

Your Ref:
Our Ref: 865

23 August 2021

Tim Bullard
Secretary
Department of Education
4 Salamanca Place
HOBART TAS 7000

By email: officeofthesecretary@education.tas.gov.au and legislation@education.tas.gov.au

Dear Tim

Re: Consultation on the Education Legislation Amendments (Education Regulation) Bill

Thank you for the opportunity to comment on the Education Legislation Amendments (Education Regulation) Bill (the draft Bill). I understand that the purpose of the Bill is to amend several pieces of legislation to give effect to 14 of the 24 Steering Committee recommendations outlined in the January 2021 *Review of Education Regulation Steering Committee Report* (Steering Committee Report). As noted in the Steering Committee Report, ensuring there is a modern regulatory framework for education in Tasmania is a critical enabler for improving the quality of education outcomes for students.

As you are aware, I provided a submission on the *Review of Education Regulation Discussion Paper* on 1 October 2020; my comments below build upon and are limited to the importance of recognising student voice and agency as key contributors to a modern regulatory framework for education in Tasmania.

The role of the Commissioner for Children and Young People (Tas)

The office of Commissioner for Children and Young People is established under the *Commissioner for Children and Young People Act 2016* (CCYP Act). The Commissioner's functions include:

- (a) advocating for all children and young people in the State generally;
- (c) researching, investigating and influencing policy development into matters relating to children and young people generally;



- (d) promoting, monitoring and reviewing the wellbeing of children and young people generally;
- (e) promoting and empowering the participation of children and young people in the making of decisions, or the expressing of opinions on matters, that may affect their lives;
- (f) assisting in ensuring the State satisfies its national and international obligations in respect of children and young people generally; and
- (g) encouraging and promoting the establishment by organisations of appropriate and accessible mechanisms for the participation of children and young people in matters that may affect them.

In performing these and other functions under the CCYP Act, I am required to:

- do so according to the principle that the wellbeing and best interests of children and young people are paramount; and
- observe any relevant provisions of the United Nations *Convention on the Rights of the Child* (UNCRC).¹

Two of the four general principles of the UNCRC that guide my work inform my comment on the draft Bill:

- The child's **right to have their best interests taken into account** as a primary consideration in all actions and decisions that affect them (Article 3 UNCRC).
- The child's **right to have a say** in all matters affecting them and for their views to be taken into account (Article 12 UNCRC).

In its *General Comment No. 12 (2009): The right of the child to be heard*, the Committee on the Rights of the Child interprets this participatory right broadly to relate not only to individual children but also groups of children.²

Comment

As I said in my submission³ to the Review:

Respect for the right of the child to be heard in the context of education is fundamental to their right to education. This means that children and young people must be provided meaningful opportunities to influence their education including, in my view, by having a voice in the system which regulates it. As the Discussion Paper acknowledges, education regulators need to be accountable and transparent to those they regulate - including learners.

In my opinion, an education regulatory framework capable of delivering positive outcomes for children and young people must include processes through which their voices are heard and they are able to influence continuous improvement of the system.

¹ CCYP Act, s3(1); UN *Convention on the Rights of the Child* (CRC) 1989, (resolution 44/25), opened for signature 20 November 1989, entered into force 2 September 1990, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

² UN Committee on the Rights of the Child (CRC), *General comment No. 12 (2009): The right of the child to be heard*, 20 July 2009, CRC/C/GC/12, available at: <https://www.refworld.org/docid/4ae562c52.html>

³ <https://www.childcomm.tas.gov.au/wp-content/uploads/2020-10-01-Submission-Review-of-Education-Regulation.pdf>



It is therefore important that any modern governance model and performance framework for the regulation of education in Tasmania includes mechanisms which enable children and young people to have a say and influence outcomes. I strongly recommend the establishment of mechanisms (perhaps by way of an advisory or reference group) through which children and young people can express their views and ideas and reflect on their experiences as learners and on the quality of their education. This would, in my view, include also providing opportunities for children and young people to comment on their experiences of how things are done in the regulation of their education (for example, whether child-friendly processes for making a complaint or raising concerns exist). Membership of such a group should include children and young people from across the three education sectors.

