

# Education (Accreditation of Non-State Schools) Regulation 2017

Explanatory notes for SL 2017 No. 197

made under the  
*Education (Accreditation of Non-State Schools) Act 2017*  
*Health Act 1937*  
*Queensland Civil and Administrative Tribunal Act 2009*

## General Outline

### Short title

*Education (Accreditation of Non-State Schools) Regulation 2017*

### Authorising law

Section 179 of the *Education (Accreditation of Non-State Schools) Act 2017*  
Section 180 of the *Health Act 1937*  
Section 242 of the *Queensland Civil and Administrative Tribunal Act 2009*

### Policy objectives and the reasons for them

The policy objectives of the *Education (Accreditation of Non-State Schools) Regulation 2017* (the Regulation) are to:

- prescribe matters under the *Education (Accreditation of Non-State Schools) Act 2017* (the Accreditation Act) to uphold the standards of and maintain public confidence in Queensland's non-state schools;
- prescribe accreditation criteria to ensure that non-state schools:
  - provide a quality educational program in a safe and secure environment;
  - are effectively governed in a transparent and accountable manner;
  - are financially viable;
  - provide for student welfare, including boarders;
  - provide appropriate and sufficient resources to deliver the education program and maintain the welfare of students and staff; and
  - have a demonstrable, systematic approach to improvement strategies; and
- prescribe additional operational and procedural matters to support the Accreditation Act, such as matters concerning temporary sites, the provision of school survey data, and fees.

The non-state schooling sector educates approximately one-third of Queensland's school students (approximately 266,000 students) through 504 schools. The Accreditation Act

regulates the non-state schooling sector in Queensland. Under the Accreditation Act, non-state schools must be accredited to operate by the Non-State Schools Accreditation Board (the Board).

The Department of Education and Training (DET) has undertaken a review of the regulatory framework for non-state schooling. The review's objectives were to:

- modernise and streamline the accreditation regime, which is 15 years old and does not align with contemporary drafting practice; and
- respond to long-standing issues raised by stakeholders in relation to operational policy and administrative arrangements underpinning accreditation.

The review was informed by a Reference Group comprising of departmental officials, the Executive Directors of the Queensland Catholic Education Commission (QCEC) and Independent Schools Qld (ISQ) and the chair of the Board. The review took account of issues raised by these stakeholders that have emerged over time.

As an outcome of the review, a Bill was passed by the Queensland Legislative Assembly on 10 August 2017 (and received Royal Assent on 25 August 2017) providing for the Accreditation Act to replace the *Education (Accreditation of Non-State Schools) Act 2001*. The Accreditation Act:

- continues the Board as an independent statutory body responsible for the regulation of non-state schools;
- streamlines the accreditation processes, for example, by removing the concept of provisional accreditation and the requirement for the issuing of accreditation certificates;
- streamlines the process for government funding eligibility by: providing for the Board to make funding eligibility decisions, rather than the Minister and enabling automatic eligibility for accredited non-state schools operating on a not-for-profit basis to receive government funding;
- strengthens the functions of authorised persons to investigate offences under the Act and requires governing bodies to inform the Board when members cease and new members commence; and
- provides for review of decisions by the Queensland Civil and Administrative Tribunal rather than by the Minister.

The Accreditation Act will commence on 1 January 2018 by Proclamation. Upon its commencement, the *Education (Accreditation of Non-State Schools) Regulation 2001* (2001 Regulation) will be repealed. A new regulation must be made under the new Accreditation Act to support the regulatory framework.

## **Achievement of policy objectives**

The new Regulation prescribes the criteria upon which a non-state school's accreditation is assessed, criteria for temporary sites for special assistance schools, school survey data requirements and other procedural matters such as fees.

The Regulation retains the majority of provisions that exist in the 2001 Regulation, although there are changes to the structure and order of the provisions, as well as minor changes to the wording to ensure clarity and ensure the policy intent is achieved.

The Regulation prescribes the same accreditation criteria as the 2001 Regulation. However, some reforms are made to the accreditation criteria to assist the Board to oversee the

accreditation of non-state schools, provide greater guidance to non-state schools about their obligations and responsibilities and to ensure high standards and public confidence in the non-state schooling sector in Queensland are maintained. The following accreditation criteria are prescribed: financial viability; governance and administration; educational program; student welfare processes; school resources; and school improvement processes.

The key changes from the criteria prescribed in the 2001 Regulation are outlined below.

