

Education Legislation Amendment Regulation (No. 1) 2014

Explanatory notes for SL 2014 No. 276

made under the

Education (Accreditation of Non-State Schools) Act 2001
Education (General Provisions) Act 2006

General Outline

Short title

Education Legislation Amendment Regulation (No.1) 2014

Authorising law

Sections 9(c) and 177(1) of the *Education (Accreditation of Non-State Schools) Act 2001*
Section 434(2)(e) of the *Education (General Provisions) Act 2006*

Policy objectives and the reasons for them

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

- *Education (Accreditation of Non-State Schools) Regulation 2001* to reflect the recommendations of the Queensland Child Protection Commission of Inquiry; and
- *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*

On 1 July 2013, the Queensland Child Protection Commission of Inquiry (COI) released its final report, *Taking Responsibility – A Roadmap for Queensland Child Protection*. Recommendation 4.2 of the COI report recommends that existing statutory obligations for reporting to Child Safety contained across Queensland legislation be reviewed and consolidated into the *Child Protection Act 1999* (CPA). The *Child Protection Reform Amendment Act 2014* (CPRA Act), which was assented to on 28 May 2014, implements this recommendation by amending the CPA to include a new mandatory reporting requirement for approved teachers.

The new section 13E of the CPA requires teachers to report to Child Safety if, during the course of their professional duties, they form a reasonable suspicion that a child has suffered, is suffering, 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 (i.e. a protective parent). This will apply to state and non-state school teachers.

The current requirements on non-state schools for reporting to Child Safety, prescribed under section 10 of the *Education (Accreditation of Non-State Schools) Regulation 2001* (Accreditation Regulation), are inconsistent with the tenets of the COI recommendations that all mandatory reporting requirements sit within the CPA.

Section 10 of the Accreditation Regulation requires non-state schools to have written processes about the appropriate conduct of its staff and students that accord with the legislation applying in the state about the care and protection of children. The Accreditation Regulation specifically requires non-state schools to have processes for reporting concerns of sexual abuse to the police under the *Education (General Provisions) Act 2006* (EGPA). It also includes a requirement to report other forms of student harm to principals and relevant authorities, including Child Safety and the police. The broadness of this requirement imposes mandatory reporting requirements on non-state schools in addition to the CPA. For example, where a student is self-harming and there is a protective parent.

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

Section 15 of the *Education (General Provisions) Regulation 2006* (EGPR) provides that a principal may only enrol a child in the preparatory year at the school if the child will be at least 5 years and 6 months on 31 December in the proposed year of attendance. In effect, this means that children who do not turn 5 by 30 June during their preparatory year are not eligible to enrol.

Subsections 15(2) and (3) of the EGPR allow for the early enrolment of a child in the preparatory year in a state school or non-state school respectively in limited circumstances. These sections provide that a principal may enrol a child in the preparatory year at school if the principal's supervisor (for a state school) or the principal (for a non-state school) is satisfied that the child has started education in another state or country that is equivalent to the preparatory year and is ready for education in the preparatory year, having regard to the child's attributes.

Section 16 of the EGPR provides that a school principal may only enrol a child in a year of schooling from years 1 to 7 at the school if the child will be at least 6 years and 6 months on 31 December. Section 16 provides an exemption to the age requirement if the principal's supervisor (for a state school) or the principal (for a non-state school) is satisfied that the child is ready to be enrolled in the year of schooling having regard to the child's attributes.

Under the current provisions, early entry into the preparatory year for a child who is ready for education is only available to a child who has started education in another State or country that is equivalent to the Queensland preparatory year. This means that a child who ordinarily resides in Queensland and who is ready for education is not eligible for consideration for early enrolment into the preparatory year. The inability for Queensland children to access early entry into the preparatory year places those children at a disadvantage.

The Amendment Regulation will:

- allow early entry into the preparatory year for a child who turns 5 in July of the year of attendance if the child is ready for education considering the child's attributes; and
- support the government's agenda to enhance local decision making by providing state school principals with the power to make the enrolment decisions relating to early entry into the preparatory year or a year of schooling rather than the principal's supervisor.

Achievement of policy objectives

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

The Amendment Regulation amends the Accreditation Regulation requiring the written processes under section 10 to include:

- reporting processes that comply with the existing requirements under the EGPA - retained from the current section 10 of the Accreditation Regulation; and
- processes for reporting 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 the harm, under the new section 13E of the CPA - this is a new requirement.

The above requirements reflect statutory obligations expressed under other Queensland legislation, and ensure that practices for implementation of those requirements are contained in a non-state school's written processes for addressing issues of student harm. State school staff are subject to the same statutory obligations.

To implement the COI recommendations, the Amendment Regulation omits the current requirement in section 10 that schools have a written process to provide for reporting of harm to authorities other than the mandatory processes under the EGPA and the CPA.

