

**Subordinate legislation tabled
between 15 October 2014 and
26 March 2015**

Report No. 2, 55th Parliament
Education, Tourism and Small Business
Committee
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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 subordinate legislation tabled between 15 October 2014 and 26 March 2015. It reports on fundamental legislative principle issues identified by the committee.

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
276	Education Legislation Amendment Regulation (No. 1) 2014	26 March 2015	17 July 2015
299	Proclamation made under the Education and Other Legislation Amendment Act 2014	26 March 2015	17 July 2015
300	Education Legislation Amendment Regulation (No. 2) 2014	26 March 2015	17 July 2015
343	Major Events (AFC Asian Cup) Regulation 2014	26 March 2015	17 July 2015

Education Legislation Amendment Regulation (No. 1) 2014

The Education Legislation Amendment Regulation (No. 1) 2014 (Amendment Regulation No. 1) amended the:

- Education (Accreditation of Non-State Schools) Regulation 2001 to reflect the recommendations of the Queensland Child Protection Commission of Inquiry
- Education (General Provisions) Regulation 2006 to revise the age requirements for early entry into the preparatory year and enhance local decision-making.

Amendments to the Education (Accreditation of Non-State Schools) Regulation 2001

As a result of the Queensland Child Protection Commission of Inquiry (COI), the *Child Protection Act 1999* (CPA) was amended to consolidate statutory obligations for mandatory reporting to Child Safety be consolidated into the CPA. Section 13E of the CPA requires state and non-state school

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

teachers to report to the chief executive of the department responsible for Child Safety if, during the course of their professional duties, they form a reasonable suspicion that a child has suffered or is at unacceptable risk of suffering, significant harm caused by physical or sexual abuse and may not have a parent able and willing to protect the child from harm. Section 10 of the Education (Accreditation of Non-State Schools) Regulation 2001 (Accreditation Regulation), previously had mandatory reporting requirements for non-state schools that were broader than those in the CPA.

To implement the COI recommendation, Amendment Regulation No. 1 replaced reporting requirements in the Accreditation Regulation with requirements that a non-state school have a written process for reporting:

- to comply with the existing requirements of the EGPA, such as reporting sexual abuse to police (which have been retained in the Accreditation Regulation)
- a suspicion of significant harm caused by physical or sexual abuse, in circumstances where the child may not have a parent willing and able to protect them from harm, as required by section 13E of the CPA.

The Explanatory Notes state that existing provisions in the EGPA, which require staff to give a written report about sexual abuse, or suspected abuse, to the school's principal or a director of the school's governing body, who is then required to pass it on to police, have been retained. The EGPA reporting requirements are about suspected criminal offences to police. The Explanatory Notes state that the intent of these reporting requirements is to prevent systemic and school cover-ups of inappropriate behaviour of school staff towards students. The Explanatory Notes also state that it was not considered appropriate to consolidate these provisions into the CPA.²

The amendments also require the school's governing body to ensure that staff, students and parents are informed about the reporting processes, and that staff are trained in implementing them.

The amendments also require schools to have a complaints procedure to address allegations of non-compliance with the reporting processes. The regulation provides that this procedure can be combined with a school's general complaints management procedure.

Amendments to the Education (General Provisions) Regulation 2006

Prior to the Amendment Regulation No. 1, section 15 of the *Education (General Provisions) Regulation 2006* (EGPR) enabled a principal to enrol a child in the preparatory year if the child would be at least five years and six months on 31 December of the preparatory year. A child was not eligible to enrol if they had not turned five by 30 June of that year. The only way a child could gain early entry into the preparatory year was if the principal's supervisor (for a state school) or the principal (for a non-state school) was satisfied the child had started their education in another state or country that was equivalent to the Queensland preparatory year, taking into consideration the child's attributes.³

However, under section 16 of the EGPR, an exemption can be made to the age requirement (of being at least six years and six months on 31 December) for children in years one to six if the principal's supervisor (for a state school) or the principal (for a non-state school) was satisfied that the child was ready to be enrolled in the year of schooling having regard to the child's attributes. Therefore, children living in Queensland were not eligible under section 15 for consideration for early enrolment into the preparatory year based on their attributes and readiness for education. However, they could be considered under section 16 for early enrolment into years one to seven, based on those criteria. The Explanatory Notes state that the inability of Queensland children to access early entry into the preparatory year placed those children at a disadvantage.