#### *Administration and governance*

Given the funds provided by Government, as well as fees paid by parents of students, and the impact a sudden closure of a school could have on students and a community, it is important that schools are administered effectively and transparently. In making accreditation decisions, the Board needs to understand how a school's governing body is structured and the governance framework in which decisions are made by the governing body relating to administration of a school. The Board must be able to access records associated with the school's financial arrangements to ensure compliance with the Act and financial viability of the school.

The Regulation provides for this through section 6, which requires non-state schools to have a document outlining the organisational structure for the governance of the school, including the key functions and responsibilities of any entity (including individual persons) that support the governing body in the governance of the school. The Board will have the power under subsection (4) to view this document to gain insight into the structures governing the school and whether they are effective, transparent and accountable.

As part of effective governance, it is also important that non-state schools have clear and transparent processes when dealing with complaints made by the school's staff, students or a student's parent or guardian. Section 7 of the Regulation requires non-state schools to have processes for dealing with complaints which incorporate principles of procedural fairness.

#### *Financial viability*

This criterion requires that schools have access to adequate financial resources for their viable operation. When considering a school's financial viability, the Board may consider a range of matters, including the school's asset base and income, including Government funding and other sources of income such as tuition fees, and the school's existing and projected enrolments.

A new requirement has been inserted requiring financial records to be retained for a period of five years. This is not inconsistent with existing requirements on corporations. It will assist to ensure the Board is able to access records of the school's financial dealings, relevant both to the school's financial viability and ensuring schools in receipt of government funding are operating on a not-for-profit basis.

#### *Educational program*

The Regulation separates the criterion for educational program from student welfare processes (which were combined under the 2001 Regulation). This change simply reflects modern drafting practice.

The 2001 Regulation requires that a school must provide an education program that enables students to achieve Queensland standards of learning or learning comparable to Queensland standards of learning. The Board is currently required to undertake this assessment of comparability, but is not the most appropriate body to do so.

The Queensland Curriculum and Assessment Authority (QCAA) is Queensland's curriculum body and has the expertise to make assessments about whether an education program is

appropriate for senior secondary education. The national curriculum body - the Australian Curriculum, Assessment and Reporting Authority (ACARA) has responsibility for endorsing curriculum for the Preparatory Year (Prep) to Year 10 that is comparable to the Australian curriculum.

The Regulation provides more certainty about the educational program a school must implement, while still maintaining flexibility for the non-state sector to be innovative in its curriculum delivery. Responsibility for determining whether an education program is appropriate will now sit with ACARA for Prep to Year 10 and the QCAA for Years 11 and 12. This will assist to ensure a quality standard of education in Queensland's non-state schools and to maintain public confidence in the sector.

Section 9 of the Regulation provides that schools must implement one or more of the following:

- for Prep to Year 10:
  - the Australian curriculum;
  - a curriculum recognised by ACARA; or
  - if the school offers any other subjects, and a syllabus for that subject has been developed or revised by the QCAA - the QCAA syllabus; and
- for senior secondary education:
  - if a school offers a subject, and a syllabus for that subject has been developed, or revised by the QCAA, the school must implement the QCAA syllabus;
  - a program or syllabus endorsed by the QCAA as appropriate for senior school education; or
  - a program authorised by the International Baccalaureate Organisation.

Schools can offer other subjects in addition to the educational programs outlined above, including vocational education courses, courses recognised by the QCAA as contributing to the Queensland Certificate of Education.

In addition, section 9(1) requires that the programs must have a written educational program that:

- has regard to ages, abilities, aptitudes, and development of students;
- promotes continuity of learning experiences;
- provides a breadth, depth and balance of learning appropriate to students' phases of development and across an appropriate range of learning areas, consistent with the Melbourne Declaration on Educational Goals for Young Australians; and
- is responsive to the needs of students.

These requirements ensure that schools implement appropriate and effective educational programs across a range of learning areas (such as English, mathematics, science, humanities and social sciences, the arts, languages, health and physical education, information and communication technology, and design and technology). The Board will consider whether a school has implemented their programs in sufficient depth, when assessing compliance with the criteria.

Consistent with the 2001 Regulation, the Regulation requires schools to have a written statement of philosophy and aims that is the basis and guide for the school's educational program and organisational practices.

Also consistent with the 2001 Regulation, the Regulation requires schools delivering distance education to have a written standard of dealing with the school's distance education service. In addition, non-state schools will be required to ensure regular engagement between students

and teachers. This engagement can be via email or other electronic forms of communication, and must include feedback and guidance as opposed to just providing students with distance education materials.