Existing provisions in the EGPA relating to reporting concerns of sexual abuse to the police have been retained. It is not appropriate to consolidate these provisions into the CPA as they relate to a different threshold of harm (the existence of a protective parent is irrelevant) and involve reporting a suspected criminal offence to a different reporting authority (i.e. police). Retaining these provisions aims to continue their original intent, that is, the prevention of systemic and school cover-ups of inappropriate behaviour of school staff towards students.

The revised section 10 also provides that the governing body must ensure that: parents, students and staff are informed about the processes; the processes are readily accessible to staff, students and parents; staff are trained in implementing the processes; and that the school is implementing the processes. This is generally consistent with existing requirements under section 10. However, the requirements that the school's governing body must ensure that parents are informed about processes, and that staff are trained in implementing the processes, are new requirements.

The Amendment Regulation also includes a new requirement that schools must have a complaints procedure to address allegations of non-compliance with the processes. A complaints procedure is considered good practice and provides an avenue for parents and students to seek a resolution for non-compliance with the processes. The Amendment Regulation makes it clear the complaints procedure can be combined with a school's general complaints management procedure.

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

The Amendment Regulation amends section 15 of the EGPR to insert a new sub-section that provides that a principal may enrol a child in the preparatory year at the school if the child will be at least 5 years and 5 months on 31 December in the proposed year of attendance and the principal is satisfied the child is ready for education considering the child's attributes.

The amendments also make the relevant attributes that are taken into consideration when determining early enrolment for the preparatory year consistent with the child's attributes that are taken into account when considering enrolment in a year of schooling from years 1 to 7.

Consistent with the government's agenda to enhance local decision making and reduce red tape the Amendment Regulation amends sections 15 and 16 of the EGPR to provide that it is the principal of the state school, rather than the principal's supervisor, who will determine whether a child below the age requirement should be enrolled in either the preparatory year or years 1- 7.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the main objectives of the:

- *Education (Accreditation of Non-State Schools) Act 2001* that provides for the prescription of accreditation criteria in the Accreditation Regulation about student welfare processes; and
- *Education (General Provisions) Act 2006* that allows for the prescription of requirements about the age and other attributes of a child for early entry enrolment at a state school or non-state school.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

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

The costs of the changes to the processes under section 10 of the Accreditation Regulation will be met from existing resources of non-state schools and the Non-State Schools Accreditation Board.

Costs of implementing the new requirement for non-state schools to have a complaints procedure regarding non-compliance with the processes within section 10 should be minimised as the Amendment Regulation makes it clear the complaints procedure can be incorporated in the school's broader complaints management procedure.

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

Creating a flexible one month period for early entry into the preparatory year for those children who are assessed by the principal of the school as being ready for education based on consideration of the child's attributes could potentially impact on Queensland's

kindergarten participation rates. Future funding arrangements for kindergarten beyond 2015 will need to consider this changed policy context.

It should be noted that the approximate number of children born in any month in Queensland is 5000, and not all children will be assessed as having the attributes to qualify for early entry, nor will all parents seek early entry for these children. It is difficult to assess potential funding implications at this stage, but the full July cohort of eligible children would equate to a 1% increase in total state enrolments.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles.

Consultation

In relation to the amendments to the Accreditation Regulation, the Department of Education, Training and Employment (DETE) consulted with the Non-State Schools Accreditation Board, Queensland Catholic Education Commission (QCEC) and Independent Schools Queensland (ISQ) during the drafting of the Amendment Regulation.

There was general stakeholder support for the amendments to section 10 of the Accreditation Regulation in order to align with the amendments to the CPA and to address issues previously identified by the non-state school sector in relation to the application of section 10. The Amendment Regulation was refined in response to stakeholder feedback received.

Consultation on the amendments to the EGPR has occurred with the DETE Red Tape Reduction Council of Principals; DETE Regional Directors; the Queensland Association of State School Principals, Queensland State P-10/12 School Administrators' Association; QCEC; ISQ; P&C's Qld; and the Queensland Teachers' Union.

In addition, consultation on the amendments to the EGPR to amend the age requirements for early entry into the preparatory year has occurred with the Queensland Independent Education Union, Crèche and Kindergarten Association Childcare Queensland, Childcare Queensland, and Goodstart Early Learning.

Consultation on the amendments to the EGPR to enhance local decision making was also undertaken with Regional Directors; Together Union; United Voice; Queensland Association of Special Education Leaders; Outdoor and Environmental Education Centres; and Queensland Indigenous Education Consultative Council.

While there was general support for the amendments to the EGPR, some stakeholders raised concerns regarding the impact of the changes on the early childcare sector and young children who are enrolled early into the preparatory year. DETE notes these concerns but, as outlined above, considers that the impact on the early childcare sector will be minimal. In addition, as the amendments only allow for the enrolment of a child who is one month younger than the usual entry age, DETE considers that the amendments strike an appropriate balance by providing Queensland parents the option to seek early entry for their child and yet minimises the age variation of children in the preparatory year.