required for schools to effectively integrate the proposed requirements into existing policy, procedures and training.
- ISQ raises concern in relation to the overly complex decision-making process outlined in s229BB and the burden placed on individuals to enact systemic change in relation to prevention in response to s229C.

A culture of over-reporting to both police and Child Safety has emerged in recent years despite a significant investment in training and resources, delivered to a skilled workforce, around reporting thresholds under existing legislation. This issue is likely to increase with the addition of personal criminal liability and inconsistent definitions and decision-making processes.

ISQ supports, in principle, the recommendations of The Royal Commission and Criminal Justice Report, however, continues to advocate for the harmonisation of reporting processes across legislation to support a more effective pathway for protecting children from abuse. In its current composition, this amendment to the Criminal Code further confuses a complex and burdensome existing framework that will have a significant impact on the independent schools in Queensland.

Complexity and the resulting over-reporting are likely to inhibit the achievement of the desired outcome of further protecting our children.

For further information about this submission please contact:

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