



**Draft Education
(General Provisions)
Bill 2006**

**Response by
Youth Affairs Network of Queensland**

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Introduction

States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity.

United Nations Convention on the Rights of the Child.

The Youth Affairs Network of Queensland Inc. (YANQ) welcomes the opportunity to provide input into the proposed changes to the *Education (General Provisions) Act 1989* that have been released in the *Draft Education (General Provisions) Bill 2006* (the Bill).

YANQ also commends the Department of Education and the Arts (EQ) for releasing a consultation draft of the Bill. This has made it possible for YANQ and other youth organisations to consider, in more detail than during the previous round of consultations in 2005, the full impact of the Bill on the young people we seek to represent.

Many of the issues that YANQ wished to raise in this submission have been addressed more fully in the submission made by the Youth Advocacy Centre (YAC). YANQ is pleased to support and endorse YAC's submission, and as such this submission has been written to complement that of YAC's, rather than repeat many of the arguments they make. In particular we share YAC's concerns regarding:

- lack of recognition of independent students;
- imbalance in timeframes for decisions;
- need for clarity around the representation of young people in disciplinary processes;
- the availability of documentation on which decisions about students are made;
- a general lack of external review of decisions;
- and the need for special consideration for marginalised groups.

A copy of YAC's submission is available by contacting the Youth Advocacy Centre on (07) 3857 1155 or via e-mail to admin@yac.net.au.

About YANQ

The Youth Affairs Network of Queensland Inc. (YANQ) is the peak community youth affairs organisation in Queensland. YANQ advocates on behalf of young people in Queensland, especially disadvantaged young people, to government and the community. The interests and well being of young people across the state are promoted by YANQ in the following ways:

- disseminating information to members, the youth sector, and the broader community
- undertaking campaigns and lobbying
- making representations to government and other influential bodies
- resourcing regional and issues-based networks

- consulting and liaising with members and the field
- linking with key state and national bodies
- initiating projects
- hosting forums and conferences
- input into policy development
- enhancing the professional development of the youth sector

YANQ's membership spreads right across Queensland and includes young people, interested citizens, youth workers and organisations that provide human services to young people.

Rights to Education

The United Nations Convention on the Rights of the Child (CROC) (to which Australia is a signatory) outlines the obligations of the State to provide education for children. The CROC states that education must be accessible, meet the developmental needs of children and respect the child's parents cultural values.

It is important that the Bill protects these rights, and thus YANQ recommends that the Bill should include a section outlining Students' Rights. This would be consistent with previous legislation in Queensland that deals with children, such as the *Child Protection Act 1999* and the *Juvenile Justice Act 1992* which include similar sections.

It may also help to clarify the rights of students to appeal decisions made about them (such as suspensions or exclusion). It is YANQ's view that the appeals process described in the Bill needs to be more clearly outlined and made more accessible (see YAC's submission for details).

The Right to be Treated Openly and Fairly

In the original consultation paper released in late 2004, it was proposed to include a statement in the 'Guiding Principles' section of Bill that stated:

"... high quality education in all Queensland schools ... is achieved by... treating parents with openness and fairness, and having regard to the principles of natural justice in managing relationships with students and their parents."

YANQ supported this statement, but responded that it should be amended to include young people, as they also had a right to open and fair treatment that had regard for the principles of natural justice.

It is concerning that this principle seems to have been dropped altogether from the legislation. Instead the legislation refers to the Ministerial Declaration that is provided as an attachment. However this does not include an equivalent statement that treating parents and young people with openness and fairness is an important part of a high quality education system.

The inclusion of a 'Charter of Student Rights' or similar, that uses the CROC as its basis would address these concerns.

Increasing Fines for Truancy

Under the existing legislation, parents who do not send their child to school face a fine of \$375 for a first offence, and \$750 for further offences. Under the Bill, these fines will be increased to \$450 and \$900 respectively. YANQ's view is that these increases are excessive (though less than was originally proposed) and have the potential to exacerbate the problems within families that lead to children being truant from school.

Furthermore, it is disappointing that EQ remains committed to increasing fines, despite a “majority of community respondents”¹ arguing against this. It is also disappointing given that EQ did not outline how it believes increased fines will improve educational outcomes for young people or address the general concerns that were raised during the initial consultation process that EQ ran in 2005.

