

**Subordinate legislation tabled  
between 20 November 2013 and  
11 February 2014**

**Report No. 30**

**Education and Innovation Committee**

**March 2014**

## **Education and Innovation Committee**

**Chair** Mrs Rosemary Menkens MP, Member for Burdekin

**Deputy Chair** Mr Ray Hopper MP, Member for Condamine

**Members** Mr Steve Bennett MP, Member for Burnett  
Mr Mark Boothman MP, Member for Albert  
Mrs Yvette D’Ath MP, Member for Redcliffe  
Mr Michael Latter MP, Member for Waterford  
Mr Neil Symes MP, Member for Lytton

**Committee Staff** Ms Bernice Watson, Research Director  
Ms Emily Booth, Principal Research Officer  
Ms Carolyn Heffernan, Executive Assistant

**Technical Scrutiny Secretariat** Mr Peter Rogers, Research Director  
Mr Michael Gorringe, Principal Research Officer  
Ms Kellie Moule, Principal Research Officer  
Ms Gail Easton, Executive Assistant

**Contact details** Education and Innovation Committee  
Parliament House  
George Street  
Brisbane Qld 4000

**Telephone** +61 7 3406 7363

**Fax** +61 7 3406 7500

**Email** [eic@parliament.qld.gov.au](mailto:eic@parliament.qld.gov.au)

**Web** [www.parliament.qld.gov.au/eic](http://www.parliament.qld.gov.au/eic)

## 1 Introduction

### Role of the Committee

The Education and Innovation Committee (the committee) is a portfolio committee established by the Legislative Assembly on 18 May 2012.<sup>1</sup> It consists of government and non-government members. The committee's primary areas of responsibility are education, training, employment, science, information technology, innovation and the arts.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each Bill and item of subordinate legislation in its portfolio area to consider:

- a) the policy to be given effect by the legislation,
- b) the application of fundamental legislative principles to the legislation, and
- c) for subordinate legislation – its lawfulness.

### Aim of this report

This report advises of subordinate legislation examined and, where applicable, presents any concerns the committee has identified in respect of subordinate legislation tabled between 20 November 2013 and 11 February 2014.

## 2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
227	<i>Proclamation made under the Vocational Education, Training and Employment (Skills Queensland) and Another Act Amendment Act 2013</i>	11 February 2014	8 May 2014
228	<i>Education, Training and Other Legislation Amendment Regulation (No.1) 2013</i>		
229	<i>Education (Accreditation of Non-State Schools) Transitional Regulation 2013</i>		
262	<i>Proclamation made under the Education (Strengthening Discipline in State Schools) Amendment Act 2013</i>		
263	<i>Education (General Provisions) Amendment Regulation (No.1) 2013</i>		
264	<i>Proclamation made under the Education and Care Services Act 2013</i>		
265	<i>Education and Care Services Regulation 2013</i>		
275	<i>Public Records Amendment Regulation (No.3) 2013</i>		

<sup>1</sup> *Parliament of Queensland Act 2001*, s88 and Standing Order 194

## Fundamental legislative principles

### ***Proclamation made under the Vocational Education, Training and Employment (Skills Queensland) and Another Act Amendment Act 2013 (SL 2013 No. 227)***

The Proclamation commenced the *Vocational Education, Training and Employment (Skills Queensland) and Another Act Amendment Act 2013* on 22 November 2013. This Proclamation is machinery in nature and no issues of fundamental legislative principle were identified.

### ***Education, Training and Other Legislation Amendment Regulation (No.1) 2013 (SL 2013 No. 228)***

The Amendment Regulation amends:

- the *Education (Accreditation of Non-State Schools) Regulation 2001* and the *Education (General Provisions) Regulation 2006* to support the move of Year 7 to secondary education from 1 January 2015 and to clarify how applications for government funding eligibility by non-state schools will be dealt with before this time, and
- the *Plumbing and Drainage Regulation 2003*, *Public Sector Ethics Regulation 2010*, *Statutory Bodies Financial Arrangements Regulation 2007* and the *Vocational Education, Training and Employment Regulation 2000* to make consequential amendments to reflect the abolition of Skills Queensland.

