

Education Legislation (COVID-19 Emergency Response) Regulation 2020

Human Rights Certificate

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

In accordance with section 41 of the *Human Rights Act 2019* (HR Act), I, Grace Grace, Minister for Education and Minister for Industrial Relations provide this human rights certificate with respect to the *Education Legislation (COVID-19 Emergency Response) Regulation 2020* (Regulation) made under the:

- *COVID-19 Emergency Response Act 2020* (COVID-19 Act);
- *Education (Accreditation of Non-State Schools) Act 2017*;
- *Education (General Provisions) Act 2006*;
- *Education (Overseas Students) Act 2018*;
- *Education (Queensland College of Teachers) Act 2005*; and
- *Education (Queensland Curriculum and Assessment Authority) Act 2014*

In my opinion, the Regulation is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

On 22 April 2020, the Queensland Parliament urgently introduced and passed the COVID-19 Act which received assent on 23 April 2020. The COVID-19 Act allows extraordinary Regulations to be made under various Acts (affected Acts) to amend statutory requirements under the affected Acts for a limited period to address the impacts of COVID-19.

An extraordinary Regulation under the COVID-19 Act is only to be made for a purpose of the COVID-19 Act, such as to protect the health, safety and welfare of persons affected by the COVID-19 emergency; and to facilitate the continuance of public administration, judicial process, small business and other activities disrupted by the COVID-19 public health emergency (such as modifying statutory timeframes or requiring personal attendance).

A number of legislative instruments under the education portfolio have regulatory requirements that are impacted by the COVID-19 public health emergency, and require an extraordinary Regulation to address them.

The Regulation is an extraordinary Regulation made under the COVID-19 Act, and will make modifications to the:

- *Education (General Provisions) Act 2006* (EGP Act), which provides for the general regulation of State schools in Queensland;
- *Education (Accreditation of Non-State Schools) Act 2017* (EANSS Act), which provides for regulation relating to the functions of the Non-State Schools Accreditation Board (Board), the accreditation of non-State schools, and eligibility for government funding for governing bodies of accredited non-State schools; and

- *Education (Queensland College of Teachers) Act 2005* (QCT Act), which provides for the establishment, of the Queensland College of Teachers (QCT) and regulation of the teaching profession in Queensland schools.

Additionally, the Regulation amends the *Education (Queensland Curriculum and Assessment Authority) Regulation 2014* (QCAA Regulation) and the *Education (Overseas Students) Regulation 2018* (EOS Regulation) to enable fees to be waived or reduced during emergencies, such as the COVID-19 public health emergency.

Human Rights Issues

Human rights relevant to the subordinate legislation (sections 15 to 37 of the HR Act)

The Regulation directly and/or indirectly engages the following rights under the HR Act: the *right to education*, the *right to recognition and equality before the law*, *right to life*, *right to protection of families and children* and the *right to freedom of movement*.

Right to education (section 36 of the HR Act)

- 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 Explanatory Notes to the *Human Rights Bill 2018* provide that the right to education is intended to be consistent with the provisions of the EGP Act and to provide rights in respect of the aspects of education service delivery for which the State is responsible. Therefore, the right to primary education provides every child with the right to have access to preparatory year and years 1 to 6. Likewise, the right to secondary education refers to the right of every child to have access to years 7 to 12.
- The *right to education* is interpreted in international jurisprudence as encompassing the key elements of:
 - *Availability* – education must be available in sufficient quantity; and the components required for an educational institution to function must also be available (that is, buildings, trained teachers, safe drinking water, teaching materials etc)
 - *Accessibility* – education must be physically and economically accessible and be non-discriminatory
 - *Acceptability* – education must be provided at an acceptable, minimum standard of education quality; and the curriculum and teaching methods should be relevant, of a high quality and culturally appropriate, and
 - *Adequacy* – education and the mode of delivery must be open to review, flexible to adapt to the changing community's needs and tailored to the needs of individual students.
- Based on Article 13 of the *International Covenant of Economic, Social and Cultural Rights*, the right to education is seen as important to enabling people the ability to realise their human rights, to fully participate in society, achieve social mobility and enjoy human existence.
- The provisions in the Regulation to modify statutory timeframes, allow alternate means of physical attendance and permit a waiver or reduction of fees will strengthen the *right to education* by amending the legislative framework to ensure educational administrators and other persons are able to effectively perform their roles and duties to deliver a high quality

education as required by legislation during the COVID-19 emergency without causing risk to the health and safety of Queenslanders or themselves.

- Protecting the health and safety of the public is a fundamental responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom.

Right to recognition and equality before the law (section 15 of the HR Act)