It is YANQ's view that using fines as a tool to coerce parents to send their children to school is counter-productive and will only exacerbate the problems that lead to their children's truancy in the first place. Furthermore YANQ believes that the level of fines proposed will impose a disproportionately high and unfair burden on lower income families.

Impact of Fines/Prosecutions on Truancy Rates

Research suggests that imposing penalties on parents whose children are truant from school does nothing to improve truancy rates. Zhang (2003) studied school districts in a number of areas in the United Kingdom and Wales in order to determine the relationship between increases or reductions in school attendance rates and prosecutions of parents whose children were truant. Zhang found no evidence that more parental prosecution would bring about improvement in school attendance. Specifically Zhang found no link between:

- the number of prosecutions and the levels of school absenteeism; or
- the number of court cases against parents and the improvement or reduction in school attendance rates.

Social Factors behind Truancy

Rates of school attendance are influenced by many factors beyond parents control. Research conducted in 2005 for EQ suggested that:

“... patterns of student retention are based on a complex interplay between a range of factors including social and demographic (e.g. gender, achievement, student aspirations and motivations, family SES, ethnicity, indigenous status, health and disability, homelessness), regional and economic (e.g. urban, rural or remote, youth labour market, unemployment, part-time employment, industry structure, community links), school policies and context (e.g. sector, school quality, teacher quality, pedagogical effectiveness, school resourcing, school organisation) and the policy environment (e.g. system, state, and commonwealth policies, curriculum and qualification framework, income support)” (Lamb, Walstab, Teese, Vickers & Rumberger, 2004).

In other research by Zhang (2002), it was found that truancy was closely correlated with poverty. Similarly, the 1996 Commonwealth Inquiry into truancy and exclusion from school found that “there is a significant relationship between early school leaving and family socio-economic

¹ pg. 6 of the Explanatory Document for the Draft Education (General Provisions) Bill 2006.

disadvantage” (House of Representatives Standing Committee on Employment, Education and Training, 1996). These findings mirror the anecdotal evidence provided to YANQ by its members who suggest that young people who are disengaged from school are mostly from families with low incomes and/or who struggle to obtain stable accommodation. Poverty, and the range of factors above are largely beyond any single family's control, and require broader social change within schools and communities.

Boredom has also been identified as a factor that contributes to early school leaving (Cottone, 2004; House of Representatives Standing Committee on Employment, Education and Training, 1996). The reasons for boredom can vary, ranging from difficulty understanding the curriculum, to finding subjects too easy or simply uninteresting. The following comment from a young Maori/Cook Islander student interviewed as part of Cottone's (2004) research highlights this point:

“I loved going to school in New Zealand, but ever since I came to Australia I had difficulties with understanding English so I started wagging school” (p. 7).

Imposing a fine on this particular student's family, would do nothing to solve the fundamental problem the student has identified. In this example, resources would better be spent on providing more support to this student in the form of (for example) ESL tuition, rather than pursuing parents with punitive fines.

Recent research conducted by YANQ also suggests that racism is a factor for some from culturally and linguistically diverse (CALD) backgrounds. Of the 144 students surveyed as part of Cottone's research, 61 (almost half) reported experiencing racism at school. These quotes below show clearly how this can impact on school attendance:

Some teachers only give white people the chance to talk.

Samoan student, aged 12 from Brisbane.

Sometimes I too scared to walk through the gate because people wait for me so they can bash me up and tease me for be a different colour ...sometimes I feel like killing myself.

Maori student, aged 13 from Brisbane.

Bullies and some teachers are mean to me because I don't think they like Yugoslavians. I have been teased a lot but I try to ignore it and just stay home so then I can't get teased.

Yugoslavian student, aged 13 from Brisbane.

Some student racism me, like tell me 'you horrible people'. It make me don't want to come to school.

Thai student, aged 14 from Cairns.

I am a Jehovah's Witness. My year six teacher thought it was an excuse to skip work

Laotian student from Brisbane.

Parents of children from Murri and Torres Strait Islander communities have also told YANQ of the racism that is experienced by their children today, and by themselves in the past. Some parents are distrustful of the schooling system, following their own traumatic and difficult experiences at school. Because of this they are often very concerned about sending their children into an environment where they fear they may be verbally or physically abused because of the colour of their skin.

Aside from experiencing overt racism which can cause some students to miss school, some students from CALD backgrounds are unable to attend school as regularly as other students due to cultural or religious obligations of the family. These obligations of the family may require their child/ren to take time off school to mind their siblings, run household errands or attend a ceremony.

