



Child Protection and Education legislation (Reporting of Abuse) Amendment Bill 2017

Education, Tourism, Innovation and Small
Business Committee

May 2017

"Words have no power to impress the mind without the exquisite horror of their reality."

Edgar Allan Poe

"History, despite its wrenching pain, cannot be unlived, but if faced with courage, need not be lived again."

Maya Angelou

Summary of Recommendations

QAI's Recommendations on the draft legislation

- QAI supports the passage of the Amendment bill, with the following two amendments:
 - the application of the legislation should not be restricted to schools, but should apply to all institutions in which children may receive education (including, but not limited, to mental health facilities, hospitals and juvenile and other detention centres);
 - the scope of the legislation should cover all forms of serious physical and psychological abuse, as well as sexual abuse.
- QAI recommends that the Committee consider extending the scope of the inquiry to introduce further legislative amendments, which:
 - introduce legislative amendment prohibiting all forms of violence and abuse against children with disabilities in all institutions in which they may receive education (including, but not limited to, schools);
 - specifically prohibit the use of Restrictive Practices on children and young people in educational institutions;
 - impose the obligation of mandatory reporting for all forms of abuse, real or suspected, on all teachers and relevant employees of state and non-state educational institutions, not only ministers of religion;
- QAI recommends that, as part of this legislative reform, the Government should introduce a proactive investigative mechanism designed to detect and report instances of abuse.

About Queensland Advocacy Incorporated

Queensland Advocacy Incorporated (QAI) is an independent, community-based systems and individual advocacy organisation and a community legal service for people with disability. Our mission is to promote, protect and defend, through systems and individual advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland.

QAI has an exemplary track record of effective systems advocacy, with thirty years' experience advocating for systems change, through campaigns directed to attitudinal, law and policy reform and by supporting the development of a range of advocacy initiatives in this state. We have provided, for almost a decade, highly in-demand individual advocacy through our three individual advocacy services – the Human Rights Legal Service, the Mental Health Legal Service and the Justice Support Program. Our expertise in providing legal and advocacy services and support for individuals within these programs has provided us with a wealth of knowledge and understanding about the challenges, issues, needs and concerns of individuals who are the focus of this inquiry.

QAI deems that all humans are equally important, unique and of intrinsic value and that all people should be seen and valued, first and foremost, as a whole person. Further, QAI believes that all communities should embrace difference and diversity, rather than aspiring to an ideal of uniformity of appearance and behaviour. Central to this, and consistent with our core values and beliefs, QAI will not perpetuate use of language that stereotypes or makes projections based on a particular feature or attribute of a person or detracts from the worth and status of a person with disability. We consider that the use of appropriate language and discourse is fundamental to protecting the rights and dignity, and elevating the status, of people with disability.

Background

QAI made a submission to the inquiry by the Legal Affairs and Community Safety Committee into the *Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016* (Qld) and the *Limitation of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Bill 2016* (Qld) in September 2016. We appeared, by invitation, as a witness at the Public Hearing into this inquiry on 26 September 2016. We have also made submissions to relevant Senate inquiries, including the 2015 Senate Inquiry into violence, abuse and neglect against people with disability in institutional and residential settings; to the ongoing Queensland Government review of the *Child Protection Act 1999* (Qld); and to the Queensland Law Reform Commission Review of whether a domestic violence disclosure scheme should be introduced in Queensland in February 2017. We have contributed to Australian Lawyers for Human Rights' submission on the UN Draft General Comment no. 4, Article 24 - The Right to Inclusive Education. In making a submission to this inquiry, we draw and build upon this earlier body of work in this space.

