Dear [Name],

By letter dated 18 June 2012, the Non-State Schools Accreditation Board wrote (at the request of the Honourable John-Paul Langbroek MP, Minister for Education, Training and Employment) to [Redacted] to advise that the commencement of section 366A (Obligation to report likely sexual abuse of person under 18 years at non-State school) of the Education (General Provisions) Act 2006 had been deferred pending further amendments.

The Board is now in a position to advise that:

(a) section 366A has been amended as foreshadowed by the Minister; and

(b) the date is set at 29 January 2013 for the commencement of section 366A and other legislative provisions related to that section.

In short, section 366A applies to certain categories of students, and requires:

(a) if a non-State school staff member reasonably suspects, in the course of the staff member’s employment at the school, that a student is likely to be sexually abused by another person — the staff member must give a written report of the suspicions to the school’s principal or a director of the school’s governing body; and

(b) the principal or director must immediately give a copy of any written report received to a police officer.

Governing bodies will need to ensure that on and from 29 January 2013, school staff and governing body directors will be in a position to fulfil the requirements for reporting of a suspicion of likely sexual abuse in compliance with section 366A.

To assist [Redacted] with implementing these new responsibilities on and from 29 January 2013, the Board encloses a ‘working version’ of the most directly relevant sections as they will be on that date, viz.:  

(a) section 366A (Obligation to report likely sexual abuse of person under 18 years at non-State school) of the Education (General Provisions) Act 2006 (section commences 29 January 2013)

(b) section 68A (Report about likely sexual abuse—Act, ss 365A(4) and 366A(5)) of the Education (General Provisions) Regulation 2006 (section commences 29 January 2013)

(c) section 10 (Health, safety and conduct of staff and students) of the Education (Accreditation of Non-State Schools) Regulation 2001 (section already operational, except for subparagraph (5)(a)(ii) which commences 29 January 2013)
(d) section 366B (Delegation of director’s reporting function under ss 366 or 366A) of the Education (General Provisions) Act 2006

(section already operational, except to the extent it relates to section 366A which commences 29 January 2013).

Governing bodies need to be mindful that any cyclical review report, submitted to the Board on or after 29 January 2013 to demonstrate a school’s compliance with the relevant requirements of the Education (Accreditation of Non-State Schools) Act 2001, is to include reporting of likely sexual abuse.

Importantly, the material in this letter is provided as an overview, and is not intended to cover all particulars of the legislative changes.

All legislation referred to in this letter (including consolidated reprints, when available) may be downloaded electronically at <www.legislation.qld.gov.au>.

The Board has been advised by the Executive Directors of the Association of Independent Schools of Queensland and the Queensland Catholic Education Commission that they will on request provide advice and assistance to governing bodies and senior school staff on these matters.

Members of the Board trust that the above information is of assistance to in ensuring that, as a governing body, it continues to meet all statutory obligations.

Yours sincerely

Emeritus Professor S Vianne (Vi) McLean AM
Chairperson

Encs
Chapter 12  Good order and management of State educational institutions and non-State schools

Part 10  Reporting of sexual abuse

Section 366A  Obligation to report likely sexual abuse of person under 18 years at non-State school

(1) Subsection (2) applies if a staff member of a non-State school (the first person) reasonably suspects, in the course of the staff member’s employment at the school, that any of the following is likely to be sexually abused by another person—
   (a) a student under 18 years attending the school;
   (b) a pre-preparatory age child registered in a pre-preparatory learning program at the school;
   (c) a person with a disability who—
       (i) under section 420(2), is being provided with special education at the school; and
       (ii) is not enrolled in the preparatory year at the school.

(2) The first person must give a written report about the first person’s suspicion to the school’s principal or a director of the school’s governing body—
   (a) immediately; and
   (b) if a regulation is in force under subsection (5), as provided under the regulation.

(3) However, if the first person is the school’s principal, the principal must give a written report about the suspicion to a police officer—
   (a) immediately; and
   (b) if a regulation is in force under subsection (5), as provided under the regulation.

(4) If subsection (3) applies, the principal must also immediately give a copy of the report to a director of the school’s governing body.

(5) A regulation may prescribe the particulars the report must include.