Another factor that causes some young people to miss school is their need to work in order to bring money into the family. Inadequate social security payments to students and families means that some students feel enormous pressure to work instead of attend school, because the income they bring in helps the family. If social security payments for both students and parents (e.g. Newstart) were increased to (at least) poverty line rates, the pressure on many students to work long hours would be reduced.

For all these reasons above, imposing fines on families who face multiple social and economic barriers is grossly unfair. For families who face financial difficulties, fines will only further entrench these problems in their lives. Furthermore criminalising non-attendance at school can only serve to further erode any trust that families with disengaged children have in the education system.

Disproportionate Impact of Fines

Finally, the use of flat-rate fines to coerce school attendance is grossly unfair as the penalty effectively increases as income decreases. For instance the current fine for a first offence of non-attendance (\$375) represents 87% of a single parent's social security income for a fortnight². Under the proposals to increase the fines, a first offence fine would take 92% of a single parent's fortnightly income. For a parent earning \$100,000/year (after tax), the proposed first-offence fine would take only 24% of their fortnightly income, roughly four times less than the fine imposed on a single parent relying on social security. Besides the discriminatory nature of this situation, there is no doubt that taking 92% of a family's income over a fortnight is likely to cause significant financial hardship. For some families, the imposition of such high fines will certainly make it impossible for them to pay rent or force them to miss meals.

Processes for Responding to Truancy

The Bill specifies that fines may only be imposed on parents if “at least 1 meeting has been held with the parent *or* the parent has been given a warning notice” (emphasis added).

YANQ does not support this clause in the Bill but recommends that proceedings can only be taken with a parent after at least 1 meeting has been held with them. YANQ believes it is

2 See http://www.centrelink.gov.au/internet/internet.nsf/payments/pay_how_pp.htm.

important to first attempt to determine the reasons for the truancy before proceeding with punitive measures. A written notice of warning is not sufficient to determine the overall context of a family's life and the factors that may be leading to truancy. Therefore YANQ recommends altering section 181(1)(b)(ii) to read:

at least 1 meeting has been held with the parent *and* the parent has been given a warning notice under section 180(4).

Furthermore, where a notice is issued under section 180(2), it should be in a language/s that the parent/s can understand.

Impact of Possible Federal Penalties

At the time of writing, the Federal Government and Opposition are considering withdrawing some social security payments to parents whose children are truant from school. Should this occur, parents will be doubly penalised by being forced to pay fines under State legislation and having income withdrawn by Federal legislation.

Federal Anti-Terror legislation may also cause some young people to miss school but be unable to explain why. Under this legislation, young people who are detained under Anti-Terror laws are barred from disclosing the reasons for their detention. If the detention causes a young person to miss a significant amount of school and they are of compulsory schooling age, then they may face a jail term for explaining their absence to the school or if they refuse, their parents will be fined for allowing them to be absent.

While the State Government has no control over Federal legislation, YANQ suggests that State authorities need to take into account the potential impact of penalties being imposed from other jurisdictions. YANQ recommends that this situation can be accounted for in departmental policy.

Recommendations

With the points above in mind, YANQ makes the following recommendations:

- That EQ use fines as a last resort, and when they are used impose them proportionally in line with parent's income levels. The contemporary success of Cherbourg State School in drastically reducing truancy rates clearly shows how young people and their families can be engaged in education without resorting to punitive financial penalties.
- That exemptions for school attendance take into account cultural diversity and cultural obligations of young people.
- That the Queensland Government advocate to the Federal Government for changes to social security policy that will remove poverty traps for low-income families.
- That the Queensland Government increase their investment in early intervention and prevention services as a strategy to reduce social isolation of families and young people.
- That EQ encourage the development of alternative methods of schooling, both within and outside the state system as a strategy to increase the range of options available to students.

Fees for Overseas Students

Section 50 of the Bill requires that the State will defray costs of instruction, administration and facilities for the education of Australian Citizens and permanent residents. Section 424 of the Bill allows for fees to be waived in exceptional circumstances.

In our previous submission, YANQ argued that students holding humanitarian visas³ should have their fees for public education automatically waived, rather than requiring a special decision from the Minister for Education. The Bill does not address our concern, and means that holders of Temporary Protection visas may be charged for their education, depending on the views of the Minister of the day.

