

**Subordinate legislation tabled
between 12 February 2014 and
6 May 2014**

Report No. 33

Education and Innovation Committee

May 2014

Education and Innovation Committee

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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 2012.¹ 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 12 February 2014 and 6 May 2014.

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
16	<i>Education (Accreditation of Non-State Schools) Amendment Regulation (No. 1) 2014</i>	4 March 2014	22 May 2014

Fundamental legislative principles

The objective of the *Education (Accreditation of Non-State Schools) Amendment Regulation (No. 1) 2014* (the Amendment Regulation) is to ensure that the definition of school survey data in legislation is consistent with data required to be provided to the Non-State Schools Accreditation Board (NSSAB) by schools. The NSSAB collects data annually from non-state schools, to inform the calculation of allowances paid by the Minister for Education, Training and Employment.²

The Amendment Regulation:

- prescribes information that must be provided to the NSSAB,
- expands the school survey data required to be provided for funding purposes from enrolled students, to those who have attended a school regularly during the relevant period, and
- explains how to establish whether a student is attending a school based on current funding policy.

The Explanatory Notes advise that “... *the Amendment Regulation does not change the amount of data that governing bodies of non-state schools are required to provide.*” Rather, it ensures that legislation is aligned with data that is already provided.³

Isolated zones

A portion of special needs funding for non-state schools is calculated based on the number of students that live in isolated zones. The Amendment Regulation introduces a map to effectively define isolated zones. The map would not be included in the Amendment Regulation, however the

¹ *Parliament of Queensland Act 2001*, s88 and Standing Order 194

² Explanatory Notes, *Education (Accreditation of Non-State Schools) Amendment Regulation (No. 1) 2014*, p1

³ Explanatory Notes, *Education (Accreditation of Non-State Schools) Amendment Regulation (No. 1) 2014*, p3

map title and a link to the NSSAB's website – where the map would be published - would be (clause 3, new section 14C(4)).

The Amendment Regulation, in providing for the details of isolated zones to be included in a map and published separately from the Amendment Regulation, may not sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly (*Legislative Standards Act 1992*). The Explanatory Notes acknowledge the potential breach and justify the provision based on the:

- level of detail required to be included in the map,
- frequency of changes required to be made to the map,
- complexity in determining isolated zones, and
- availability of the map on the NSSAB website.⁴

The committee considered whether (and where) criteria were available that described how isolated zones are defined; and whether the funding policy provided more detail on how isolated zones were defined.⁵ In response to a request from the committee, the Minister provided a copy of the State Recurrent Grant policy and information on how non-state school funding is calculated.

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*.

Committee comment

The committee notes that the Amendment Regulation ensures that the definition of school survey data is consistent with data required to be provided to the NSSAB and that it does not increase the amount of data that non-state schools are required to provide.

The committee notes that information describing isolated zones will not be included in the Amendment Regulation. While it is preferred that information essential to the interpretation of a regulation be contained within the regulation, the committee is also aware that this is not always possible, for example, due to the nature of information being communicated.

With regard to the description of isolated zones, the committee is satisfied that the title of the isolated zone map and a website reference is provided in the regulation. The committee considers it unlikely that this information can be provided in any other meaningful way and the identified potential breach of fundamental legislative principles is justified.

3 Recommendation

The committee has examined the policy to be given effect by the subordinate legislation and the application of fundamental legislative principles and lawfulness. One potential breach of fundamental legislative principle was identified. It was examined in more detail by the committee and considered justified in the circumstances.

Recommendation 1

The committee recommends that the House notes the contents of this report.

⁴ Explanatory Notes, *Education (Accreditation of Non-State Schools) Amendment Regulation (No. 1) 2014*, p4

⁵ *Education (General Provisions) Act 2006*, s368(1)(b)