

# REVIEW OF THE QLD EDUCATION ACT 1989



This is our opportunity to have a say about the laws on education. We NEED to have a voice.

WILL NEW LAWS ALLOW REAL CHOICE?

HOW DO THE PROPOSALS PROTECT STUDENTS WITH  
DISABILITIES AND THEIR PARENTS?

WHAT DOES “PARTNERSHIP” LOOK LIKE FOR PARENTS,  
STUDENTS WITH DISABILITIES AND TEACHERS?

# Background

The Government has committed itself to a review of the Act under which it provides education services. The proposed changes to the Act give parents a unique opportunity to address some long-standing concerns in this area. Students with disabilities have been disadvantaged by policies that have permitted and even encouraged the growth of practices which QPPD has found through research to be harmful. Legislation provides the framework under which policy is developed and without the appropriate changes to the Act the development of new policy will lack the direction it desperately needs.

It has to be noted that the proposed changes hold much more promise than detail. The proposed objects and principles espouse lofty ideals but the proposals quickly revert to threats of heavier penalties, enrolment conditions and suspensions. There appears to be real reluctance to spell out the difficulties that are causing so much discontent with the current system. At the head of the list is the failure to acknowledge the complete lack of trust in the department's complaint process. A culture of denial appears to exist within Education Queensland that acts to resist change and inhibit the formation of the much-proclaimed partnership with parents. Also missing is due consideration to other commitments made by the current Government, namely the recommendations of the Government Response to the Ministerial Taskforce on Inclusive Education Final Report and the implementation of the Queensland Government Strategic Framework for Disability 2002-2005. The upcoming Disability Discrimination Act Standards for Education will also have an impact.

Some of the issues raised in the consultation paper lie outside the legitimate jurisdiction of disability advocacy or support groups. QPPD does not comment on proposals related to Parents and Citizens bodies (P&C), religious education, or schools as community assets. This does not preclude those writing their own response from expressing their own opinion on those or any other topic.

Regrettably, many of the hopes and wishes of parents fall outside the scope of this process. The quality and quantity of support our children receive, the values and attitudes of those that teach our children and the level of acceptance by their peers are all beyond the capacity of legislation review. Reform of the law is merely the first step in a long process.

## **For more information**

You can obtain copies of the EDUCATION REVIEW DISCUSSION PAPER by contacting Education Queensland:

Phone: (07) 3237 1700

Email: [StrategicPolicy@qed.qld.gov.au](mailto:StrategicPolicy@qed.qld.gov.au)

[www.education.qld.gov.au/review/](http://www.education.qld.gov.au/review/)

# Writing a Response

QPPD advises parents that if they are concerned about confidentiality to request that any personal information within your response remain confidential.

**There are no restrictions on how you write your response.**

The response questions provided ask Yes or No questions and are therefore not particularly useful for in depth and thoughtful responses. We recommend that the response questions do not guide your submission. Remember this is a review of the entire act and it is all open for comment.

You may choose to answer the questions outlined in the discussion paper  
AND/OR

You may choose to write your own response.

Responses can be as simple as a one page letter stating whether or not you agree with the proposals or as detailed as a full analysis of every section of the discussion paper.

If possible, use your own experiences to illustrate your point of view.

## Example

*Dear Legislation Review Team,*

*I am concerned about what might be kept on student records. My son was only 6 years old when a teacher wrote that he had an "eating disorder" because he stuffed chocolate cake in his mouth. Over the years I have been unable to persuade the school to remove it from the record. In the meantime every new teacher or aide puts in behaviour management plans for his "eating disorder" (which he never had). I think that parents need to be able to look at their child's record and to remove statements which are untrue and /or harmful.*

Every response is important and particularly so for students with disabilities and their parents, which has traditionally been the least powerful voice. The more voices heard the more attention will be given.

Send your response by **31 March 2005** to:

Legislation Review Team  
Strategic Policy and Education Futures Division  
Department of Education and the Arts  
PO Box 33  
Albert Street BC Q 4002  
Fax: 07 3237 1175  
Email: StrategicPolicy@qed.qld.gov.au

# Key Issues

## Objects and Principles

The current education law does not include guiding principles for how the Act is to be administered and how decisions are made. Guidelines assist the interpretation of an Act. Policies written under an Act with guiding principles must follow the spirit of those principles.

The consultation paper proposes principles which include parents' right to choose, promoting inclusive practices, encouraging innovation, diversity and opportunity and ensuring ALL children have access to high quality education. QPPD believes the proposed objects and principles sound good however we remain concerned how they will be interpreted.

