

## Education, Employment and Small Business Committee

### Report No. 33, 56<sup>th</sup> Parliament

#### Subordinate legislation tabled between 18 March 2020 and 22 April 2020

#### 1 Aim of this report

This report summarises the committee's findings following its examination of the subordinate legislation within its portfolio areas tabled between 18 March 2020 and 22 April 2020. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles and lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992*.<sup>1</sup>

The report details any issues identified by the committee in its consideration of the human rights certificate tabled with the subordinate legislation.<sup>2</sup>

#### 2 Subordinate legislation examined

No.	Subordinate legislation (SL)	Date tabled	Disallowance date
46	Education (Queensland Curriculum and Assessment Authority) Amendment Regulation (No. 1) 2020	22 April 2020	9 September 2020

\*Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

#### 3 Committee consideration of the subordinate legislation

No significant issues regarding policy, consistency with fundamental legislative principles or the lawfulness of the subordinate legislation were identified. The committee considers explanatory notes tabled with the subordinate legislation comply with the requirements of section 24 of the *Legislative Standards Act 1992*.

The committee considers that SL No. 46 raises one human rights issue as detailed below:

- Right to education – Section 36 of the *Human Rights Act 2019* (HRA).

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

#### 4 Education (Queensland Curriculum and Assessment Authority) Amendment Regulation 2020:

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

<sup>1</sup> *Legislative Standards Act 1992*, Part 4.

<sup>2</sup> *Human Rights Act 2019*, s 41.

- amends s 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 notice stating the authority’s decision’
- amends s 62 of the QCAA Regulation to clarify which tests may be reassessed by the QCAA
- makes a technical amendment to include a new division and heading in the QCAA Regulation that will ensure a relevant section is correctly categorised and separated from the previous sections.<sup>3</sup>

The Queensland Curriculum and Assessment Authority (QCAA) is a statutory authority established under the *Education (Queensland Curriculum and Assessment Authority) Act 2014* (QCAA Act) that performs an important role in ensuring consistent and quality education in Queensland schools.<sup>4</sup> The QCAA’s functions include:

- developing and revising syllabuses for Queensland schools
- testing and assessing senior students; keeping of student accounts
- issuing certificates of achievement to senior students.<sup>5</sup>

In 2018, the QCAA Act was amended to provide the QCAA with the function and powers to support the introduction of new senior assessment tertiary entrance systems (SATE systems), which commenced for the 2019 Year 11 cohort of students.<sup>6</sup> Amendments were made to the QCAA Regulation in 2019 to support new provisions in the QCAA Act and for the QCAA to implement and operationalise the new SATE systems.<sup>7</sup>

The 2019 amendments to the QCAA Regulation included changes to review processes to accompany the new SATE systems. These processes allow a school to ask for an internal review about a moderation decision for internal senior assessments (ISAs) and a student may request an external review to the Queensland Civil and Administrative Tribunal (QCAT) about a decision to reassess an external senior assessment (ESA) at a lower mark. There is no right to an internal or external review (apart from judicial review for all QCAA decisions), for all other matters.<sup>8</sup>

In addition to these review processes, section 157 of the QCAA Regulation provides the ability for a student to request the QCAA undertake a verification of the accuracy of the information in their statement of results. Section 159(2) of the QCAA Regulation required the QCAA to issue an information notice of its decision. This requirement however, allowed for both an internal QCAA review and external review to QCAT of the decision, and provided ‘unanticipated avenues of additional internal and external review beyond those which were identified as appropriate for the new assessment and examination processes’.<sup>9</sup> The Amendment Regulation therefore amends s 159(2) of the QCAA Regulation to reflect the intended review processes in the new SATE systems.<sup>10</sup>

In addition, the Amendment Regulation clarifies which tests may be reassessed by the QCAA under s 62 as the current wording may lead to some confusion as to whether the reassessment applies to

---

<sup>3</sup> Education (Queensland Curriculum and Assessment Authority) Amendment Regulation (No. 1) 2020 (Amendment Regulation), explanatory notes, p 1.

<sup>4</sup> Amendment Regulation, explanatory notes, p 2.

<sup>5</sup> Amendment Regulation, explanatory notes, p 2.

<sup>6</sup> Amendment Regulation, explanatory notes, p 2.

<sup>7</sup> Amendment Regulation, explanatory notes, p 2.

<sup>8</sup> Amendment Regulation, explanatory notes, p 2.

<sup>9</sup> Amendment Regulation, explanatory notes, p 2.

<sup>10</sup> Amendment Regulation, explanatory notes, p 3.

both internal and external assessments. The section is intended to apply only to external senior assessments and external senior examinations.<sup>11</sup>

The explanatory notes also provide reasons for a technical amendment to include a new division and heading in the QCAA Regulation to ensure a relevant section is correctly categorised and separated from the previous sections.<sup>12</sup>

#### **4.1 Explanatory notes**

The explanatory notes comply with part 4 of the *Legislative Standards Act 1992*.

#### **4.2 Human rights considerations**

Section 8 of the HRA provides that a statutory provision is compatible with human rights if it does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with s 13 of that Act.

Section 13 of the HRA provides that a human right may be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. Section 13 sets out a range of factors that may be relevant in deciding whether a limit on a human right is reasonable and justifiable.

In the human rights certificate accompanying the amendment regulation, the Minister states her opinion that the amendment regulation is compatible:

- with the human rights protected by the HRA, and
- with the HRA, 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.

The following issue was raised for the committee's consideration.

#### Right to education – section 36 *Human Rights Act 2019*

Under s 36(1) of the HRA, every child has the right to have access to primary and secondary education appropriate to the child's needs.

The regulation removes the right to an internal or external review relating to the verification of information in a Queensland certificate of individual achievement or statement of results. This could be seen to indirectly limit a student's right to education, through the removal of the QCAA's decision that reflects the final subject result for their senior secondary education.

The Minister for Education and Minister for Industrial Relations (the Minister) explained that there are a number of other avenues for review or reassessment prior to the application for verification of information.<sup>13</sup> The decision is also subject to judicial review.

The Minister stated:

*... 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 [internal senior assessments] and ESAs [external senior assessments]; and on the grounds that section 157 of the QCAA Regulation [Education (Queensland Curriculum and Assessment Authority) Regulation 2014] 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.*

---

<sup>11</sup> Amendment Regulation, explanatory notes, p 3.

<sup>12</sup> Amendment Regulation, explanatory notes, p 3.

<sup>13</sup> Amendment Regulation, human rights certificate, p 2.

*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.*<sup>14</sup>

Committee comment

The committee considers that any limitation on human rights is reasonable and demonstrably justified.

**4.3 Human rights certificate**

Section 41 of the HRA requires that the responsible Minister for the subordinate legislation must prepare a human rights certificate for the legislation.

A human rights certificate was tabled with the subordinate legislation. The certificate contained a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

**5 Recommendation**

The committee recommends that the House notes this report.



Ms Leanne Linard MP  
**Chair**

June 2020

**Education, Employment and Small Business Committee**

Chair	Ms Leanne Linard MP, Member for Nudgee
Deputy Chair	Mr Jim McDonald MP, Member for Lockyer
Members	Mr Bruce Saunders MP, Member for Maryborough
	Mrs Simone Wilson MP, Member for Pumicestone
	Mr Michael Healy MP, Member for Cairns
	Mr Nick Dametto MP, Member for Hinchinbrook

---

<sup>14</sup> Amendment Regulation, human rights certificate, p 3.