YANQ recommends amending Section 50(4) of the Bill to read as follows:

In this section -
permanent resident means the holder of a permanent visa as defined by the Migration Act 1958 (Cwlth), section 30(1) or section 36 or section 37A.

This would mean that people residing in Australia under protection visas are able to freely access State education services without having to rely on special decisions of the Minister of the day.

Guidelines for Voluntary Contributions

Section 53 of the Bill stipulates that principles may ask for voluntary contributions from parents (or the student where he/she is an adult) to cover the cost of specific educational services. It also requires that the educational services may not be withdrawn where the voluntary contribution is not made.

YANQ supports this section, but remains concerned that some students and families may be singled out in other ways for not making voluntary contributions. In our previous submission, we discussed a situation in which a student was not issued with a student card because the student's parents had not made a 'voluntary' contribution. This student was effectively denied access to library and computer resources. To avoid this situation, the section 53(2) of the Bill could be reworded to read:

The student must not be denied access to the school's educational resources or educational services even though the parents do not make the financial contribution.

Additionally, YANQ believes that schools must not directly or indirectly draw attention to students whose parents are unable or unwilling to make voluntary financial contributions. An additional clause should be added to the legislation, as follows, that makes this a requirement:

Schools must not draw attention directly, or indirectly (e.g. by refusing access to school activities) to students whose parents do not make voluntary financial contributions.

Including these guidelines as a minimum will help to ensure that students are not educationally disadvantaged, either directly or indirectly, when their families do not make voluntary contributions to schools.

³ Refugees for instance.

Charging for Distance Education and Flexible Learning

The explanatory document accompanying the Bill states that an amendment to the current Act has been passed that allows EQ to charge students enrolled in a school of distance education (SDE) at a state school. The amendment also allows for the fees to be waived in certain circumstances. It is disappointing that the Government saw fit to introduce this aspect of the legislation without consulting with the community.

Nevertheless, YANQ again urges EQ to carefully consider the impact of charging some students (who do not have a medical condition or are not living in remote areas) for accessing distance education. YANQ is concerned that charging fees to these students will significantly disadvantage those students that:

- have been excluded or refused enrolment in another school, and their only other educational options are private fee-charging schools;
- attend a flexible learning service (and through this are enrolled in an SDE) and find the support offered enables them to remain engaged in education.

In the former case YANQ argues that the full SDE service must be offered, without charge to students:

- whose only other option (that provides the full curriculum) is via a private school that charges fees; and
- whose family, or (in the case of independent students) the student, is unable or unwilling to pay the fees or the private school/s are unwilling to waive/reduce their fees.

The situation of students enrolled in flexible learning services (FLSs) is more complex. YANQ shares the Government's concerns that SDEs are being 'stretched' and providing services to a section of the community that SDEs were not originally designed for, and that SDEs are not the optimal solution for students that are not geographically isolated and who do not have a medical condition that prevents them from attending a mainstream school. A significant number of young people enrolled in SDEs and who are not geographically isolated or suffer from severe medical conditions are young people accessing FLSs.

The reasons that young people use the services of FLSs are complex and differ for each young person. In a recent survey of flexible learning services conducted by EQ, the issues faced by young in these services included:

- poor literacy and numeracy skills
- problems conforming with behaviour standards
- history of absences and exclusions from school
- generational history of early school leaving
- engaging in substance abuse
- family conflict / lack of family support
- generational history of unemployment
- disability
- pregnancy/parenting
- negative experiences at school
- homelessness / high mobility
- mental health issues
- contact with juvenile justice system
- difficulties with school expenses

YANQ shares the Government's hope that the suite of legislation, policy and programs that form the Education and Training Reforms for the Future will make it easier for young people facing issues such as those above to re-engage or maintain their connection with the mainstream education system. This *may* result, in time, in far fewer numbers of young people using SDEs (via FLSs) to maintain their involvement in education.

However, these 'hopes' are yet to be realised and it may take many years before the full impact of the reforms will be felt. Furthermore, it is unrealistic to expect that when the ETRF reforms are fully embedded within the system, that Queensland will no longer need alternatives such as flexible learning services. Indeed one of the clear messages from the survey of these services was that

“young people need a range of re-entry points into the education system if they are at risk or have disengaged. Those services need to be customised to local needs and circumstances, and need to have strong community support.” (p. 7)

It is important that flexible learning and other services for re-engaging, or maintaining an education connection for at risk young people are maintained during the ETRF implementation phase. If existing services and opportunities (such as full service from SDEs) are withdrawn or reduced before the impact of the ETRF can be fully measured, some young people that are at risk will drop out of the system, and young people that have already disengaged will find it more difficult to re-engage.