CRPD principles relevant to this inquiry

The Convention on the Rights of Persons with Disabilities (CRPD), which Australia has signed and ratified, protects a number of rights that are relevant to this review. Importantly:

- Article 5 establishes the right to equality and non-discrimination for persons with disability, which is a basic human right also recognised and protected by a number of other international treaties and conventions.
- Article 7 protects the rights of children with disabilities and posits the best interests of the child as a primary consideration (the over-riding objectives of both the *Child Protection Act 1999* (Qld) and the *Education (General Provisions) Act 2006* (Qld) are consistent with this).
- Article 15 demands that no person with disability is subjected to torture or to cruel, inhuman or degrading treatment or punishment, and requires states parties to take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities from being subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- Article 16 protects the right of people with disabilities to freedom from exploitation, violence and abuse and requires states parties to put into place effective legislation and policies, including child-focused legislation and policies, to ensure instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.
- Article 17 protects the right of persons with disabilities to physical and mental integrity.

The Amendment Bill

The aim of the *Child Protection and Education legislation (Reporting of Abuse) Amendment Bill 2017* (Qld) (Amendment Bill) is to impose an obligation on ministers of religion to report all real or suspected instances of sexual abuse. To achieve this aim, amendments are proposed to both the *Child Protection Act 1999* (Qld) and the *Education (General Provisions) Act 2006* (Qld).

At its heart, this Bill is concerned with protecting the rights of all Queensland children to a safe and non-abusive learning environment. As My Rob Pyne MP states in the explanatory speech: *[c]hildhood is the one time in life that human beings are entitled to feel happy and carefree.*¹

QAI endorses this sentiment but notes that children with disability are often disempowered and marginalised and subjected to violence and abuse, including in educational settings responsible for their care and protection. As such, children with disability are often denied a happy and carefree childhood. As we noted in our written submission to the *Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016* (Qld) and the *Limitation of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Bill 2016* (Qld):²

¹ Mr Rob Pyne, MP. Explanatory Speech: Child Protection and Education Legislation (Reporting of Abuse) Amendment Bill. 21 March 2017, 585.

² Queensland Advocacy Incorporated submission to the *Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016* (Qld) and the *Limitation of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Bill 2016* (Qld), 12 September 2016, 2.

Any consideration of issues surrounding the abuse, whether sexual or otherwise, of children or vulnerable people is very sobering. Where this abuse is inflicted by those trusted with their care and protection, it is cause for grave concern and reflection, the development of safeguards to protect future generations and a critical look at ways to help to rehabilitate and compensate those who have experienced the abuse.

The need for broader reforms

While QAI congratulates the Queensland Government on taking a further step towards protecting Queensland children from sexual abuse, we submit that broader protection of vulnerable children with disability is urgently needed.

We note that an issue requiring urgent redress is the use of Restrictive Practices within educational institutions in Queensland. The application of Restrictive Practices on persons with an intellectual or cognitive disability is an issue of significant concern from a human rights perspective, which is sanctioned by the permissive legislative regimes adopted by the state and territory governments. The use of Restrictive Practices is an issue that permeates all areas of service provision for people with disabilities, including the educational context.

Branded as a 'behaviour management' approach, each schooling institution is largely closed and unaccountable for any application of Restrictive Practices. At present, there is a significant degree of inconsistency between different educational institutions throughout Queensland regarding discipline of children. The *Education (General Provisions) Act 2006* (Qld) vests significant discretion in the school principal in this regard, empowering the principal to 'control and regulate' student discipline in the school,³ although the principal must comply with policies made by the chief executive in this regard.⁴

Restrictive Practices are those practices used by funded disability service providers to respond to the behaviours of a person with an intellectual or cognitive disability that is said to cause or risk harm to the person or others. Restrictive Practices include mechanical, physical and chemical restraint, seclusion, containment and restricting access to objects. The sanitised terminology of Restrictive Practices masks the reality of the practices – mechanical restraint involves using a device that prevents a person from moving freely (such as the widely deplored use of a chair and bonds on Dylan Voller at Don Dale Youth Detention Centre); physical restraint is where a person is held down by another; chemical restraint constitutes medicating, or drugging, a person to control specific behaviours; seclusion involves solitary confinement or isolation.⁵ QAI considers that Restrictive Practices are imposed upon vulnerable people by those who abuse their power and exert domination over the person.

