

Education Legislation Amendment Regulation (No. 2) 2014

Explanatory notes for SL 2014 No. 300

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. 2) 2014

Authorising law

Section 177 of the *Education (Accreditation of Non-State Schools) Act 2001*
Section 2 of the *Education and Other Legislation Amendment Act 2014*
Section 434 of the *Education (General Provisions) Act 2006*

Policy objectives and the reasons for them

The policy objectives of the *Education Legislation Amendment Regulation (No. 2) 2014* (the Amendment Regulation) are 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) to support amendments contained in the *Education and Other Legislation Amendment Act 2014* (the EOLA Act) regarding special assistance schools and mature age student enrolments;
- a minor amendment to the EGPR to remove duplication with the civil liability indemnity arrangements under the *Public Service Act 2008* (the PS Act); and
- a technical amendment to replace the reference to the repealed *Financial Administration and Audit Regulation 1995* with a reference to the *Auditor-General Regulation 2009*.

On 7 November 2014, the EOLA Act, which made various amendments to education portfolio legislation, received Royal Assent. As a result, consequential amendments to the Accreditation Regulation and the EGPR are required.

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

Non-state schools are established and operate in Queensland under the *Education (Accreditation of Non-State Schools) Act 2001* (the Accreditation Act) and the Accreditation Regulation.

Under the Accreditation Act, the Non-State Schools Accreditation Board (the Accreditation Board) is responsible for, amongst other things, the provisional accreditation and accreditation of non-state schools. This includes assessing whether a non-state school meets the prescribed accreditation criteria in the Accreditation Regulation.

The EOLA Act amends the Accreditation Act to provide for the accreditation of special assistance schools. Special assistance schools are provisionally accredited or accredited non-state schools that cater specifically for children and young people who have disengaged from mainstream education and are not participating in vocational education and training or employment. Special assistance schools do not charge tuition fees.

The EOLA Act amends the Accreditation Act to: specifically recognise special assistance schools within its legislative framework; permit a 'mainstream' non-state school to provide special assistance at a special assistance site; and enable a special assistance school to provide special assistance at a temporary site, subject to certain criteria and for a limited time period.

Amendments are required to the Accreditation Regulation to prescribe specific accreditation criteria relevant to special assistance schools, temporary site criteria and minimum enrolment numbers.

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

Amendments consequential to the EOLA Act

The EOLA Act makes amendments to the provisions in the EGPA that relate to the enrolment of mature age students at state secondary schools. Currently, adult students are able to enrol in any state school, provided they have a positive mature age student notice issued by the Director-General of the Department of Education, Training and Employment (DETE) after consideration of the adult's criminal history. The EOLA Act restricts mature age student enrolments to mature age state schools prescribed in a regulation or to distance education. This aims to improve educational outcomes of children and mature age students and create safe environments in state schools.

The EGPR needs to be amended to prescribe mature age state schools, remove the fee prescribed in the EGPR for a mature age student notice and to prescribe the application fee for enrolment as a mature age student.

Civil liability indemnity

Amendments to the PS Act relating to civil liability indemnity commenced on 31 March 2014. Chapter 1, part 3, division 3 of the PS Act now provides primary and

standardised protection to ‘State employees’ and ensures that civil liability does not attach to State employees when they are acting in an official capacity. A contribution may be recovered from the State employee if the conduct was engaged in other than in good faith and with gross negligence. A ‘State employee’ includes a public service employee.

An amendment is required to remove duplication between the EGPR and PS Act indemnity provisions.

Technical amendment

In 2009, the *Financial Administration and Audit Regulation 1995* (the repealed regulation) was repealed. Section 3 of the repealed regulation exempted a parent and citizens association from audit by the Auditor-General and provided for the appointment of a person who must annually audit the association. These matters are now prescribed in section 4 of the *Auditor-General Regulation 2009*.

Achievement of policy objectives

The policy objectives of the Amendment Regulation are achieved by:

- making consequential amendments to the Accreditation Regulation and the EGPR to support amendments contained in the EOLA Act;
- amending the EGPR to remove duplication with the civil liability indemnity arrangements under the PS Act; and
- replacing the reference in the EGPR to section 3 of the *Financial Administration and Audit Regulation 1995* with section 4 of the *Auditor-General Regulation 2009*.

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

Provisionally accredited and accredited non-state schools are required to comply with accreditation criteria, which are prescribed in part 2 of the Accreditation Regulation. Accordingly, these accreditation criteria will apply to special assistance schools. The proposed amendments to the Accreditation Regulation will provide additional requirements on special assistance schools relating to educational programs and the provision of special assistance at temporary sites.

Special assistance schools - educational program criteria

To strengthen the educational outcomes of special assistance school students, the Amendment Regulation amends the educational program accreditation criteria to provide additional criteria for a special assistance school’s educational program to:

- focus on promoting enrolled students’ continuous engagement in primary or secondary education; and
- include a written standard of service about learning standards to be achieved by special assistance school students, dealing with, for example, tracking student achievement, monitoring attendance and participation and strategies for keeping students engaged in education.