Two provisions of the amended EGPR allow principals to enrol a child in the preparatory year despite the child not being 5 years and 6 months on 31 December. First, amended section 15(2) enables a

² Explanatory Notes, Education Legislation Amendment Regulation (No. 1) 2014, p3

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

principal to allow early entry into the preparatory year for a child who turns 5 in July of the year of attendance if the principal is satisfied the child is ready for education having considered the child's attributes.⁴ The amended EGPR also still provides (section 15(3)) that a principal may enrol a child in the preparatory year, regardless of the child's age, if the principal is satisfied that the child has started their education in another state or country that is equivalent to the Queensland preparatory year, and is ready for education in the preparatory year, having considered the child's attributes. Amendments to sections 15 and 16 specify that the principal of a state school, rather than the principal's supervisor, may determine whether a child below the age requirement may be enrolled.

Section 9 of Amendment Regulation No. 1 inserts a definition of the attributes that may be considered when determining early enrolment for the preparatory year. The attributes are consistent with the child's attributes taken into account when considering enrolment in a year of schooling from years 1 to 7. The attributes are:

- aptitude and ability
- social and emotional competence
- physical development
- level of knowledge and understanding.⁵

Explanatory Notes

The *Legislative Standards Act 1992* requires that Explanatory Notes for subordinate legislation include, in clear and precise language, a brief statement of the policy objectives, the reasons for them and the way the policy objectives will be achieved.

The committee considers that the explanation of the policy about entry age into the preparatory year would have benefited from a brief summary of the attributes that may be considered when determining early enrolment.

The Explanatory Notes lack all of the required information about the consultation undertaken. While the Explanatory Notes outline who was consulted and the results of the consultation, they do not describe the way the consultation was carried out. In addition, the description of the consultation on the amendments to the Accreditation Regulation states that the Amendment Regulation No. 1 was refined in response to stakeholder feedback, but does not include a brief explanation of the changes made as a result of the consultation.

Fundamental legislative principles

The committee did not identify any issues regarding consistency with fundamental legislative principles or the lawfulness of the Amendment Regulation No. 1.

Proclamation: Education and Other Legislation Amendment Act 2014

The Explanatory Notes state that the policy objective of the Proclamation: Education and Other Legislation Amendment Act 2014 (the Proclamation) was to commence: part 2, division 3; part 4; and part 5, division 3 of the *Education and Other Legislation Amendment Act 2014* (the EOLA Act).⁶ The proclamation set 1 January 2015 for most provisions of the Act, and 27 January 2015 for provisions relating to mature age student enrolment and distance education.

The parts of the EOLA Act which commenced on 1 January 2015 included:

- amendments to the *Education (Accreditation of Non-State Schools) Act 2001* about special assistance schools, which cater specifically for children and young people who have

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

⁵ *Education Legislation Amendment Regulation 2014* No. 276, p5-6

⁶ Explanatory Notes, Education and Other Legislation Amendment Act 2014, p1

disengaged from mainstream education and are not participating in vocational education and training or employment.

- amendments to capital assistance under the State Capital Assistance Scheme (SCAS) in the *Education (Capital Assistance) Act 1993*. The SCAS provides state funds to assist eligible non-state schools with capital projects.
- amendments to the *Education (General Provisions) Act 2006* (EGPA) to enable principals of non-state schools to grant an exemption from attendance of up to 110 school days and strengthened powers for schools to deal with 'hostile persons' on 1 January 2015.

Explanatory Notes

The Explanatory Notes provided a detailed summary of the - provisions commenced by the Proclamation. As noted above, some provisions commenced on 1 January and others on 27 January 2015. The Explanatory Notes gave no information about the reason for different commencement dates. . While information about the Act can be of assistance in understanding the effect of a Proclamation, the committee notes that the *Legislative Standards Act 1992* requires Explanatory Notes to include information about the subordinate legislation, rather than information about the Act under which the subordinate legislation is made.