No issues of fundamental legislative principle were identified, however, a possible drafting error was identified. Section 5 of the Amendment Regulation provides that new section 16A should be inserted “After section 16A-” of the *Education (Accreditation of Non-State Schools) Regulation 2001*. The committee believes that section 5 of the Amendment Regulation should state that new section 16A should be inserted after section 16.

#### **Recommendation 1**

That the Minister for Education, Training and Employment amends section 5 of the *Education, Training and Other Legislation Amendment Regulation (No.1) 2013* to insert new section 16A after section 16.

### ***Education (Accreditation of Non-State Schools) Transitional Regulation 2013 (SL 2013 No. 229)***

The Regulation provides for how certain applications for accreditation and changing accreditation attributes of non-state schools are to be dealt with during the transition period until Year 7 moves to secondary education in January 2015.

#### Retrospectivity

The committee is required to consider whether the legislation adversely affects rights and liberties, or imposes obligations, retrospectively.<sup>2</sup> The Regulation was notified on the Queensland legislation website on 22 November 2013, while the Regulation (section 2) notes that it commenced on 29 August 2013. It therefore has retrospective effect.

Section 34 of the *Statutory Instruments Act 1992* provides that only provisions that do not operate to the disadvantage of a person (other than the State, a State authority or a local government) may be given retrospective effect.

The Explanatory Notes state that “Although the *Transitional Regulation* applies retrospectively it does not affect rights or liberties or impose obligations retrospectively. The *Transitional Regulation* applies to particular applications made from 29 August 2013 and clarifies how those applications are to be detailed.”<sup>3</sup>

---

<sup>2</sup> *Legislative Standards Act 1992*, section 4(3)(g)

<sup>3</sup> *Education (Accreditation of Non-State Schools) Transitional Regulation 2013*, Explanatory Notes, p3

The applications that are subject to the Regulation all relate to changes that would have effect on or after 1 January 2015, the date on which Year 7 moves to secondary education. The Regulation provides that when considering such applications the Non-State Schools Accreditation Board must consider and decide the application as if Year 7 was part of secondary education.

On the basis that the Regulation provides clarity about how certain applications, which relate to changes that would take effect on or after 1 January 2015, are to be considered and dealt with, the committee considers that the Regulation complies with section 34 of the *Statutory Instruments Act 1992*, and has sufficient regard to the rights and liberties of individuals.

While it is noted that the Act commenced on 29 August 2013, and it is assumed that is why the Regulation has retrospective effect from that date, the committee considers that it would have been helpful if the Explanatory Notes addressed this issue in more detail.

***Proclamation made under the Education (Strengthening Discipline in State Schools) Amendment Act 2013 (2013 No. 262)***

The Proclamation commenced the *Education (Strengthening Discipline in State Schools) Amendment Act 2013* on 6 January 2014. The Proclamation is machinery in nature and no issues of fundamental legislative principle were identified.

***Education (General Provisions) Amendment Regulation (No.1) 2013 (SL 2013 No. 263)***

The *Education (General Provisions) Amendment Regulation (No.1) 2013* (the Amendment Regulation) amends the *Education (General Provisions) Regulation 2006* to reflect the omission of approved behaviour plans from the *Education (General Provisions) Act 2006* (the Act).

The Amendment Regulation removes reference to an ‘approved’ behaviour plan, and replaces it with a reference to a ‘behaviour plan’ made by the Principal under a policy or procedure made under section 276 of the Act. No issues of fundamental legislative principle were identified.

***Proclamation made under the Education and Care Services Act 2013 (SL 2013 No. 264)***

The Proclamation commenced the remaining provisions of the *Education and Care Services Act 2013* on 1 January 2014. No issues of fundamental legislative principle were identified.