Temporary site criteria

The EOLA Act enables a special assistance school to provide special assistance at a temporary site for a limited period. This approach differs from the existing statutory regime

in the Accreditation Act, which restricts the operation of non-state schools to sites approved by the Accreditation Board as attributes of the schools' accreditation. The EOLA Act contains certain measures to ensure that the Accreditation Board retains an appropriate level of oversight while still enabling the special assistance school to respond expeditiously to the educational needs of a local community, where it is known that a number of young people have disengaged from mainstream schooling.

The EOLA Act amends the Accreditation Act to provide that a special assistance school must comply with criteria prescribed by regulation for temporary sites and gives the Accreditation Board the power to assess whether a special assistance school is complying with the temporary site criteria. The EOLA Act provides that failure to comply with temporary site criteria is a ground for cancelling a school's provisional accreditation or accreditation.

The Amendment Regulation prescribes the temporary site criteria, including the time period which a special assistance school may provide special assistance at a temporary site. New part 2AA prescribes temporary site criteria in new sections 14AB to 14AD.

New section 14AB makes it clear that a special assistance school's written standard of service required under new section 9AA(2) must deal with the regular monitoring of attendance by relevant students at a temporary site.

New section 14AC ensures that school resources criterion contained in part 2, division 4 of the Accreditation Regulation (staffing, land and buildings and educational facilities and materials) apply to temporary sites.

New section 14AD prescribes the period of time a special assistance school can provide special assistance at a temporary site. A special assistance school cannot provide special assistance at a temporary site after the expiry of 140 consecutive school days from the commencement of provision of special assistance at the site. The exception to this time period is in circumstances where the governing body of the special assistance school has applied to the Accreditation Board to make the temporary site an attribute of the school's provisional accreditation or accreditation. In this situation, the special assistance school can continue to operate at the temporary site pending the determination of the application.

New section 14AE clarifies that the prescription of temporary site criteria in new part 2AA does not limit the operation of part 2 of the Accreditation Regulation to special assistance schools.

Minimum enrolment

The Accreditation Act also establishes a regime for deciding whether governing bodies of non-state schools are eligible for government funding. The Non-State Schools Eligibility for Government Funding Committee (the Committee) makes non-binding recommendations about eligibility for Government funding to the Minister for Education, Training and Employment. The Minister is the decision maker on government funding eligibility.

In making a recommendation to the Minister, the Committee must have regard to the criteria listed in section 85 of the Accreditation Act. The recognition of special assistance schools within the Accreditation Act required an amendment to sections 85(3)(c) and (4)(c) to provide for the minimum enrolments at a site, rather than for a school. This was necessary as a special assistance school, due to the unique nature of its student base, would be unlikely to

meet the minimum enrolment provisions that apply to mainstream schools. It was also necessary because the reforms in the EOLA Act enable a school to offer mainstream education at some sites and special assistance at other sites.

The prescribed minimum enrolment is contained in section 16 of the Accreditation Regulation. The Amendment Regulation amends section 16 to prescribe different minimum enrolment requirements depending on which type of site it is, and then further demarcated depending on whether primary or secondary education is offered (or proposed to be offered), and for sites, other than special assistance sites, which years of secondary education it offers (or proposes to offer).

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

Amendments consequential to the EOLA Act

The Amendment Regulation amends section 72 of the EGPR to prescribe the mature age state schools. This list of schools includes the four schools previously known as Centres for Continuing Secondary Education.

The Amendment Regulation also omits the existing fee to accompany an application for a mature age student notice and inserts new section 72A, which prescribes the fee that is to accompany the mature age student application. The fee of \$26.00 is prescribed in new schedule 6 of the EGPR. This fee is the same as the current mature age student application fee.

Amendments relating to civil liability indemnity

Section 9D of the EGPR protects a principal or a staff member of a state school from civil liability for an act done, or omission made, honestly and without negligence under part 2, division 2 of the EGPR, which relates to temporary removal of student property. Section 9A provides that a staff member of a state school means anyone employed by the chief executive at the school.

The Amendment Regulation omits section 9D. Principals and staff members of state schools are ‘State employees’ within the meaning of section 26B of the PS Act and accordingly, are afforded protection from civil liability under section 26C of the PS Act.

Technical amendment

Section 45 of the EGPR provides that the accounts of a parents and citizens association must be audited annually by a person under section 3 of the, now repealed, *Financial Administration and Audit Regulation 1995*.

The Amendment Regulation replaces the reference to the repealed regulation to refer to section 4 of the *Auditor-General Regulation 2009*.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the main objectives of the Accreditation Act and the EGPA.

Inconsistency with policy objectives of other legislation

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

Benefits and costs of implementation

Any costs from implementation will be met from within existing resources.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles.

Consultation

DETE consulted with stakeholders on the proposals contained in the EOLA Act.

Independent Schools Queensland, the Queensland Catholic Education Commission and the Accreditation Board were consulted on the amendments in the Amendment Regulation relating to special assistance schools.