Consistent with the 2001 Regulation, the Regulation requires special assistance schools to promote continuous engagement of students in education. It also requires they have a written standard of service dealing with matters such as the regular tracking and assessment of students' work, monitoring of student attendance, participation and achievements and strategies for engaging students in education.

As with the 2001 Regulation, the Regulation requires that approvals for flexible arrangements for students to participate outside the school's usual educational program must comply with the requirements under section 182 of the *Education (General Provisions) Act 2006*.

#### *Student welfare process*

The Regulation requires a school must be compliant with the *Work Health and Safety Act 2011* and the *Working with Children (Risk Management and Screening) Act 2000*. If a school does not comply then, in addition to contravening those Acts, it is contravening the accreditation criteria and the Board can take action against the school under the Accreditation Act. This is consistent with the 2001 Regulation, except that the requirement for written processes about the health and safety of staff and students is removed, as it is considered unnecessary and a potential burden on schools.

The Regulation retains requirements in the 2001 Regulation that a school must have written processes dealing with how the school will respond to harm or allegations of harms to students, and the appropriate conduct of the school's staff and students. The new Regulation ensures staff members are trained annually in relation to the procedures.

#### *School resources*

The Regulation retains the provisions in the 2001 Regulation for the school resources criteria. Additionally, it also provides that if a school provides boarding accommodation, the school must provide adequate and appropriate types of staff and the necessary accommodation and associated facilities to ensure a safe environment and the health and well-being of students who are boarding.

#### *Improvement processes*

The Regulation retains the requirement that schools must have a demonstrable, systematic approach about improvement processes for the school.

#### *Other matters*

As with the 2001 Regulation, the Regulation provides for:

- procedural requirements and matters relating to temporary sites providing special assistance, with an increase in the period in which a special assistance school can provide special assistance at a temporary site (from 140 to 200 days);
- procedural requirements and processes for calculating numbers of students enrolled and attending a non-state school (school survey data); and
- fees.

## **Consistency with policy objectives of authorising law**

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

## **Inconsistency with policy objectives of other legislation**

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

## **Benefits and costs of implementation**

The proposed changes will provide more guidance on the steps a school needs to undertake in order to comply with the accreditation criteria.

The proposed changes will assist the Board to oversee the accreditation of non-state schools, provide greater guidance to the schools about their obligations and responsibilities and to ensure high standards and public confidence in the non-state schooling sector in Queensland is maintained.

The new Regulation is not expected to impose any significant new regulatory burden on non-state schools.

## **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 (FLPs) prescribed in the LSA.

Section 9(4)(b) of the Regulation provides that the QCAA may endorse a program or syllabus as appropriate for senior secondary education. This enables non-state schools that wish to implement alternate education programs for senior secondary education to be able to seek QCAA endorsement and if granted deliver the program while still complying with the accreditation criteria.

Under section 4(3) of the LSA, administrative power should be sufficiently defined and subject to appropriate review. There is no ability to review a decision by the QCAA under this section. This potential inconsistency with FLPs is justified for the reasons outlined below.

Ensuring all schools provide a quality education is essential in ensuring Queensland children are educated as modern, effective citizens. It is important that decisions about whether an education program is appropriate are made by a body with the necessary expertise to make such a decision.

The QCAA is the only body in Queensland with the curriculum expertise to make an informed decision on the appropriateness of education programs. Given this, there is no body that can effectively review the QCAA's decisions. ACARA currently makes decisions on alternative education programs for Prep to Year 10, but not for senior secondary education. Additionally, they are a Commonwealth institution, and do not have the required functions or powers to review decisions made under Queensland law.

Ultimately, it is not considered likely that the QCAA will be required to make many decisions under this section. It is anticipated that only a small number of schools may seek endorsement of an alternative program. All Queensland non-state schools are currently accredited to provide QCAA approved syllabi in their senior secondary education programs, and so will be able to operate without QCAA endorsement of an alternative program.

It is intended that the endorsement process will be iterative, enabling schools to work with the QCAA to take necessary steps to ensure their program is appropriate for senior secondary education.

## **Consultation**

The Board, QCAA, ISQ and QCEC have been consulted and provided general support for the Regulation. The Board acknowledges the revisions to the accreditation criteria will support better oversight of non-state schools.

The Board and QCEC would prefer tighter controls for senior educational programs – requiring schools to adopt QCAA syllabus, rather than having an option to seek QCAA endorsement of an alternate program. However, the option for QCAA endorsement of alternative education programs is the preferred approach because it provides flexibility for non-state schools to be innovative, while ensuring they provide a quality education. The Regulation ensures the assessment is made by the appropriate curriculum body.