



Queensland
Government

**Non-State Schools
Accreditation Board**

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Dear Chairperson

The Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020

I am writing to inform you about some changes that have been made to the Queensland Criminal Code to provide greater protection of children from sexual abuse.

You may be aware that, as part of implementing recommendations of the Criminal Justice Report of the Royal Commission into Institutional Responses to Child Sexual Abuse ('Royal Commission'), the Queensland Parliament passed amendments to the Criminal Code to:

- create a new offence of failure to report belief of child sexual offence that requires all adults to report child sexual abuse to police;
- create a new offence of failure to protect a child from child sexual offence that applies in an institutional context;
- ensure that the new failure to report and protect offences apply to information or knowledge gained during, or in connection with, a religious confession.

New failure to report and failure to protect offences

As a result of the amendments, section 229BC of the Criminal Code will create a new offence of failure to report belief of child sexual offence committed in relation to a child mandating that all adults (18 years and over), unless they have a reasonable excuse, report to police child sex abuse of children under 16 or a child (under 18 years) with an impairment of the mind. The information gained by the adult must cause the adult to believe on reasonable grounds, or ought reasonably to cause the adult to believe, that a child sexual offence is being, or has been, committed against the child.

Liability under the offence is subject to the absence of a reasonable excuse. Without limiting the scope of what constitutes a reasonable excuse, a number of specific reasonable excuses are set out in s 229BC. Consistent with recommendation 34 of the Royal Commission, this includes where a person has already reported the information, or reasonably believes that another person will report the information under existing reporting requirements of the *Child Protection Act 1999*, the *Education (General Provisions) Act 2006* or the *Youth Justice Act 1992*.

A 'child sexual offence' is defined as an offence of a sexual nature which is committed in relation to a child, including offences under Chapter 22 (Offences against morality) of the

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Criminal Code, such as offences relating to the making, distribution and possession of child exploitation material, and Chapter 32 (Rape and sexual assaults) of the Criminal Code.

The new reporting offence will apply to information received on or after commencement, even if that information relates to abuse that occurred before commencement.

It is a reasonable excuse not to report if the adult reporter:

- believes on reasonable grounds that the information has already been disclosed to a police officer; or
- has already reported (or believes it will be reported) under the **Child Protection Act**, the **Education (General Provisions) Act 2006**, or the **Youth Justice Act 1992**; or
- gains the information after the child becomes an adult (the alleged victim), and the adult reasonably believes the alleged victim does not want the information to be disclosed to a police officer; or
- both of the following apply— (i) the adult reasonably believes disclosing the information to a police officer would endanger the safety of the adult or another person, other than the alleged offender, regardless of whether the belief arises because of the fact of the disclosure or the information disclosed; and (ii) failure to disclose the information to a police officer is a reasonable response in the circumstances.

The reporting offence provision also makes it clear that a person who in good faith discloses information in accordance with the provision, is protected from liability of a civil or criminal nature or pursuant to an administrative procedure for the making of that disclosure.

A maximum penalty of three years imprisonment will apply to the new failure to report offence.

New failure to protect offences

In addition, s 229BB of The Criminal Code will provide for a new offence of failure to protect child from child sexual offence. The failure to protect offence will apply to an 'accountable person' (i.e. an adult 18 years or over who is associated with an institution, other than a regulated volunteer).

Under the failure to protect offence, an accountable person will be liable where the person:

- knows there is a significant risk that another adult (who is associated with an institution or is a regulated volunteer) will commit a child sex offence; and
- has the power or responsibility to reduce or remove the risk; and
- wilfully or negligently fails to reduce or remove the risk.

The failure to protect offence will apply to a child that is under the care, supervision or control of an institution and the child is either:

- under 16 years, or
- 16 or 17 years of age with an impairment of the mind.

A maximum penalty of five years imprisonment will apply to the new failure to protect offence.

Section 229B expressly clarifies the new offences apply to any information or knowledge gained during, or in connection with, a religious confession. The offences do not override any other privilege, including the privilege against self-incrimination or legal professional privilege.

Application to non-State schools

For the purposes of the new offences, an 'institution' means an entity, other than an individual, that:

- provides services to children; or
- operates a facility for, or engages in activities with, children under the entity's care, supervision or control.

An institution may include government and non-government entities, including a government department.

A non-State school will clearly be an institution for the purposes of the new offences.

An adult is 'associated' with an institution if the adult:

- owns, or is involved in the management or control of, the institution; or
- is employed or engaged by the institution; or
- works as a volunteer for the institution; or
- engages in an activity in relation to the institution for which a working with children authority under the *Working with Children (Risk Management and Screening) Act 2000* is required; or
- engages in the delivery of a service to a child who is under care, supervision or control of the institution.

(Note: this letter contains general information about the new offences. It is not legal advice and does not relate to your particular circumstances. You should seek your own legal advice about compliance with the new requirements).

Compliance

Compliance with the law is one of the factors to which the Board can have regard in assessing the suitability of a governing body to be the governing body of a non-State school.

Given the importance of these new measures to the protection of children, the Board encourages the governing body to establish procedures to ensure compliance with them.

The Board acknowledges that in many cases reporting under the new Criminal Code provisions would already occur at the school level because of the mandatory requirements of existing reporting frameworks (such as the EGPA or CPA). In those cases additional reporting to police is not required.

Nevertheless, and although a school's written procedures about harm are not required to specifically address the new failure to report offence, you should make staff aware that those procedures are not the only reporting requirements in relation to information about harm to children.

The new offences will commence on proclamation, and are not in force as yet. I will provide you with more information about that when it is available.

Yours sincerely



Lynne Foley OAM
Chairperson