To avoid this, YANQ recommends that, for the short term at least, fees to students enrolled in SDEs via FLSs should be waived. Moreover, resources need to be provided to flexible learning services to allow them to develop programs that are better suited to their students, than is offered through SDEs. Finally, practical support needs to be provided to FLSs and mainstream schools and TAFE colleges to allow them to build closer relationships that will:

- make it easier for young people in FLSs to reconnect with mainstream schools
- provide opportunities for mainstream schools to utilise and learn from the staff of FLSs who have demonstrated success in encouraging at risk young people to rebuild and maintain commitments to education.

Research into partnerships conducted by the Queensland Council of Social Service (Powell, Brown, McCarthy, Barker, 2002) found that relationship building was a process that takes significant time and resources. Without practical and tangible support to build connections, flexible learning services and mainstream schools will struggle to create more accessible pathways into education for young people at risk.

Access to other Programs for Excluded Students.

Under the proposed changes to the Education Laws, EQ will, at most, be required to notify a student that is excluded from all schools of their alternative educational options. There will be no obligation for the Department to (for instance) support the student and their family to enrol in another school or in an alternative education or flexible learning facility.

YANQ is concerned that this proposal will allow EQ to effectively wipe its hands of some of the most disadvantaged and challenging young people. 'Notification' in this instance may be little more than a letter.

YANQ argues that the Government, must make every effort to ensure that all students excluded from schools are made aware of alternative options and provided with practical support to access these alternatives. The type and level of support offered will vary in each case and thus YANQ would urge schools to work closely with local community youth services, including, but not limited to Youth Support Coordinators, to support the re-engagement of excluded students.

Issues Specific to Diverse Students

Instruction in a religion or other belief

Instructions in religion or other beliefs need to reflect the diversity of religions and beliefs of the student population. Schools need to be sensitive in the way that religious instruction is provided, so that it prevents students being marginalised or discriminated by exposing their religion.

The organisation or individual providing religious instruction should be recognised as a respected member within their own religious community.

Barriers to Enrolment for Refugees

Under section 157(2) of the Bill, an application for enrolment is to be made by a parent if the prospective student is a child or by the prospective student if that student is an adult.

This process could cause problems for some refugee students, the majority of which are of an adult age when enrolling in schools. This means that they will need to apply for enrolment themselves. However, language barriers and their limited understanding of the social system may make it difficult for refugee youth to apply for enrolment.

Schools will be much better able to address issues such as these above, if staff are trained in cross-cultural training. Therefore YANQ recommends that EQ make cross-cultural training available to all school staff in Queensland.

Dress Codes

Under Section 351 of the Bill, the principal of a state school may develop a dress code including determining standards for acceptable clothing and presentation. Although Section 352 specifies that the principal must adhere to the guidelines prepared by the chief executive when developing a dress code, an inclusive consultation process should be in place for all students and parents to participate in setting the dress code for the school. This process will ensure that the dress code does not discriminate against certain cultures and/or beliefs. The dress code should also be translated into languages relevant to the cultural profile of the school.

Conclusion

The Youth Affairs Network of Queensland applauds EQ's decision to open the Bill upto public scrutiny. YANQ has raised a range of concerns regarding the Bill and looks forward to seeing these addressed. Specifically YANQ would like to see a number of changes to the Bill:

- ensuring the Bill is consistent with universal human rights standards;
- consideration for unfairness and ineffectiveness of harsh fines on parents;
- safeguarding the rights of students on humanitarian visas to free education
- ensuring students from all backgrounds are able to access the full gamut of educational opportunities, regardless of their parents willingness or ability to make voluntary contributions;
- safeguarding access to schools of distance education or other alternative programs for marginally engaged students in the interim period until the full impact of the ETRF agenda are realised;
- recognising and supporting independent students;
- allowing fair timeframes for decisions;
- providing clarity around the representation of young people in disciplinary processes;
- making available the documentation on which decisions about students are made;
- providing real access to external review of decisions;
- and the need to give special consideration for marginalised groups.

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