Fundamental legislative principles

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

Education Legislation Amendment Regulation (No. 2) 2014

The Explanatory Notes state that the policy objectives of the *Education Legislation Amendment Regulation (No. 2) 2014* (Amendment Regulation No. 2) were to make:

- consequential amendments to the *Education (Accreditation of Non-State Schools) Regulation 2001* (the Accreditation Regulation) and the *Education (General Provisions) Regulation 2006* (the EGPR) following amendments in the *Education and Other Legislation Amendment Act 2014* (the EOLA Act) regarding special assistance schools and mature aged student enrolments
- a minor amendment to the EGPR to remove duplication with civil liability indemnity arrangements under the *Public Service Act 2008* (the PS Act)
- a technical amendment to replace a reference to the repealed *Financial Administration and Audit Regulation 1995* with a reference to the *Auditor-General Regulation 2009*.

Amendments to the Education (Accreditation of Non-State Schools) Regulation 2001

The *Education (Accreditation of Non-State Schools) Act 2001* (the Accreditation Act) provides for non-state schools to be established and operated. The criteria for accreditation or as a non-state school are prescribed in the Accreditation Regulation. The 2014 amendments to the Accreditation Act provide for the accreditation of special assistance schools, and therefore amendments were required to the Accreditation Regulation. The amendments prescribed accreditation criteria for special assistance schools, temporary site criteria and minimum enrolment numbers.

Educational program criteria

Amendment Regulation No. 2 inserted additional educational program accreditation criteria for a special assistance school's written educational program. The amendments provide that:

- the educational program must promote enrolled students' continuous engagement in primary or secondary education

- the school must have a written standard of service about learning standards to be achieved by students. The standard must deal with, for example, tracking and assessment of student work submitted, monitoring attendance, achievement, and participation and strategies for keeping students engaged in education.

Temporary site criteria

A special assistance school may provide special assistance at a temporary site for a limited period if it complies with criteria prescribed in a regulation for a temporary site. Previously, the operation of non-state schools was restricted to sites approved by the Non-State School Accreditation Board (the Accreditation Board) as attributes of the school's accreditation.

The temporary site criteria prescribed in the Amendment Regulation No. 2 included the following:

- a special assistance school's written standard of service must deal with the regular monitoring of attendance by relevant students at a temporary site
- school resources criterion (staffing, land and buildings, and educational facilities and materials) apply to temporary sites

a "special assistance period" during which special assistance may be provided at a temporary site. A "special assistance period" expires after 140 consecutive school days from the commencement of special assistance at the site. *Minimum enrolment*

The Amendment Regulation No. 2 amended section 16 of the Accreditation Regulation to prescribe minimum enrolment requirements which differ depending on whether or not it is a special assistance site. The minimum enrolment numbers are further demarcated depending on whether primary or secondary education is offered (or proposed to be offered), and which years of secondary education it offers (or proposes to offer), other than special assistance sites.

Amendments to the *Education (General Provisions) Regulation 2006*

Mature age students

The Amendment Regulation No. 2 amended the EGPR to prescribe the mature age state schools to which mature age student enrolments are restricted as a result of changes to the *Education (General Provisions) Act 2006*. The aim of the change is to "improve educational outcomes of children and mature age students and create safe environments in state schools."⁷

In addition to prescribing particular schools, amendments to the EGPR removed the fee for a mature age student notice (which was needed to enrol at a state high school) and instead prescribed the application fee for enrolment as a mature age student.

Civil liability indemnity

Since March 2014 amendments to the PS Act has provided protection from civil liability to 'State employees' (which includes public service employees when they act in an official capacity. As principals and staff of state schools are 'State employees' within the meaning in the PS Act, they are protected from civil liability. Amendment Regulation No. 2 omitted a provision in the EGPR which also provided indemnity for a principal or staff member of a state school.

Amendment to correct a cross reference

In 2009, the *Financial Administration and Audit Regulation 1995* (the repealed regulation) was repealed. The repealed regulation exempted a parents and citizens association from audit by the Auditor-General and provided for the appointment of an auditor. Since 2011 these matters have been prescribed in section 4 of the Auditor-General Regulation 2009. The Amendment Regulation replaced the reference to the repealed regulation with section 4 of the Auditor-General Regulation 2009.

