

Education (General Provisions) Regulation 2017

Explanatory notes for SL 2017 No. 161

made under the
Education (General Provisions) Act 2006
Education (Queensland Curriculum and Assessment Authority) Act 2014

General Outline

Short title

Education (General Provisions) Regulation 2017

Authorising law

Section 434 of the *Education (General Provisions) Act 2006*
Section 92 of the *Education (Queensland Curriculum and Assessment Authority) Act 2014*

Policy objectives and the reasons for them

The policy objectives of the Education (General Provisions) Regulation 2017 (Regulation) are to:

- create a new Regulation that supports the *Education (General Provisions) Act 2006* (the Act);
- replace the *Education (General Provisions) Regulation 2006* (current Regulation), which is due to expire on 1 September 2017, in accordance with section 54 of the *Statutory Instruments Act 1992*; and
- clearly and effectively communicate policy intent and reflect current regulatory and drafting practices.

The Act provides the legislative framework for the provision of education to Queensland children and young people, including outlining responsibilities of parents and the State in relation to the education of children and young people, and the establishment and management of state educational institutions (schools) as safe and supportive learning environments. Queensland has had legislation regulating its education framework since 1860, one year after it was founded as a colony.

The current Regulation supports the attainment of the Act's objectives through prescription of a number of procedural and operational matters that give effect to many of the Act's

provisions.

A strong and effective education system is essential to a modern State in ensuring its citizens have the capability to maintain a functioning, effective society and interact with the rest of the world. It is also essential to Queensland businesses to ensure that there is a skilled workforce available to address resourcing needs. It is therefore important that a Regulation continue to exist.

Achievement of policy objectives

The Regulation achieves its policy objectives by creating a new Regulation that retains the majority of provisions that exist in the current Regulation. Consistent with the current Regulation, the new Regulation supports the Act's objectives by providing for the:

- management of state schools, property management and administration of students including enrolment matters, reporting absences, good behaviour and homework in state schools;
- prescribes the ages children can be enrolled in state and non-state primary schools;
- provision of religious instruction in state schools;
- enrolment of overseas students at state schools;
- details to be included in reports of sexual abuse for both state and non-state schools;
- formation and ongoing administration of parents and citizens associations (P&Cs) and the dissolution of school councils; and
- prescription of fees for a range of services under the Act, including the provision of distance education, preparation of reports, specialised education programs and criminal history checking fees for enrolment of mature age students.

In addition, minor amendments have been made to:

- reflect current drafting practices;
- reflect changes in society and technology;
- remove and add schools to the prescribed list of state schools providing education to mature age students: and
- improve the clarity of the legislative provisions and ensure the policy intent is achieved.

Some examples of changes are outlined below.

Section 17 of the current Regulation provides that, if asked by a principal of a state school, a parent of a student or the student (if an adult) must provide documentary evidence of their date of birth. This ensures that a principal has the ability to identify whether students are eligible for enrolment. This is retained in the new Regulation as section 19, with an additional provision that a person claiming to be a parent of a child must provide, if asked by the principal, documentary evidence of their parentage. Documentation might include proof of identification, such as a driver's licence or passport, or court orders, relating to custody or guardianship. This ensures that a principal has the ability to ascertain whether the person who claims to be a parent is actually who they claim to be.

Additionally, section 19 of the new Regulation clarifies that 'student', under this section, can mean 'prospective student', as a principal may need to ascertain eligibility before enrolling a

prospective student.

Section 62 of the current Regulation provides that the chief executive may give to a person in particular circumstances a report about a state school student. For example, a report about a state school student can be released when: authorised by a court; the parent of the student consents; or giving the report on balance serves the public interest. This capacity is retained as section 62 of the new Regulation. However, the section has been enhanced to provide that the report can be about a former state school student.

Section 63 of the current Regulation relates to enrolment of overseas students in Queensland state schools. This section has been amended in the new Regulation to remove duplicative enrolment processes and reflect enrolment practices required under Commonwealth legislation regulating providers of courses to overseas students. As a consequence, overseas students will be able to be enrolled in an appropriate state school once their confirmation of enrolment is provided to them, without having to separately apply to the state school principal for enrolment at the school. The state school in which the prospective overseas student is to enrol is consulted about the enrolment through internal departmental procedures.

Section 64 of the current Regulation provides that the Minister must approve student vacations for state schools, which must be published in the gazette. To reflect changes in technology and society, school vacations are now required to be published on the Department of Education and Training's (DET) website.

An adult may apply for enrolment at a school prescribed in the Regulation as a mature age state school. There are ten mature age state schools prescribed in the current Regulation. Nambour State College has been approved by DET to be a mature age state school. Toowoomba State High School has been approved by DET to cease being a mature age state school. The new Regulation reflects these changes.

The proposed reforms do not impose any additional regulatory burden that does not already apply through the current Regulation. The new Regulation will ensure the continuity of the current framework for education in Queensland.

Consistency with policy objectives of authorising law

The new Regulation is consistent with the objectives of the Act.