As should be apparent from my comments below, it is my strong view that the regulatory framework proposed in the draft Bill should more clearly acknowledge the importance of student voice as critical to the implementation of an education regulatory framework capable of delivering positive outcomes for children and young people.

Recommendation 1 of the Review is as follows:

- Update the section 4(1)(g) of the *Education Act 2016* to include education regulators
- Require a more explicit focus on learner outcomes by the TRB [Teachers Registration Board] and TASC [Tasmanian Assessment and Standards and Certification] through the application of the *Education Act 2016* principles
- Develop regulator and function-specific principles to guide the administration of the respective Acts by all the regulators.

Principles upon which the *Education Act 2016* (Tas) is based include Principle (f) of subsection 4(1):

the importance of a child having the opportunity, and being encouraged, to be actively involved in decisions affecting the child's participation in education, having regard to the age and understanding of the child

It is proposed to amend section 4 of the Education Act to provide that:

A person performing a function, action or duty, or exercising a power under this Act is to ensure that:

- (a) the performance of the function, action or duty, or exercise of the power, is likely to further the principles referred to in subsections (1) and (1A);

Amendments proposed by the draft Bill also include amendment of both the *Office of Tasmanian Assessment Standards and Certification Act 2003* (TASC Act) and the *Teachers Registration Act 2000* to apply the Education Act Principles (section 4(1) of the Education Act as amended by the draft Bill) to each of these Acts.

As decisions made by each of the regulatory bodies have the potential to affect a child's participation in education, the establishment of mechanisms for children to have a say in their decision making processes would represent one way of practical implementation of the above participatory principle.



Consistent with recommendation 13 of the Review, the regulatory framework proposed by the draft Bill provides that each regulator may form committees to provide policy and operational advice on an “as needs” basis. Membership of committees is left to the discretion of each regulator.

Committees provide an opportunity for children to have a say on matters relevant to their education, and in my opinion, the desirability of incorporating children’s voices in these processes should be explicitly acknowledged in each Act. This could be done by including in the draft Bill a requirement that, in considering the composition of committees, regulators are to consider the incorporation of student voice; this could also be through the establishment of committees comprised entirely of children.

Alternatively, if it is intended that these committees operate in a formal manner, provision could be made in each Act for the establishment of student advisory groups to inform and assist each of the regulators as appropriate. By way of example, the Education Registrar has functions in relation to student absenteeism and compulsory conciliation. The inclusion of a mechanism enabling student voice to inform the carrying out of this function from the perspective of student experience and opinions would represent a concrete way in which the participatory principle contained in paragraph 4(1)(f) of the Education Act could be implemented.

More explicitly incorporating student voice into the regulatory framework also represents a clear acknowledgment of the intrinsic link between “having a say” and promoting wellbeing and best interests. I note that it is also proposed to amend the Education Act to insert a new subsection 4(1A) which relevantly provides:

In addition to the principles set out in subsection (1), the following principles are to be taken into consideration by the Registrar and Registration Board:

(a) in performing their functions and powers, the Registrar and Registration Board must consider the welfare and best interests of students to be of paramount importance;

Amendments to the TASC Act and Teachers Registration Act would also incorporate this guiding principle. I make 2 comments in relation to this additional principle:

- a) I welcome the explicit requirement for regulators to consider the best interests of students to be of paramount importance in the performance of their functions and powers. In this regard I note that there can be no real appreciation of what is in the best interests of students without according them the right to have a say on matters that affect them. ⁴
- b) I recommend that the word “welfare” be replaced by “wellbeing” as this would align with the terminology used in the Department of Education Child and Student Wellbeing Strategy, the Tasmanian Child and Youth Wellbeing Framework and the Tasmanian Government’s Child and Youth Wellbeing Strategy.

⁴ UN Committee on the Rights of the Child (CRC), General comment No. 12 (2009): The right of the child to be heard, 20 July 2009, CRC/C/GC/12, available at: <https://www.refworld.org/docid/4ae562c52.html> [accessed 23 August 2021]



Conclusion

Thank you for the opportunity to comment on the draft Bill. I would welcome the opportunity to discuss my comments in more detail.

Yours sincerely

Leanne McLean
Commissioner for Children and Young People

cc The Hon. Sarah Courtney MP, Minister for Children and Youth, Minister for Education