*How will the EQ monitor the adherence to the objects and principles in individual schools?*

## Attending School – Parent responsibilities

The consultation paper proposes increasing the fines for parents whose children truant. QPPD has concerns about the impact of this proposal on students with disabilities who are only attending school part time. In most instances this is not parent choice or truancy. Instead typically the school has been unable to support the

student and the responsibility has been passed on to the parents. QPPD suggests that schools who fail to provide education to students also need to face consequences.

*How does putting greater financial pressure on families already under stress help?*

*What consequences will there be for EQ if they fail to provide an education for a student?*

QPPD suspects that the people who will be most affected by this proposal will be those least likely to afford the consequences.

## Home Schooling

Tighter controls on home schooling parents are proposed including reporting on educational outcomes as a condition for registration. QPPD is aware of parents who have been told their only option is to home school as the school cannot educate their child. This is not parent or student choice as espoused in the proposed principles for the Act. ie. *encouraging parents to take part in the education of their children, and recognising their right to choose a suitable educational environment.* Additionally many parents in this situation may not be able to do this.

*Why should a parent be expected to educate their child when the school is unable to?*  
*What are the impacts for families who have been told their only option is to home school?*

## Student Records

It is proposed that a standard record be kept on each student. This student record would be transferred between schools. The consultation paper also proposes new confidentiality provisions including enabling a student 16 years and over to consent to sharing their confidential information with others.

A major concern expressed to QPPD is the right for parents to remove incorrect information from student records. Currently the proposal is that parents are allowed to view the record and insert comments, however no provision exists to remove items that may be harmful or misleading. This is particularly serious for students who have been falsely labelled in order to receive resources. Disability labels not only stick, they change the way in which community (including teachers and students) relate and respond to the individual. The long term consequences of a wrong diagnosis within a student record are enormous.

QPPD is also concerned about teacher and school bias in the records which could potentially travel with the students and influence future educational opportunities. This is more likely to impact on students with disabilities than other students.

QPPD believes informed consent for students with decision making disabilities is absolutely necessary if students aged 16 years and over are allowed to sign consent forms.

*What process is available if parents wish to have incorrect information removed?*

*What is role of guardians for 16 year old students who do not have capacity for certain decisions?*

## Enrolment Procedures (State schools only)

The Act currently does not include the power to refuse enrolment. It is proposed to introduce a formal enrolment process that would take the form of a partnership agreement between parents, students and schools. The proposals also include **increased powers to refuse enrolment**.

In law Principals may not have had the power to *refuse* enrolment, however we know in practice there are many ways in which Principals can actively *discourage* enrolment.

*What is the connection between the work currently being undertaken by EQ (to revoke the "placement policy" and write a common enrolment policy) and these proposals?*

*Will the increased powers to refuse enrolment provide a loophole for Principals?*

*How does the Disability Discrimination Act link with this proposal?*

Also the current placement policy and procedures ensure a systemic way to exclude students without the need for a Principal to refuse enrolment.

The proposed contract between the school, student and parent appears to be onerous on the student/parent. QPPD would like to see more responsibility placed on **teachers and schools**, particularly in the area of respectful relationships with parents.

QPPD has also been informed of contracts already in existence between parents and schools. These have been onerous on students/families and include part time placements, families required to provide own teacher aide, parents being on-call to provide personal care to their son/daughter at school.

## Creating safe and supportive schools

The paper discusses some minor changes to the current sanctions of suspensions, exclusions and cancellation such as the process a principal must follow before cancelling enrolment of a student over 15. An external appeal process through the Magistrates Court for parents of students who have been excluded from all schools is proposed. Education Queensland appears to be fine tuning processes already in place.

QPPD believes the consultation paper is very limited in thinking about how they might create safe and supportive schools. QPPD does not see how the proposals will lead to any culture change. Research, nationally and internationally, has found that suspension and exclusion doesn't work. Yet it appears to be the only option proposed. In addition, QPPD has concerns about how expectations around behaviour will impact on students with disabilities. No consideration has been given to the impact of poor and/or inappropriate teaching strategies on behaviour. It appears this section of the act will support the practice of teachers merely excluding students as a strategy of dealing with behaviour as opposed to looking at their own practice.

*Where is the research leading to these limited proposals?*

*Will there be consideration of the contribution that the system itself makes to a student's behaviour as opposed to laying the responsibility solely with the student?*

*Who are proposals benefiting?*

*What really keeps students safe?*

The Act uses terms such as "unreasonable risk". QPPD is concerned that there are no exemplars for what is considered a 'threat' or 'unsafe'. In our experience schools judge this very differently.

The proposed appeal to the Magistrates Court could be seen to be a barrier for families to pursue justice. The financial and emotional cost of going to Court would be a deterrent. QPPD will be insisting that an independent appeals mechanism be established as the alternative to the complaints process and Magistrates Court.