Inconsistency with policy objectives of other legislation

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

Benefits and costs of implementation

The creation of the new Regulation will maintain the status quo by supporting the Act once the current Regulation expires, retaining a stable, effective regulatory framework for education in Queensland. There will be no additional costs for implementation.

Consistency with fundamental legislative principles

Section 4(2)(a) of the *Legislative Standards Act 1992* (LSA) requires that legislation has

sufficient regard to the rights and liberties of individuals. The Regulation is generally consistent with the fundamental legislative principles prescribed in the LSA. One potential inconsistency is outlined below.

Enrolment of students who do not meet age requirements

Section 17 of the new Regulation provides that a child may be enrolled in Preparatory Year (Prep) at a state or non-state school if the child will be at least 5 years and 6 months on 31 December in the proposed year of attendance at the school (i.e. a child will turn 5 on or before 30 June).

However, a principal of a state school or non-state school may also enrol a child who is 5 years and 5 months on 31 December in the proposed year of attendance (i.e. the child will turn 5 on or before 31 July) if the principal is satisfied the child is ready for education, considering the child's attributes. Additionally the principal may enrol a child that does not meet the age requirement if satisfied the child has started education in another State or country that is equivalent to Prep and is ready for education, considering the child's attributes.

Section 18 of the new Regulation provides that a principal of a state school or non-state school may only enrol a child in a year of schooling from Years 1 to 6 if the child will be at least 6 years and 6 months on 31 December in the proposed year of attendance. However, the principal may enrol a child that does not meet the age requirement if satisfied the child is ready for education in the year of schooling considering the child's attributes.

Attribute is defined in schedule 6 as the child's: aptitude and ability; social and emotional competence; physical development; and level of knowledge and understanding.

Under section 4(3) of the LSA, administrative power should be sufficiently defined and subject to appropriate review. Under sections 17 and 18, a principal's decision to enrol or not enrol a child that does not meet the age requirements, based on the principal's assessment of the child's attributes and/or the child's previous education, is not subject to review. As these administrative decisions do not have a prescribed avenue of review, the provisions could be considered inconsistent with fundamental legislative principles.

The new provisions are consistent with the provisions in the current Regulation. The provisions provide clear guidance about appropriate ages for enrolment in school in Prep to Year 6 and give principals some flexibility for children to enrol early into a suitable year of schooling, where it is in their best interest, given their level of intellectual, physical and social maturity.

The principal is best placed to make these decisions, as they understand the school environment and can make a judgement based on relevant assessments of the student. DET provides a clear guideline to assist state school principals in assessing whether children should be accepted for early enrolment. The guideline requires that the principal consider what is in the child's best interests in order to achieve a positive and successful start to school. Principals consider evidence provided by the parent to support the application and discuss the child's attributes with relevant school staff such as the Head of Curriculum, Prep teachers, guidance officer and/or support staff in regional offices where appropriate. Principals provide parents with formal written advice regarding the reasons for the decision.

A refusal to allow a child to enrol early into a year level does not impact on the child's right to an education. Under the Act, a principal in a state school must enrol a student who is entitled to be enrolled under the Act. Examples of when a child is not entitled to enrol in a school include: the child poses a unacceptable risk to the safety of staff or students; or the child lives out of catchment of a school for which there is an enrolment management plan,

and does not meet the out of catchment requirements for enrolment at the school.

Accordingly, for enrolment in Prep – once the child reaches the appropriate age, they can seek enrolment at a state school and, subject to entitlement under the Act, must be enrolled at the school. A child already enrolled at a school in Years 1 to 5 who is refused acceleration to a higher grade is still accessing education. Further, a parent aggrieved by a decision of a principal to refuse early or accelerated enrolment could seek enrolment at another state or non-state school. Decisions about acceleration are not made lightly and are made in consultation with parents and the child.

Providing for a review of a principal's decision to refuse early or accelerated enrolment in legislation contradicts the expectation that principals are best placed to make such decisions. It may increase burden on state and non-state schools, delay enrolment decisions and impact on their ability to effectively plan school resources, set class composition and determine teacher allocations.

It may also impact on the learning outcomes of students. For example, if a review body overturned a principal's decision after the commencement of the school year, the child could then commence schooling later than other students, and miss out on aspects of the curriculum.

For these reasons, a review process is not considered appropriate or necessary and any inconsistency with fundamental legislative principles is considered justified. The provisions provide sufficient flexibility for principals to take into account a child's needs and attributes, and the impact of a decision not to enrol a child who does not meet the age requirements is not considered significant enough to justify the additional regulatory burden that a review process would impose on the school and the potential impact on the child themselves.

Consultation

The Queensland Catholic Education Commission and Independent Schools Queensland were consulted and support the proposed Regulation.

Consultation has also been undertaken with the Queensland Teachers Union and the Independent Education Union – Queensland and Northern Territory Branch.

The Office of the Best Practice Regulation (OBPR), in the Queensland Productivity Commission has been consulted in relation to the requirements under the Queensland Government Guide to Better Regulation. OBPR considers that the new Regulation is unlikely to result in significant adverse impacts and therefore further analysis is not required.