***Education and Care Services Regulation 2013 (SL 2013 No. 265)***

The *Education and Care Services Regulation 2013* (the Regulation) establishes a regulatory framework for Queensland education and care services, that is, the 2 per cent of services in Queensland regulated under the *Education and Care Services Act 2013*, rather than the *Education and Care Services National Law (Queensland) Act 2011* (the National Law). They include limited hours care services in receipt of Queensland Government funding, occasional care services, budget based funded services that do not receive the Australian Government child care benefit, and early childhood education and care services that are also disability services.<sup>4</sup>

The Regulation commenced on 1 January 2014 and prescribed the detailed requirements about operating a Queensland education and care service, such as staffing levels, qualifications, record keeping requirements, fees payable, hygiene, food safety and the provision of medical attention.

Fees

The Regulation prescribes application fees, for example for approval to become a Queensland provider, for waivers and for the lifting of a suspension of a service provider approval (Schedule 1).

The Explanatory Notes state that “[t]hese fees are consistent with the fees in the *Child Care Regulation 2003* and will not result in Queensland education and care services paying more fees than

---

<sup>4</sup> *Education and Care Services Regulation 2013*, Explanatory Notes, p2

they currently pay.”<sup>5</sup> While the Regulation includes new fees, for example, an annual service approval fee, the Explanatory Notes state that “... the overall fee burden is not increased for services.”<sup>6</sup>

As the fees in the Regulation are consistent with existing fees and that the overall fee burden on service providers is not increased, the committee considers that on balance the fees prescribed in the Regulation have sufficient regard to the rights and liberties of existing and future service providers.

#### Offences and Penalties – proportion and relevance

The Regulation creates a number of offences and specifies associated penalties. The OQPC Notebook states, “[l]egislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.”<sup>7</sup>

The Explanatory Notes acknowledge that for some of these offences there is no defence of reasonable excuse.<sup>8</sup> For instance, the defence of reasonable excuse does not apply to section 15 (ensuring children have access to safe drinking water and are offered food and beverages appropriate to their needs) and section 17 (environment must be free from the use of alcohol, illicit drugs and tobacco).

The Explanatory Notes state that other defences are available for these offences under section 36 of the Criminal Code such as a mistake of fact and extraordinary emergencies.<sup>9</sup> The Explanatory Notes also suggest that the fact that the penalty for each offence is no more than 10 penalty units (\$1,100) mitigates any concerns about not providing a defence of reasonable excuse. It is also noted that this approach reflects the approach taken in the National Law.

The committee considers that, on balance, the offences and associated penalties in the Regulation are justified in the circumstances and, therefore, have sufficient regard to the rights and liberties of individuals.

A possible drafting error has been identified at section 69(2). This section refers to “items 22 and 23” in Schedule 4 to the Regulation however, Schedule 4 to the Regulation does not list an item 23.

#### **Recommendation 2**

That the Minister for Education, Training and Employment amends section 69(2) of the *Education and Care Services Regulation 2013* to remove reference to Schedule 4, item 23.

#### ***Public Records Amendment Regulation (No.3) 2013 (SL 2013 No. 275)***

The *Public Records Amendment Regulation (No.3) 2013* amends the *Public Records Regulation 2004* to provide that the Department of Justice and Attorney-General will be responsible for the public records of the Queensland Racing Commission of Inquiry, once the Commission ceases to exist. No issues of fundamental legislative principle were identified.

#### Explanatory Notes

The Explanatory Notes tabled with the subordinate legislation outlined above are considered to comply with part 4 of the *Legislative Standards Act 1992*.

---

<sup>5</sup> *Education and Care Services Regulation 2013*, Explanatory Notes, p4

<sup>6</sup> Ibid

<sup>7</sup> Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p120

<sup>8</sup> *Education and Care Services Regulation 2013*, Explanatory Notes, p8

<sup>9</sup> Ibid

### 3 Recommendation

The committee has examined the policy to be given effect by the subordinate legislation, the application of fundamental legislative principles and lawfulness and has not identified any significant issues.

**Recommendation 3**

That the House notes the contents of this report.