⁷ Explanatory Notes, Education Legislation Amendment Regulation (No. 2) 2014, p2.

Explanatory Notes

The Explanatory Notes tabled with the Education Legislation Amendment Regulation (No. 2) 2014 do not fully comply with the consultation requirements in section 24 of the *Legislative Standards Act 1992*.

The Explanatory Notes list the stakeholders consulted on the amendments relating to special assistance schools, but there is no statement of the way the consultation was carried out, nor an outline of the results of the consultation as required by section 24 of the Legislative Standards Act.

There is no mention of whether consultation was undertaken on other parts of Amendment Regulation No 2, and there is no explanation as to why consultation was not undertaken. The committee notes that a description of consultation about the authorising Act is not relevant to the requirements for Explanatory Notes for the subordinate legislation.

Fundamental legislative principles

No issues regarding consistency with fundamental legislative principles or the lawfulness of the Regulation were identified.

Major Events (AFC Asian Cup) Regulation 2014

The purpose of the *Major Events (AFC Asian Cup) Regulation 2014* (the Asian Cup Regulation), as stated in the Explanatory Notes, was to facilitate the 2015 AFC Asian Cup matches in Brisbane. This was achieved by prescribing the event as a major event under the *Major Events Act 2014*. The Asian Cup Regulation also prescribed the major event organiser, major event area, controlled area, major event periods and control periods, and invoked certain provisions of the Act for the event.

The Asian Cup Regulation also amended the *Police Powers and Responsibilities Regulation 2012* to declare authorised persons as public officials, enabling the Police Commissioner to approve police officers exercising the powers of an authorised person under the *Major Events Act 2014*. The Asian Cup Regulation provided for the appointment of authorised persons. For those authorised persons who were not police officers, the regulation imposed limits on powers so that they could not seize items, enter property to enforce advertising protections or require a persons' name or address. In addition, only police officers had powers to inspect a person and their belongings prior to entering a major event area or inspect bags within the major event area. These powers were only in force from 2.00 pm to 11.00 pm on each match day and from 3.00 pm to midnight for the quarter final.

Explanatory Notes

The Explanatory Notes tabled with the Asian Cup Regulation do not fully comply with section 24 of the *Legislative Standards Act 1992* in relation to consultation.

While the Explanatory Notes include a list of stakeholders they do not include a brief statement of the way the consultation was carried out or an outline of the results of the consultation as required by section 24 of the *Legislative Standards Act 1992*.

Fundamental legislative principles

When deciding the powers that should be conferred on authorities to investigate or inquire into a matter, consideration must be given to the extent to which the power is capable of abuse or may otherwise be insufficiently sensitive to the rights and liberties of individuals.⁸

Section 4 of the Asian Cup Regulation declared the AFC Asian Cup as a major event. This had the effect that the remaining provisions of the Regulation allowed for the Brisbane Stadium to be a 'controlled area' for a certain period of time. The provisions also allowed the event organiser to

⁸ Office of Queensland Parliamentary Counsel Notebook, p132.

appoint authorised persons (those persons had to be licenced crowd controllers under the *Security Providers Act 1993*).

There was the potential for breaches of the rights and liberties of individuals as a result of actions by authorised persons, such as requests for names and addresses, bag searches and property seizure.

However, limits were placed on authorised persons who were not police officers, and the powers provided to police in relation to the controlled area were for certain restricted time periods, for a specific purpose, and to enhance community safety.

Therefore, the committee considers that there were sufficient limitations on the powers provided under the Asian Cup Regulation, and the Asian Cup Regulation was consistent with fundamental legislative principles.

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. No significant issues regarding consistency with fundamental legislative principles or the lawfulness of the subordinate legislation were identified.

The committee has noted that the Explanatory Notes tabled with the subordinate legislation did not fully comply with the requirements of the *Legislative Standards Act 1992*. The committee expects departments to comply with the requirements for the content of Explanatory Notes.

Recommendation 1

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