

**Subordinate legislation tabled
between 7 May 2014 and
5 August 2014**

Report No. 38

Education and Innovation Committee

August 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
Mr Michael Latter MP, Member for Waterford
Dr Anthony Lynham MP, Member for Stafford
Mr Neil Symes MP, Member for Lytton

Committee staff Ms Bernice Watson, Research Director
Ms Melissa Salisbury, Principal Research Officer
Ms Carolyn Heffernan, Executive Assistant

Technical Scrutiny Secretariat Ms Renee Easten, Research Director
Mr Michael Gorringe, Principal Research Officer
Ms Tamara Vitale, Executive Assistant

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

Telephone +61 7 3406 7363

Fax +61 7 3406 7070

Email eic@parliament.qld.gov.au

Web 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 2012.¹ 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 7 May 2014 and 5 August 2014.

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
100	<i>Proclamation made under the TAFE Queensland (Dual Sector Entities) Amendment Act 2014</i>	5 August 2014	30 October 2014
101	<i>TAFE Queensland Amendment Regulation (No.1) 2014</i>		
102	<i>Proclamation made under the Further Education and Training Act 2014</i>		
103	<i>Further Education and Training Regulation 2014</i>		
125	<i>Proclamation made under the Education (Queensland Curriculum and Assessment Authority) Act 2014</i>		
126	<i>Education (Queensland Curriculum and Assessment Authority) Regulation 2014</i>		

Fundamental legislative principles

Three of the pieces of subordinate legislation (No. 100, 102, and 125) are proclamations to fix a commencement date for the:

- *TAFE Queensland (Dual Sector Entities) Amendment Act 2014*
- *Further Education and Training Act 2014*
- *Education (Queensland Curriculum and Assessment Authority) Act 2014*

These proclamations are machinery in nature and no issues of fundamental legislative principle were identified.

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

TAFE Queensland Amendment Regulation (No.1) 2014 (SL No. 101)

In September 2013, the Queensland Government entered into a merger agreement with CQUniversity to establish a dual sector entity at the university from 1 July 2014. The entity will be established by merging the Central Queensland Institute of TAFE (CQIT) with CQUniversity. CQIT is currently operated by the Department of Education, Training and Employment (DETE) as a TAFE Institute under Chapter 6 of the *Vocational Education, Training and Employment Act 2000* (VETE Act).

The objective of the *TAFE Queensland Amendment Regulation (No. 1) 2014* is to:

- prescribe CQUniversity, established under section 4 of the *Central Queensland University Act 1998*, as a dual sector entity
- prescribe \$3 million as the amount for a significant action under section 570 of the *TAFE Queensland Act 2013*
- provide for the transfer of assets, liabilities, student enrolments and other matters from CQIT to CQUniversity in accordance with the merger agreement.

Committee comment

The committee notes that no issues of fundamental legislative principle were detected.

The committee also notes that setting the amount of \$3 million as the amount for a 'significant action' under section 570 of the *TAFE Queensland Act 2013* means that assets valued at over \$3 million cannot be sold, leased or mortgaged by the entity without giving notice to the minister unless that significant action is contained in the entity's current operational plan. Notice to the minister of planned actions (such as sale, lease or mortgage) involving assets valued at less than \$3 million is not required.

Further Education and Training Regulation 2014 (SL No. 103)

The objective of the *Further Education and Training Regulation 2014* is to prescribe:

- additional matters which can be included in a declaration of an apprenticeship and traineeship
- training records required to be kept, updated or produced by apprentices and trainees and
- fees payable by persons requesting an extract from the training register and copies of certain documents relating to an apprenticeship or traineeship.

Committee comment

The committee is satisfied with this regulation.

Education (Queensland Curriculum and Assessment Authority) Regulation 2014 (SL No. 126)

On 19 February 2014, the *Education (Queensland Curriculum and Assessment Authority) Act 2014* (QCAA Act) received Royal Assent. Section 2 of the Act provides for commencement on a day to be fixed by proclamation. The Proclamation commenced the QCAA Act on 1 July 2014 (as mentioned above).

The QCAA Act establishes the Queensland Curriculum and Assessment Authority (the Authority) and provides for a range of curriculum and related functions including: developing, purchasing or revising school syllabuses; supporting the implementation of syllabuses and the Australian Curriculum; testing; moderation; certification; tertiary entrance ranking; and administration of student accounts.

The Authority replaces the Queensland Studies Authority (the QSA), which operated under the *Education (Queensland Studies Authority) Act 2002* and the *Education (Queensland Studies Authority) Regulation 2002* (the QSA Regulation).

The Regulation requires ten matters to be the subject of guidelines developed by the Authority. The areas these guidelines cover include:

- literacy and numeracy requirements for eligibility for a QCE
- matters relating to contributing studies, including
 - categories of, and criteria for, contributing studies
 - credit value for contributing studies
 - required standard of achievement for contributing studies
 - criteria for partial completion of contributing studies
 - required pattern for credits
 - criteria for recognising particular studies as contributing studies (for other non-Queensland studies)
 - criteria for recognising particular studies as contributing studies (for particular studies)
- completion of tertiary entrance subjects
- tertiary entrance ranking procedures.

Section 4(4)(a) of the *Legislative Standards Act 1992* provides that delegation of legislative power should occur only in appropriate cases and to appropriate persons. As noted in the Office of the Queensland Parliamentary Counsel Fundamental Legislative Principles Notebook, this matter is concerned with the level at which delegated legislative power is used.

Generally, the greater the level of political interference with individual rights and liberties, or the institution of Parliament, the greater the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament.

The *Education (Queensland Curriculum and Assessment Authority) Regulation 2014* includes ten provisions where matters are subject to guidelines. The subject matter of these guidelines is important and it is therefore arguable that their content should appear in the regulation itself.

The Explanatory Notes (at page 9) address this issue as follows:

Guidelines may be considered an inappropriate delegation of legislative power or a failure to subject an exercise of delegated legislation to Parliamentary scrutiny. It is considered that the use of guidelines in this case is appropriate as they relate to areas which, due to their detailed or highly technical nature, are unable to be appropriately reflected in the Regulation. The use of guidelines has been reduced from 28 matters in the QSA Regulation to the ten matters under this Regulation.²

Committee comment

The committee notes that there are ten matters which will be subject to guidelines developed by the QCAA that will be listed outside of the 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.

The committee is satisfied that, due to the detail or highly technical nature of the ten matters, they are unable to be appropriately reflected in the regulation and the identified potential breach of fundamental legislative principles is justified. The committee suggests that the QCAA be required to ensure the guidelines are readily accessible and prominent on the QCAA website.

² *Education (Queensland Curriculum and Assessment Authority) Regulation 2014*, Explanatory Notes, p9.

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

While the Explanatory Notes are considered to comply with requirements, the committee would like to suggest that Explanatory Notes refer to which specific provisions of an Act are being commenced through a proclamation, for greater clarity.

3 Recommendation

Recommendation 1

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