

Education (General Provisions) (Audit Requirements) Amendment Regulation 2019

Explanatory notes for SL 2019 No. 170

made under the *Education (General Provisions) Act 2006*

General Outline

Short title

Education (General Provisions) (Audit Requirements) Amendment Regulation 2019

Authorising law

Section 135 of the *Education (General Provisions) Act 2006*

Policy objectives and the reasons for them

The objective of the amendments to the *Education (General Provisions) Regulation 2017* (Education Regulation) is to ensure the financial integrity of parents and citizens associations (P&Cs) by prescribing auditing requirements. These requirements were previously prescribed in section 4 of the *Auditor-General Regulation 2009* (AG Regulation), which is due to lapse on 1 September 2019.

Chapter 7 of the *Education (General Provisions) Act 2006* (Act) provides for the formation and regulation of P&Cs for State schools in Queensland. Section 120 provides that the objectives of a P&C are to promote the interests of, and facilitate the development and further improvement of the State instructional institution for which it is formed.

The Act and Education Regulation prescribe a variety of matters about P&Cs, including the formation and dissolution of P&Cs, election of Executive Committee officers, the adoption and amendment of a constitution, requirements for membership, the establishment and maintenance of a register of members, mandatory insurance, protection from liability, powers to employ staff, and disclosure of interest requirements.

Section 118 of the Act provides that the following persons are eligible to be members of a P&C: a parent of a child attending the school; a staff member of the school, including the principal; and an adult, other than a parent or staff member, interested in the school's welfare.

Under section 121 of the Act, a P&C has the following functions:

- fostering community interest in educational matters;
- trying to bring about closer cooperation between the parents of children attending the school and other members of the community, staff members and students;
- giving advice and recommendations to the principal about issues relating to persons who receive educational instruction at the institution;

- giving advice and recommendations to the principal about the general operations and management of the institution;
- giving financial or other resources or services for the benefit of persons who receive educational instruction at the institution; and
- performing any other functions, not inconsistent with the Act, as the Minister decides.

To enable them to perform their functions, P&Cs undertake a variety of fundraising activities, including fetes, trivia nights and raffles. Some also operate services such as before and after school care, employing staff in key roles. Accordingly, P&Cs for large schools can have a significant monetary turnover.

A P&C is a statutory body under the *Statutory Bodies Financial Administration Arrangements Act 1982*. The P&C accounts for each financial year must be audited in the way prescribed by a Regulation subject to the *Auditor-General Act 2009* (AG Act). A P&C must give the chief executive a copy of their audited accounts for a financial year by 31 May of the following year.

The Education Regulation does not currently prescribe restrictions on auditing requirements because this has been addressed by section 4 of the *Auditor-General Regulation 2009* (AG Regulation).

Part 3 of the AG Act prescribes the scope of the Auditor-General's mandate. Section 30 provides that the Auditor-General must, for each financial year, audit all public sector entities unless exempted under section 30A or a regulation made under section 31. Under the authority of section 31 of the AG Act, section 4 of the AG Regulation provides that a P&C is exempted from audit by the Auditor-General. Subsection 4(2) provides for who must audit P&Cs and subsection 4(3) provides that a person who is a member of the P&C may only audit the relevant P&C with approval from the Education chief executive.

However, after reviewing the relevant provisions, the Queensland Audit Office concluded that P&Cs do not fit the definition of public sector entity under the AG Act. Therefore the exemption under the AG Regulation is out of scope as P&Cs are not in the Auditor-General's mandate. It is intended the AG Regulation will expire on 1 September 2019 and will not be remade, as the exemption provisions for P&Cs (which form the basis of the AG Regulation) are not necessary (in so far as they exempt P&Cs from being audited under the AG Act).

The restrictions the AG Regulation places on who must audit a P&C need to be retained to ensure the integrity of auditing processes for P&Cs. Therefore, the relevant provisions in the expiring AG Regulation need to be included in the Education Regulation, under the authority of section 135 of the Act.

Achievement of policy objectives

The Education (General Provisions) (Audit Requirements) Amendment Regulation 2019 achieves its policy objectives by prescribing auditing requirements in the Education Regulation previously prescribed in section 4 of the AG Regulation.

The provisions provide that a P&C must be audited each year by a suitably qualified person:

- appointed by the association each year at its annual general meeting or a special meeting; and
- who is:
 - a member of CPA Australia who is entitled to use the letters 'CPA' or 'FCPA'; or
 - a member of The Institute of Chartered Accountants in Australia who is entitled to use the letters 'CA' or 'FCA'; or

- a member of the Institute of Public Accountants who is entitled to use the letters ‘MIPA’ or ‘FIPA’; or
- an employee of a public sector entity who has the commercial skills and experience to examine the books and accounts of the association; or
- an employee of an insurance company, financial institution or other financial or commercial organisation, who has the commercial skills and experience to examine the books and accounts of the association; and
- who, to the extent practicable, is a member of the local community aware of the activities of the association.

The provisions also provided that a person who is a member of a P&C may audit the association only with the approval of the chief executive.

Consistency with policy objectives of authorising law

Section 135 of the Act provides that a P&C must be audited as prescribed under a regulation. While this provision provides that any auditing process should be subject to the AG Act, it does not specify that auditing requirements be provided under the AG Act or AG Regulation.

Inconsistency with policy objectives of other legislation

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

Benefits and costs of implementation

The amendments provide for continuity of auditing requirements for P&Cs, by transferring the relevant provision to a different legislative instrument. Consequently, no new policy will be implemented and the benefits and costs to stakeholders will remain unchanged.

Consistency with fundamental legislative principles

The Regulation is consistent with fundamental legislative principles.

Consultation

The amendments provide for continuity of auditing requirements for P&Cs, by transferring the relevant provision to a different legislative instrument. Given that no new policy is being implemented, consultation was not undertaken with any stakeholders on the specific amendments other than P&Cs Qld, who raised no issues with the proposed amendment.