

Education (Queensland Curriculum and Assessment Authority) Amendment Regulation (No. 1) 2020

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Grace Grace MP, Minister for Education and Minister for Industrial Relations, provide this human rights certificate with respect to the *Education (Queensland Curriculum and Assessment Authority) Amendment Regulation (No. 1) 2020* (Amendment Regulation) made under section 92 of the *Education (Queensland Curriculum and Assessment Authority) Act 2014* (QCAA Act).

In my opinion, the Amendment Regulation is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The Amendment Regulation is made under and pursuant to section 92 of the QCAA Act which empowers the Governor in Council to make regulations about a range of matters relating to the QCAA's functions including matters relating to: developing and conducting external senior assessments and examinations; endorsing and moderating senior school-based assessments; managing student accounts; and making guidelines.

The Amendment Regulation amends section 159(2) of the *Education (Queensland Curriculum and Assessment Authority) Regulation 2014* (QCAA Regulation) to omit the reference to 'an information notice' and insert a 'a notice of the authority's decision'. This will, in effect, remove the right for an internal or external review for this decision but will ensure consistency with the other review rights in the new senior assessment and tertiary entrance systems (new SATE systems) for students in the QCAA Regulation.

The Amendment Regulation also amends section 62 of the QCAA Regulation to clarify which tests may be reassessed by the QCAA as the current wording may create uncertainty.

The Amendment Regulation also makes a technical amendment to include a new heading and division number in Part 7.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The Amendment Regulation indirectly engages the *right to education* under the HR Act.

Section 36 – right to education

- The *right to education* provides every child has the right to have access to primary and secondary education appropriate to the child’s needs.
- The *right to education* is interpreted in international jurisprudence as encompassing the key elements of availability, accessibility, acceptability, and adequacy. Adequacy provides that it is flexible, open to review, and tailored to the needs of individual strengths.
- The Amendment Regulation amends section 159(2) of the QCAA Regulation to ensure that the QCAA Regulation is consistent with the review provisions included in the new SATE systems for students.
- The new SATE systems involve a new senior assessment approach combining school-based assessment (that is, three internal senior assessments (ISAs)), developed and marked by classroom teachers, with one ESA set and marked by the QCAA. The QCAA will endorse ISAs prior to their use and moderate the results of ISAs to ensure quality and comparability. The Queensland Tertiary Admission Centre is responsible for the calculation and issuing of the Australian Tertiary Rank for Queensland students.
- The review processes are justified on the basis that the decisions involve technical issues and that specialist confirmers are best placed to make these assessments. Several confirmers will be involved in the decision, each of them independent of the others and engaged by the QCAA as independent confirmers, which involves a reviewer who is independent from the original decision-maker.
- The review rights policy for the new SATE systems provides a process that is open to schools in the first instance (section 81E of the QCAA Regulation), and then to students when they are issued with a statement of results containing their overall subject results (sections 62 and 157 of the QCAA Regulation).
- In relation to students’ ISAs, schools may request either a verification that the correct files were reviewed for one or more samples (that is, a check on accuracy of QCAA’s process), or a review of the confirmed result for one or more students (that is, a check on the fairness of a result). Where a school request for review is accepted, the QCAA will appoint confirmers to effectively reassess the student’s work in question. When the review process is complete, the QCAA will notify the school of the review outcome, and there will be no further opportunities for review by the school.
- When a student is issued with a statement of results, they may seek a verification of the accuracy of the information included in the statement (section 157). Further, a student may seek a reassessment of their ESA results (section 62). Only if the student’s ESA result is reassessed at a lower mark, may the student seek for the QCAA to undertake an internal review followed by a right of external review to the Queensland Civil and Administrative Tribunal (QCAT).
- Any decision by the QCAA may also be judicially reviewed, whether or not there are existing external review rights to QCAT.
- As noted above, section 157 of the QCAA Regulation allows a person to request the QCAA to verify the information that is in the person’s certificate of individual achievement or statement of results. Section 159(2) requires the QCAA to give the person an *information notice* of its decision, which would then permit both an internal QCAA review and external review to QCAT of the QCAA decision. The review rights in section 159(2) provide

unanticipated avenues of additional internal and external review beyond those which were identified as appropriate for the new assessment and examination processes.

- It was always envisaged to limit internal and external review rights for students' results for their ISAs and ESA. This is justified given the safeguards provided under the QCAA's quality assurance processes for 'endorsement' and 'confirmation' events for ISAs and existing review processes available to schools and students. The amendment to this section was inadvertently overlooked for inclusion in the *Education (Queensland Curriculum and Assessment Authority) Amendment Regulation 2019* that amended the QCAA Regulation to allow the QCAA to implement and operationalise the new SATE systems.
- The proposed amendment to section 159(2) will remove a student's right for an internal and external review on a decision made by the QCAA in relation to the verification of information in a student's certificate of individual achievement or statement of results.
- This may be perceived as indirectly limiting a student's *right to education* through the removal of an internal and external review of the QCAA's decision that reflects the final subject result for their senior secondary education.
- However, the limitation to a student's right of review is justified given the safeguards provided under the QCAA's quality assurance processes for 'endorsement' and 'confirmation' events for ISAs and ESAs; and on the grounds that section 157 of the QCAA Regulation will continue to provide a student with a right to seek a verification of the accuracy of the information in their certificate or statement. In addition, a student may seek a reassessment of their ESA under section 62 of the QCAA Regulation.
- Neither the clarifying amendment to section 62 nor the technical amendment in Part 7 of the QCAA Regulation impact or limit a person's human rights.
- On this basis, the Amendment Regulation is considered compatible with the *right to education*.

Consideration of reasonable limitations on human rights (section 13 of the *Human Rights Act 2019*)

The Amendment Regulation does not limit, restrict or interfere with the human rights protected under the HR Act.

Conclusion

I consider that the Amendment Regulation is compatible with the HR Act because it raises a human rights' issue but that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

GRACE GRACE MP
MINISTER FOR EDUCATION AND
MINISTER FOR INDUSTRIAL RELATIONS