

**Subordinate legislation tabled
between 27 August and
14 October 2014**

**Report No. 1, 55th Parliament
Education, Tourism and Small Business
Committee**

May 2015

Education, Tourism and Small Business Committee

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1 Introduction

Role of the Committee

The Education, Tourism and Small Business Committee (the committee) is a portfolio committee established by the Legislative Assembly on 27 March 2015.¹ It consists of government and non-government members. The committee's primary areas of responsibility are education, tourism, major events, small business and the Commonwealth Games.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each Bill and item of subordinate legislation in its portfolio area to consider:

- a) the policy to be given effect by the legislation
- b) the application of fundamental legislative principles to the legislation
- c) for subordinate legislation – its lawfulness.

The committee's responsibilities also include monitoring the operation of the *Statutory Instruments Act 1992* as it relates to subordinate legislation. The committee reports to the Legislative Assembly on all subordinate legislation it has considered.

Aim of this report

This report summarises the committee's examination of the *Education Legislation (Fees) Amendment Regulation (No. 1) 2014*, tabled on 14 October 2014.

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
228	<i>Education Legislation (Fees) Amendment Regulation (No. 1) 2014</i>	4 October 2014	7 May 2015

The Explanatory Notes state that the objective of the *Education Legislation (Fees) Amendment Regulation (No. 1) 2014* (the Amendment Regulation) is to increase the prescribed fees and charges contained in the following regulations by 3.5%. The increase is in accordance with the Queensland Government's policy on annual indexation of fees and charges.

- *Education (General Provisions) Regulation 2006*, which prescribes student fees for the provision of distance education and specialised educational programs, provision of a report about a state school student and an application for a mature age student notice
- *Education (Overseas Students) Regulation 2014*, which prescribes fees for registration (or renewal of registration) of providers and courses for overseas students, and changes to the registration of a registered provider or a registered course
- *Education (Queensland College of Teachers) Regulation 2005*, which prescribes fees for the registration of teachers, such as initial registration or permission to teach, renewal or restoration of registration or permission to teach, annual registration and criminal history check
- *Education (Queensland Curriculum and Assessment Authority) Regulation 2014*, which prescribes fees for taking external examinations, reassessing and reviewing examination results, applications for decisions on equivalence of education and qualifications obtained

¹ *Parliament of Queensland Act 2001*, s88 and Standing Order 194

interstate and overseas, and accreditation or renewal of accreditation of a syllabus, preparatory guideline or kindergarten guideline

- *Further Education and Training Regulation 2014*, which prescribes fees to obtain an extract from the register of training contracts and certified copies of documents.²

The Explanatory Notes also state that an objective of the regulation is to increase prescribed fees and charges, except for the annual fee, in the *Education and Care Services Regulation 2013* (ECS Regulation) at a rate of 2.6%. The ECS Regulation prescribes fees under the *Education and Care Services Act 2013* (ECS Act) for Queensland education and care providers not covered by the Education and Care Services National Law (National Law).

According to the Explanatory Notes, the fees in the ECS Regulation are to be indexed at the same rate as that prescribed under the National Law (2.6% for the 2014-2015 financial year) to ensure consistency of indexation rates across the early childhood sector.³ The fees prescribed by the ECS Regulation include fees for applications for provider and service approvals, applications for amendment of service approval, application for transfer of service approval, applications for service waivers and transfer waivers, and fees for inspection of, and obtaining copies of, registers.⁴

The Explanatory Notes state that the annual fee under section 54 of the ECS Act and as prescribed by the ECS Regulation has been waived by the department as a result of transitional arrangements on commencement of the ECS Act until 1 July 2015. As a result, the annual fee in the ECS Regulation has been exempted from indexation for 2014-2015 by the Queensland Government. Hence, the regulation does not change the annual fee for providers of Queensland education and care services.⁵

The committee notes that it is not clear in the Explanatory Notes whether the statement that “...the Amendment Regulation does not change the annual fee for providers of Queensland education and care services”⁶ applies to all Queensland education and care services or only those covered by the ECS Act. While it may be assumed that it applies only to providers covered by the ECS Act, the Explanatory Notes are ambiguous.

The fee increases took effect from 1 January 2015.

Explanatory Notes

The Explanatory Notes tabled with the subordinate legislation outlined above fall short of strict compliance with section 24 of the *Legislative Standards Act 1992*.

The committee considers the Explanatory Notes could be improved in the clarity and precision of the language used, explanation of the policy objectives, the information provided on the way the policy objectives will be achieved and the information included about consultation for the regulation.

The Explanatory Notes would benefit from providing greater clarity about the policy objectives. It appears that it is the objective of the amendment is to ensure greater consistency between the Education and Care Services (National Law) and the ECS Act as a whole (not just the indexation of fees), however this policy objective is not made explicit in the Explanatory Notes.

As mentioned above, it is also unclear whether the waiving of the annual fee is only for providers of Queensland education and care services covered by the ECS Act, or all providers in that sector in Queensland.

The Explanatory Notes are also silent on what happens after 1 July 2015 to the annual fee prescribed in the ECS Regulation, particularly in relation to how indexation will apply from that date.

² Explanatory Notes, Education Legislation (Fees) Amendment Regulation (No. 1) 2014, p2-3

³ Explanatory Notes, Education Legislation (Fees) Amendment Regulation (No. 1) 2014, p2

⁴ Explanatory Notes, Education Legislation (Fees) Amendment Regulation (No. 1) 2014, p3

⁵ Explanatory Notes, Education Legislation (Fees) Amendment Regulation (No. 1) 2014, p2

⁶ Explanatory Notes, Education Legislation (Fees) Amendment Regulation (No. 1) 2014, p2

Under section 24 of the *Legislative Standards Act 1992* the Explanatory Notes are required to include information on consultation undertaken on the subordinate legislation if it occurred. A brief statement is required on the way consultation was carried out, the results of the consultation, and any changes made to the legislation as a result of consultation. If no consultation is undertaken, a statement of the reason for no consultation being undertaken is required. The Explanatory Notes state that consultation was undertaken with two statutory bodies, however it does not outline the way consultation was undertaken or the results of the consultation.

Fundamental legislative principles

The committee did not identify any issues regarding consistency with fundamental legislative principles or the lawfulness of the Regulation.

3 Recommendation

The committee has examined the policy to be given effect by the subordinate legislation and the application of fundamental legislative principles and lawfulness, and no issues regarding consistency with fundamental legislative principles or the lawfulness of the Regulation were identified.

Recommendation 1

The committee recommends that the Legislative Assembly note the contents of this report.



Scott Stewart MP

Chair