

Ms Lizzie Blandthorn MLA

Chairperson
Regulation Review Subcommittee
Scrutiny of Acts and Regulations Committee
Parliament House, Spring Street
East Melbourne VIC 3002

By email: sarc@parliament.vic.gov.au

Dear Ms Blandthorn MLA

Submission to the Education and Training Reform Regulations Review

The Law Institute of Victoria (**LIV**) welcomes the opportunity to provide a submission towards the consultation draft of the *Education and Training Reforms Regulations 2017* (Vic) (**'the Draft Regulations'**) and in particular, Regulation 25, which provides that:

A member of staff of a Government school may take any reasonable action that is immediately required to restrain a student of the school from acts or behaviour that is dangerous to the member of staff, the student or any other person.

Although the LIV appreciates the need for safety in schools, it is the LIV's view that Regulation 25 is incompatible with international human rights documents and human rights set out in the *Charter of Human Rights and Responsibilities 2006* (Vic) (**'the Charter'**). The LIV is also concerned that this regulation addresses issues which should be properly dealt with by an Act rather than subordinate legislation. This is because Regulation 25 deals with the fundamental rights and liberties of children.

Incompatibility with human rights

Regulation 25 proscribes staff members of Government schools with a power to take reasonable action to restrain a student from acts or behaviours that are dangerous to others. The authorising of physical restraint on a student and child engages a number of rights under the Charter including: the right to equality before the law (section 8); protection from cruel, inhuman or degrading treatment (section 10(b)); liberty and security of person (section 21(a)); and freedom of movement (section 12). Regulation 25 also interferes with the right to protection of families and children (section 17) and section 17(2) which states every child has the right, without discrimination, to such protection as in his or her best interests and is needed by him or her by reason of being a child.

The LIV has identified that Regulation 25 is also incompatible with numerous provisions within international human rights documents. For example: the International Covenant on Civil and Political Rights which governs excessive restraint in schools through its prohibition on the use of cruel, inhuman or degrading treatment or punishment under Article 7; The United Nations Convention on the Rights of the Child which states under Article 28 that 'States Parties' shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's

human dignity; and in circumstances where a student is or may be disabled there is an obligation under Article 14 of the Convention on the Rights of Persons with Disabilities which provides that States Parties have an obligation to ensure that persons with disabilities enjoy the right to liberty and are not deprived of their liberty unlawfully or arbitrarily.

The LIV is concerned that the physical restraint of children in Government schools, authorised by Regulation 25, is not appropriately limited or safeguarded as the provision is ambiguous in scope and operation. This view is consistent with that of the Victorian Equal Opportunity & Human Rights Commission in its submission to Department of Education and Training.

Scope and ambiguity of Regulation 25

The LIV finds there are several terms within Regulation 25 that need further clarification to properly identify the scope and operation of that provision. These terms include, 'reasonable action', 'restraint', and 'behaviours dangers to the member of staff'. The Regulatory Impact Statement (**RIS**) of (former Regulation 25 in 2007 (formerly Regulation 15) and the RIS 2017 published by the Department of Education and Training do not offer sufficient clarity on the scope and operation of Regulation 25. Whilst the RIS 2017 identifies some examples of 'dangerous behaviours', this term as well as the others identified do not explain the nature and the extent of the regulation.

The LIV submits that further clarification of the scope and operation of Regulation 25 should be incorporated into any Act or subordinate legislation which allows a staff member to physically restrain a child in a Government school.

The LIV thanks the Scrutiny of Acts and Regulations Committee for the opportunity to provide a submission on the Draft Regulations. Should you have any questions about this submission, please contact the Administrative Law and Human Rights Section Lawyer, Clara Bradley on (03 9607 9384) or CBradley@liv.asn.au.

Yours sincerely



Nerida Wallace

**CEO
Law Institute of Victoria**