In Australian schools and educational institutions, there have recently been horrific instances where Restrictive Practices have been used on children and youths in unspecified, unsanctioned and illegal ways. For example, recent allegations of physical and emotional abuse and deprivation of liberty of children with disabilities include the caging of a 10 year old boy with autism in a Canberra classroom,⁶ locking a child with autism in a dark cupboard at a

³ See *Education (General Provisions) Act 2006* (Qld), s 275.

⁴ See *Education (General Provisions) Act 2006* (Qld), s 276.

⁵ Queensland Advocacy Incorporated. *Conclusions on the Use of Restrictive Practices for People with an Intellectual or Cognitive Impairment: How to Return Respect and Control to Marginalised People*. October 2014.

⁶ Rachel Browne, 'Children with autism caged and abused at school', *The Sydney Morning Herald* (online), 2 April 2015 <<http://www.smh.com.au/nsw/children-with-autism-caged-and-abused-at-school-20150331-1mbt48.html>.

Newcastle school,⁷ tying a child with special needs to a chair with a seat belt,⁸ and constraining an autistic boy in a cell-like room in Hervey Bay in Queensland.⁹ These appalling human rights abuses must immediately cease and strong protective measures put in place to guard against similar occurrences.

Article 37(1) of the *Convention on the Rights of the Child* prohibits the use of Restrictive Practices on children, requiring that no child is subjected to torture or other cruel, inhuman or degrading treatment or punishment. QAI submits that the unsanctioned and unregulated use of Restrictive Practices on children by the Department of Education constitutes torture and/or cruel, inhuman and degrading treatment and therefore contravenes the requirements established by international human rights law.

For adults, Restrictive Practices are subject to legal regulation, with a mandated approach that the 'least restrictive' approach is taken, with Restrictive Practices only to be used as a last resort. There are requirements imposed on Service Providers regarding reporting on the use of Restrictive Practices and that data is collected and monitored by an external Government Department, with a view to ensuring that the use of Restrictive Practices is reduced or eliminated. Yet there is presently an absence of specific protection for children against the use of Restrictive Practices under Queensland law. Similarly, there are no mandatory reporting guidelines and the examples provided above of the heinous treatment children with disabilities can be subjected to within the educational system only come to light when the schools are 'found out', rather than as a result of proactive reporting requirements underpinned by legislative safeguards. Protecting children from the application of Restrictive Practices is central to the 'safety, wellbeing and best interests of a child', which is identified as the paramount principle of the *Child Protection Act 1999* (Qld).¹⁰ Similarly, the primary objectives of the *Education (General Provisions) Act 2006* (Qld) include making available to each Queensland child or young person a high-quality education that will help maximise his/her educational potential and enable him/her to be an effective and informed member of the community.¹¹ We submit that subjecting children and young people to Restrictive Practices within an educational institution is the antithesis of fostering a high-quality education that will nurture that child's growth and potential.

QAI submits that the type of abuse covered should be extended beyond sexual abuse and include physical abuse and deprivation of liberty. This is consistent with the proposal under the *Limitation of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Bill 2016* (Qld) to define child abuse in relevant civil proceedings as including both sexual abuse and serious physical abuse. While this Bill was not ultimately passed, QAI was of the view that the extension beyond sexual abuse was appropriate and warranted and we call for a similar broadening of focus here. In the Report, the Committee noted Mr Pyne MP's comments at the public briefing on this bill, where he explained his rationale for proposing to extend the reach of the legislation beyond institutional child sexual abuse:¹²

⁷ <http://mobile.abc.net.au/news/2015-12-16/police-investigate-schools-treatment-of-autistic-child/7032038?section=nsw>.

⁸ <http://www.scribd.com/doc/287809156/Parents-Claim-Special-Needs-Student-Tied-to-Chair-With-Seat-Bel>.

⁹ <http://www.scribd.com/doc/287338662/School-Puts-Autistic-Boy-in-Cell-Like-Room-QLD>.