## Homework

Education Queensland proposes guidelines for homework be included in the future Act. Many students with disabilities require homework to be modified for their individual needs and as a result have not been given homework at all. QPPD believes that homework needs to be individualised.

## Education Costs

The proposed changes will allow schools to charge for "specialised" programs and services such as the Dance Program at Kelvin Grove High School and international students. EQ does not include "special education" in this category.

*What are the impacts for parents of students with disabilities?*

*Have you been asked to pay for a disability support within the school?*

QPPD believes that costs for disability supports should not fall to parents. QPPD is aware that some schools ask parents to pay an additional levy for equipment, aide time or supports for students with disabilities. This is not fair. Parents have sometimes described their experiences as being “blackmailed” into paying additional fees. Usually the demands are more subtle. By constantly talking about what a burden the child imposes, schools force parents to become unpaid full-time aides.

## **What isn't included in the Discussion Paper?**

Education Queensland is proposing changes to sections of the Education Act. There is much of the Act that is not discussed in the consultation paper. Yet all of the Act is under review and it is a good time to examine it in its entirety. QPPD has noted the following sections:

### **Ministerial Accountability**

The Act says that the Minister is ultimately accountable for approving any "program of instruction". QPPD questions how the Minister makes these approving decisions. All Special Education is required to meet the criteria set out in the Act for Minister's approval. Special Education Units appear to be EQ's most recommended "program" for students with disabilities yet the lack of consistency in unit practice would suggest that the Minister does not know what she is approving.

### **School Responsibilities**

School responsibilities are set out in the Act and in the regulations which guide the Act. Some of the responsibilities covered in the Act but not mentioned in the review are:

- Supervision of students
- Teacher Training and professional development
- School records
- School inspections

### **Complaints**

According to the Act, the CEO (Director-General of EQ) is responsible for complaints. QPPD questions how effective the complaints process has been in general. In our experience complaints which have been unresolved at a local level usually bypass the Director-General and go straight to the Minister. QPPD believes the complaints system should be independent and provide protection for the complainant.

### **Definition**

The Act provides explanations for words used in the act. They call this section "interpretations". QPPD would like to see 'inclusive education' covered in the interpretations given that it is part of the proposed objects and principles for the Act.

# Research says....

Traditional methods of problem behaviour reduction (eg. Time-out, suspension) have predominantly proven ineffective. These procedures are generally time consuming, often reinforce the inappropriate behaviour and focus on short-term rather than long-term solutions. Research shows that schools using these traditional forms of discipline continue to experience significant increases in violence and destructive behaviour as well as increases in the number of students excluded from instruction due to suspension or expulsion.

Hudson, Phillippa (2003) Behavioural intervention plan: reducing challenging behaviour through academic skills instruction. *Special Education Perspectives*, 12(2), 35-64

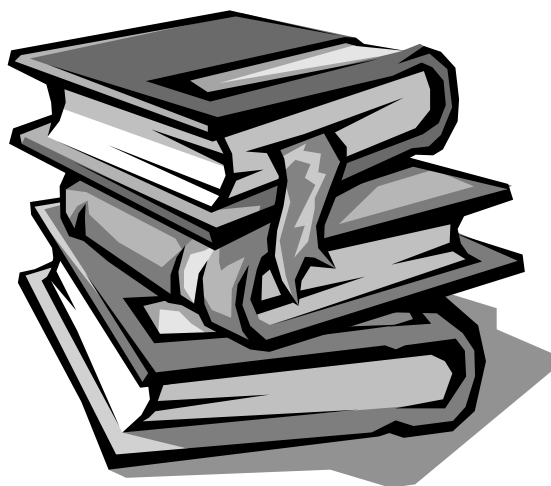
It is not uncommon for students with disabilities to experience very high levels of frustration at times and to exhibit this through their behaviour. As children first, they experience the same need to belong, to be understood and to be loved as any other child. Similarly, the child with the disability also has to learn how to manage the negative feelings of anger, jealousy and frustration. Many circumstances increase frustration for students with disabilities. Some of these may include a reduced ability to communicate needs or to understand new or unfamiliar situations, increased pain, mobility difficulties, social and peer interactions and dependency issues. Teachers may not be able to manage behaviours such as kicking, hitting, swearing or punching effectively if they do not have any understanding of the motivations for these behaviours. The interpretation of difficult behaviours is often complex and many require unique strategies for management.