(6) A non-State school’s principal or a director of a non-State school’s governing body must immediately give a copy of a report given to the principal or director under subsection (2) to a police officer.

(7) A person who makes a report under subsection (2) or (3), or gives a copy of a report under subsection (4) or (6), is not liable, civilly, criminally or under an administrative process, for giving the information contained in the report to someone else.

(8) Without limiting subsection (7)—
   (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and
   (b) if the person would otherwise be required to maintain confidentiality about the given information under an Act, oath, rule of law or practice—the person does not contravene the requirement by giving the information.

(9) To remove any doubt, it is declared that a person does not commit an offence against this or another Act only because the person omits to do an act required under this section.
Part 9  Miscellaneous

Section 68A  Report about likely sexual abuse—Act, ss 365A(4) and 366A(5)

A report under section 365A(4) or 366A(5) of the Act must include the following particulars—

(a) the name of the person giving the report (the first person);
(b) the student’s name and sex;
(c) details of the basis for the first person reasonably suspecting that the student is likely to be sexually abused by another person;
(d) any of the following information of which the first person is aware—
   (i) the student’s age;
   (ii) the identity of the person who is suspected to be likely to abuse the student;
   (iii) the identity of anyone else who may have information about the suspected likelihood of abuse.
Part 2  Accreditation criteria

Division 3  Educational program, and student welfare processes, criteria

Section 10  Health, safety and conduct of staff and students

(1) A school must have written processes about the health and safety of its staff and students, that accord with relevant workplace health and safety legislation.

(2) Also, the school must have written processes about the appropriate conduct of its staff and students, that accord with legislation applying in the State about the care or protection of children.

(3) Without limiting subsection (2), the processes must include—

(a) a process for the reporting by a student to a stated staff member of behaviour of another staff member that the student considers is inappropriate; and

(b) a process for how the information reported to the stated staff member must be dealt with by the stated staff member.

(4) For the process mentioned in subsection (3)(a), there must be stated at least 2 staff members to whom a student may report the behaviour.

(5) Also, without limiting subsection (2), the processes must include the following—

(a) a process for reporting—

(i) sexual abuse or suspected sexual abuse in compliance with the Education (General Provisions) Act 2006, section 366; and

(ii) a suspicion of likely sexual abuse in compliance with the Education (General Provisions) Act 2006, section 366A;

(b) a process for—

(i) the reporting by a staff member, to the school’s principal or another person nominated in the process, of harm that—

(A) the staff member is aware or reasonably suspects has been caused to a student who, when the harm was caused or is suspected to have been caused, was under 18 years; and

(B) is not harm to which the process mentioned in paragraph (a) applies; and

(ii) the reporting by the principal or other person, to a relevant State authority, of the harm or suspected harm if the principal or other person also is aware or reasonably suspects the harm has been caused.

(6) The processes must—

(a) be readily accessible by the staff and students; and

(b) provide for how the staff and students are to be made aware of the processes.

(7) The school’s governing body must be able to demonstrate how the school is implementing the processes.

(8) In this section—

*relevant State authority* means—

(a) the chief executive, or another officer, of the department in which the Child Protection Act 1999 is administered; or

(b) an authorised officer under the Child Protection Act 1999; or

(c) a police officer.
Chapter 12 Good order and management of State educational institutions and non-State schools

Part 10 Reporting of sexual abuse

Section 366B Delegation of director’s reporting function under s 366 or 366A

(1) Subsection (2) applies if a non-State school’s governing body has only one director.

(2) The director may delegate, to an appropriately qualified individual, the director’s function.

(3) Subsection (4) applies if a non-State school’s governing body has more than one director.

(4) All of the directors may, by unanimous resolution, delegate the directors’ function to an appropriately qualified individual.

(4A) However, the director or directors must not delegate the function to the principal or any other staff member of the non-State school.

(5) If a delegate commits an offence against section 366(4), the delegator also commits the offence.

(6) However, it is a defence for the delegator to prove the delegator took all reasonable steps to ensure the delegate complied with the section.

(7) In this section—

appropriately qualified, to perform a director’s function, means having the qualifications, experience or standing appropriate to perform the function.

function, of a director of a non-State school’s governing body, means the director’s function of receiving a report and giving a copy of the report to a police officer under section 366 or 366A.