¹⁰ *Child Protection Act 1999* (Qld), s.5A.

¹¹ *Education (General Provisions) Act 2006* (Qld), s 5.

¹² Queensland Government. Report: *Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016 and Limitation of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Bill 2016*. Report No 41, 55th Parliament, Legal Affairs and Community Safety Committee, November 2016, 11.

The royal commission was limited by its terms of reference to only reporting and recommending on matters of institutional abuse and of sexual abuse. The parliament is not so restricted. The parliament is free to consider all information before it and act accordingly to address the broader needs of Queensland victims of child abuse. The parliament has the capacity to acknowledge the obvious truth that what is just and proper law reform for victims of institutional and sexual abuse is much needed law reform for victims of non-institutional and non-sexual child abuse. There is no need for further consultation on this question. The royal commission has heard four years of evidence, and both Victoria and New South Wales have conducted extensive consultation and arrived at the conclusion that extending rights to all victims of child abuse is the right thing to do.

The Report also acknowledged that a majority of the submissions agreed with Mr Pyne MP's approach in terms of legislating in relation to all physical child abuse and not limiting reform to child sexual abuse, in both an institutional and non-institutional context.¹³ On this basis, we confirm that there is recognition and support for the dire need for a legislative response to the incidences of serious physical and psychological abuse that children can sustain in an institutional setting.

QAI submits that both the *Child Protection Act 1999* (Qld) and the *Education (General Provisions) Act 2006* (Qld) should prohibit the use of Restrictive Practices by educational institutions on children with disabilities as part of their core work.¹⁴ This protection from the use of Restrictive Practices should extend to cover all children with disability who are in care and who are in receipt of mental health services, in circumstances where they are in receipt of education, including religious education. Those teaching these children are performing an educative function and should therefore be subjected to the same standards and rules that apply to other Queensland teachers. We therefore recommend broadening the scope of the Act, replacing the application of the Act to 'school' to include 'all institutions and other premises where children may receive education'. This should include (non-exhaustively, hospitals, mental health facilities, youth detention centres and immigration detention centres, as well as schools). Further we consider it important that what constitutes an institution is widely construed to include all places where children with disability may be taught.

Conclusion

There are a number of issues that must be addressed if we are to move towards child protection and educational systems that do not perpetrate violence or abuse on children with disability. As an important step towards this, the Department must broaden the scope of this inquiry to:

1. introduce legislative amendment prohibiting all forms of violence and abuse against children with disabilities in all institutions in which children may receive education (including, but not limited to, mental health facilities, hospitals and juvenile and other detention centres);

¹³ Queensland Government. Report: *Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016* and *Limitation of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Bill 2016*. Report No 41, 55th Parliament, Legal Affairs and Community Safety Committee, November 2016, 11.

¹⁴ See <http://www.smh.com.au/nsw/autistic-boy-died-are-being-bound-to-chair-and-showered-in-cold-water-court-20151111-gkwc17>; <http://www.abc.net.au/news/2015-11-10/teenager-found-chained-to-bed-in-blacktown-sydney-s-west/6928444>.

2. cover all forms of serious physical and psychological abuse, as well as sexual abuse.
3. specifically prohibit the use of Restrictive Practices on children and young people in educational institutions;
4. impose the obligation of mandatory reporting for all forms of abuse, real or suspected, on all teachers and relevant employees of state and non-state educational institutions, not only ministers of religion;
5. introduce a proactive investigative mechanism designed to detect and report instances of abuse.

The health of any society necessarily begins with its children. The experience children with disability have in the education system has a significant impact upon their later life experiences and prospects. The framework in place in Queensland at the moment for the protection of our most vulnerable children and families is deeply flawed in key areas and this has significant ramifications for our society.

QAI calls upon the Government to take a decisive step forward, introducing legislative reform and policy development aimed at bringing about a shift in culture and attitudes that will move Queensland towards being a truly inclusive society, which protects its most vulnerable children from abuse and supports their active and inclusive involvement within the educational system.