Keeffe-Martin, (2000) Students with Disabilities and Challenging Behaviours: implications for educators from *Hoggan v The State of New South Wales* (Department of Education). *Australia & New Zealand Journal of Law & Education*, 5(2), 74-86

The prevailing policies in operation in many schools tend to ignore the influence of external factors and focus only on the behaviour at issue, attempting to deal with that in isolation from influences on it. Students' lives, however, are influenced by their environments, and external influences create tensions and stresses which can lead to disruption in class and in the playground. Teachers are similarly influenced by factors other than the immediate situation before them (Partington, Waugh, & Forrest, 1995) and escalation can occur so that a simple act of misbehaviour becomes a serious offence.

Girous (1992) observed the significance of context in the lives of students, and argued that it is not possible to compartmentalise either their lives or the lives of teachers. Current behaviour management policies endeavour to do this, however, and the increasing rate of suspensions, dropping out of school by the students most influenced by their negative contexts, and greater anger and anxiety among students and stress among teachers are likely consequences.

Partington, G. (2001) Student suspensions: the influence on students and their parents. *Australian Journal of Education*, 45(3), 323-340



"I table for the interest of honourable members a paper by Dr Catherine Skellern that was delivered to the Royal Australasian College of Physicians in May this year. The essence of it is that the number of children being diagnosed with Autistic Spectrum Disorder has increased dramatically in the last few years. Part of that increase could be explained by the results of a survey published in that paper. Fifty-eight per cent of paediatricians, child psychologists and clinicians admitted to having at some time deliberately exaggerated a child's symptoms to facilitate ascertainment for the purposes of triggering additional resources for the child in the context of the education system. In other words, children are being given an autistic label that does not belong to them. The numbers are frightening. In Queensland a child is five times more likely to be diagnosed as autistic than a child elsewhere in Australia.

I invite honourable members to consider the consequences of this phenomenon. Large numbers of children are going to grow up with an autistic label when they are in fact not autistic. But throughout their lives they will be treated as if they were. Some of them will be put into special schools. Those who do not, but get additional support in the mainstream classes, will still get the label. If the other kids in the class come to hear of their autistic label they will be teased for it. They will have to grapple with self esteem issues in relation to the label for the rest of their lives. Imagine what it will be like for an eight year old who is deliberately misdiagnosed today as autistic, but in fact is merely shy and underconfident. That child will perhaps come to relate to other people as normally as we do, but will grow up thinking there is something wrong with himself or herself. Think of the numerous forms we have to fill in for commercial, life, or health insurance or other purposes. In the column 'Any other diagnosed illnesses', they will have to write 'autistic'. Consider what it means when they go for a job and the employer wishes to know every detail of their health and medical record. "

Speech by The Hon Dean Wells in Parliament on 17 June 2004  
<http://www.parliament.qld.gov.au/Hansard/>

This research exposes the non-sense of the notion of choice for parents of students with disability. This current study confirms that students with disability and their families are actually given little choice and that what is on offer fails to provide students with disabilities opportunities to develop, learn and grow and that choice can be seen to be imposing additional restrictions, reducing, sometimes removing options and resulting in fewer opportunities for personal growth and development.

QPPD (2003) There's small choice in rotten apples: an exploration of the process of parental decision-making around educational choice for parents of children with disabilities.

## **United Nations Conventions say...**

States Parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

(Convention on the Rights of the child article 23.1)

States should recognise the principle of equal primary, secondary and tertiary educational opportunities for children, youth and adults with disabilities in integrated settings. They should ensure that the education of persons with disabilities is an integral part of the educational system.

(United Nations Standard Rules on the Equalisation of Opportunities for Persons with Disabilities, 1993, Rule 6)

# QUALITY EDUCATION

## What does it mean?

Having Peer Support

Having support to be  
Involved

Forgetting labels

Having adapted Curriculum

Using Different Learning Models

Welcoming All Students

Being Valued for Who You Are

Making Friends

Having School Based  
Support Services

Learning environments  
that reflect community  
life

Going to regular Neighbourhood Schools

Using Co-operative  
Learning Strategies

Participating in Class,  
Playground and in extra-  
curricular activities

Growing Up with Mates  
of the same age

Having  
Human  
Rights

Being in Age  
Appropriate Classes

Celebrating Differences  
and commonalities

Developing Socially Just  
Communities

Enrolling with sisters, brothers and neighbours

Reducing Ignorance  
and Fear

Having Ordinary Lives

Achieving Social Justice

*The day will come when the progress of nations will be judged not by their economic or military strength but by the social well-being of their peoples; by their levels of health, nutrition and education; by their respect for civil and political liberties; by the provision that is made for those who are vulnerable and disadvantaged; by the protection that is afforded to the growing bodies and minds of their children.*

*(Walter Eigner, 1998)*