

Education, Employment and Training Committee

Report No. 17, 57th Parliament

Subordinate legislation tabled between 13 October 2021 and
30 November 2021

1 Aim of this report

This report summarises the findings of the Education, Employment and Training Committee (the committee) following its examination of the subordinate legislation within its portfolio areas tabled between 13 October 2021 and 30 November 2021. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, its consistency with fundamental legislative principles (FLPs),¹ its compatibility with human rights,² and its lawfulness.³ It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA),⁴ and the compliance of the human rights certificate with the *Human Rights Act 2019* (HRA).⁵

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
167	Education (General Provisions) (Prescribed State Schools) Amendment Regulation 2021	30 November 2021	12 May 2022

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

¹ Section 4 of the *Legislative Standards Act 1992* states that FLPs are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to: a) the rights and liberties of individuals, and b) the institution of Parliament.

² Section 8 of the *Human Rights Act 2019* (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 the HRA. 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 determining whether a limit on a human right is reasonable and justifiable.

³ *Parliament of Queensland Act 2001*, s 93.

⁴ LSA, part 4. Section 24 sets out the information that must be included in the explanatory notes for subordinate legislation which is required to be tabled in the Legislative Assembly with the subordinate legislation (LSA, s 22).

⁵ Section 41(4) of the HRA provides that the portfolio committee responsible for examining subordinate legislation may, in examining the legislation, also consider the human rights certificate prepared by the responsible Minister for the subordinate legislation. The human rights certificate, which must be tabled in the Legislative Assembly with the subordinate legislation, must state: a) whether, in the responsible Minister’s opinion, the subordinate legislation is compatible with human rights, and if so, how it is compatible; and b) if, in the responsible Minister’s opinion, a part of the subordinate legislation is not compatible with human rights, the nature and extent of the incompatibility (see HRA, s 41(1)-(3)).

3 Committee consideration of the subordinate legislation

No significant issues were identified by the committee regarding the policy, consistency with FLPs, human rights compatibility, or lawfulness of the Education (General Provisions) (Prescribed State Schools) Amendment Regulation 2021 (SL No. 167).

The committee considered that the explanatory notes tabled with the subordinate legislation comply with the requirements of part 4 of the LSA. Further, 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 the HRA.

A brief overview of the subordinate legislation is provided below.

4 SL No. 167 – Education (General Provisions) (Prescribed State Schools) Amendment Regulation 2021

4.1 Objectives

The objective of SL No. 167 is to prescribe an additional 33 state schools in Schedule 4 of the Education (General Provisions) Regulation 2017 (EGP Regulation) to enable them to provide a kindergarten learning program under s 419A of the *Education (General Provisions) Act 2006*.

The 33 state schools are in addition to the 71 state schools currently prescribed to deliver a state delivered kindergarten program.

The Queensland Government provides state delivered kindergarten programs in rural and remote locations where there is limited access to a kindergarten program. The explanatory notes stated that ‘it can be challenging for rural and remote communities and other communities experiencing vulnerability to sustain a viable kindergarten service due to difficulties attracting and retaining early childhood teachers and fluctuating cohorts of kindergarten aged children’.⁶

Twenty-two of the additional 33 state schools prescribed in the EGP Regulation by SL No. 167 to enable them to provide a kindergarten program are located at least 40 km from the nearest approved kindergarten program provider. These schools were identified as part of a program to allow state schools to provide state delivered kindergarten programs which commenced as a pilot in 2016, transitioned to an on-going program in 2018 to encompass schools at least 50 km by road from the nearest kindergarten program provider, and recently expanded to include state schools at least 40 km from the nearest kindergarten program provider. The Queensland Government committed to expanding the program in 2020 ‘in response to feedback from stakeholders and community that the 50 km distance criterion was not fully meeting the needs of children and families in rural and remote Queensland’.⁷

Eleven schools are in communities that experience unique challenges in accessing an approved kindergarten program, and were identified through community consultation.⁸ According to the explanatory notes, these schools ‘are located in communities in which the Minister may apply the discretionary criterion’ to approve a state delivered kindergarten program to schools that do not meet the 40km distance criterion and where there are barriers to accessing kindergarten.⁹

The criteria considered in determining these 11 schools included:

- little or no impact on market viability of existing services
- distance to the nearest kindergarten program provider is prohibitive to access (due to lack of transportation options, location of child’s principal place of residence, etc)

⁶ SL No. 167, explanatory notes, p 1.

⁷ SL No. 167, explanatory notes, pp 1-2.

⁸ SL No. 167, explanatory notes, p 2.

⁹ SL No. 167, explanatory notes, p 2.

- Indigenous population, including ensuring culturally appropriate programs and qualified workforce
- vulnerable community, including children from refugee and asylum seeker backgrounds and children with disability
- high risk population or community requiring additional support (eg high ratio of substance abuse or domestic and family violence)
- sustainability of the service.¹⁰

The explanatory notes advised that ‘based on Prep enrolments over the past five years’ the new state delivered kindergarten programs in the 33 locations ‘may register up to 177 children’.¹¹

5 Recommendation

The committee recommends that the Legislative Assembly notes this report.



Kim Richards MP

Chair

February 2022

Education, Employment and Training Committee

Chair	Ms Kim Richards MP, Member for Redlands
Deputy Chair	Mr James Lister MP, Member for Southern Downs
Members	Mr Mark Boothman MP, Member for Theodore
	Mr Nick Dametto MP, Member for Hinchinbrook
	Mr Barry O'Rourke MP, Member for Rockhampton
	Mr Jimmy Sullivan MP, Member for Stafford

¹⁰ SL No. 167, explanatory notes, p 4.

¹¹ SL No. 167, explanatory notes, p 2.