- The *right to recognition and equality before the law* is a stand-alone right that also permeates all human rights. It encompasses both the right to recognition as a person before the law and the right to enjoy human rights without discrimination.
- The right to recognition as a person before the law refers to the universal recognition of legal personality of the human being. To be recognised before the law will give a person rights to participate in the legal process and to defend yourself in a court of law.
- The right to equality reflects the essence of human rights: that every person holds the same human rights by virtue of being human and not because of some particular characteristic or membership of a particular social group. The right protects individuals from discrimination and provides that every person has the right to equal and effective protection against discrimination.
- The Regulation amends relevant provisions under the EGP Act, EANSS Act, and QCT Act to ensure that timeframes for legislative actions can continue to be undertaken in an appropriate and flexible manner during the COVID-19 emergency. This includes actions in relation to accreditation of non-State schools by the Board.
- The amendments are time critical to ensure that key aspects of Queensland's education system can continue to operate during the COVID-19 public health emergency, which imposes restrictions to physical movements and physical social interactions.
- In allowing the chief executive or the Board to extend statutory timeframes for actions or events, there may be occasions where the effect of this extension is that a timeframe is extended for particular entities but not others. For example, the chief executive may extend a timeframe for an annual general meeting (AGM) and auditing which will benefit particular Parents and Citizens' associations (P&Cs) that did not hold their AGM prior to social distancing requirements in response to the COVID-19 public health emergency.
- The Regulation indirectly engages and limits the *right to recognition and equality before the law*. The limitation is reasonable and justifiable to ensure that P&Cs can continue to meet their statutory requirement while adhering to strict government guidelines in response to the COVID-19 public health emergency. For example, the public health directions issued by the Chief Medical Officer impose social distancing and limitations to travel and social gatherings. These government guidelines are designed to mitigate infection of COVID-19 and, in the event of significant community exposure, slow the rate of transmission particularly to vulnerable persons who may develop complications or otherwise require emergency or life sustaining treatment.

Right to freedom of movement (section 19 of the HR Act)

- The *right to freedom of movement* provides every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live. This means that a person cannot be arbitrarily forced to remain in, or move to or from, a particular place. The right also includes the freedom to choose where to live, and freedom from physical and procedural barriers, like requiring permission before entering a

public park or participating in a public demonstration in a public place. It also protects the rights of individuals to enter and leave Queensland.

- The Regulation amends section 181 of the QCT Act. Section 181 of the QCT Act enables an investigator to require a person to attend a place or produce a thing. The existing provision directly engages and limits *the right to freedom of movement* of a person who is required to attend, but the limitation is justified by ensuring investigators are able to appropriately carry out investigations in order to ensure the ongoing viability and transparency of the teaching profession.
- The Regulation amends section 181 to enable the QCT to direct the person to attend the place via electronic means and ensures that the production of the thing is not required in person.
- The Regulation gives the person greater freedom of movement, broadens the person's ability to meet their obligations under section 181 of the QCT Act, and is consistent with government guidelines in response to the COVID-19 public health emergency. More importantly, the Regulation will ensure the person who is required to attend as per the section 181 Notice complies with the public health directions and will remain safe from possibility of contracting COVID-19.

Right to Life (section 16 of the HR Act)

- The *right to life* protects the lives of all persons and includes the right not to be arbitrarily deprived of life. The concept of arbitrariness in the context of the right to life carries a human rights meaning of 'capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate purpose of the aim being sought.
- The United Nations Human Rights Committee in its General Comment No. 6 states that the right imposes both a negative and positive obligation on the State, which can never be derogated under any circumstances, even in a state of emergency which threatens the life of the nation.
- The positive obligations on the State include: a protective obligation to take appropriate steps and adopt positive measures to protect life (for example effective criminal or other laws to protect the health and safety of its citizens); to protect the lives of people in the State's custody or care; and a procedural obligation to ensure safeguards and mechanisms of review are in place to investigate deaths which may have involved the deprivation of life in certain circumstances (for example, coronial investigations of deaths in care).
- The Regulation provides for alternate options for attendances at places and meetings and physical attendance requirements in the EGP Act, EGP Regulation and QCT Act. These provisions enhance the right to life and ensure that protections are in place to avoid unnecessary transmission of COVID-19, mitigate infection through reducing community exposure, and slow the rate of transmission particularly to vulnerable persons who may develop complications or otherwise require emergency or life sustaining treatment.

Protection of families and children (section 26 of the HR Act)

- The right to *protection of families and children* recognises that families are the fundamental group of society and entitles families to protection by the society and the State. The meaning of families is broad and recognises that families take many forms and accommodates the various social and cultural groups in Queensland whose understanding of family may differ. Cultural, religious and other traditions will be relevant when considering whether a group of persons constitutes a 'family'.

- The right also protects the right of every child, without discrimination, to the protection that is needed by the child and is in the child's best interests. This recognises the special vulnerability of children, and it is a right that is only held by children. The right requires the State to ensure the survival and development of every child to the maximum extent possible. It also includes the right of every person born in Queensland to a name and to have their birth registered.
- The Regulation modifies provisions in the EGP Act, EGP Regulation and QCT Act to allow for alternate options for physical attendance at meetings and physical attendance requirements. These provisions enhance the right of *protection for families and children* by ensuring that public officials, the school community and teachers are not forced to attend certain sites or meet in public forums. This will ensure that protections are in place to avoid unnecessary transmission of COVID-19, mitigate infection through reducing community exposure, and slow the rate of transmission particularly to vulnerable persons who may develop complications or otherwise require emergency or life sustaining treatment.

Consideration of reasonable limitations on human rights (section 13 of the HR Act)

- On balance, the Regulation provides fit-for-purpose legislative solutions in response to the COVID-19 public health emergency; enable continuity of access to the *right to education*; broadens the *right to freedom of movement, right to life, right to protection of families and children*; and imposes a minor justifiable limitation to the *right to recognition and equality before the law*.

Conclusion

I consider that the Regulation is compatible with the HR Act because it supports and strengthens human rights (sections 15, 16, 26 and 36 of the HR Act); and while it does limit a human right (section 19 of the HR Act), that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

GRACE GRACE
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