

Human Rights Regulation 2020

Explanatory notes for SL 2020 No. 191

Made under the

Human Rights Act 2019

General Outline

Short Title

Human Rights Regulation 2020

Authorising law

Sections 9(4)(c) and 105 of the *Human Rights Act 2019*

Policy objectives and the reasons for them

The *Human Rights Act 2019* (HR Act) came into force on 1 January 2020. One of the main objects of the HR Act is to help build a culture in the Queensland public sector that respects and promotes human rights. It does this by requiring public entities to act and make decisions in a way compatible with human rights.¹

The definition of a “public entity” in section 9 of the HR Act includes ‘an entity established under an Act when the entity is performing functions of a public nature’. Functions of a public nature include the provision of a range of services, such as emergency services, public health services, public disability services and public education (including public tertiary education and public vocational education).

At present, Queensland grammar schools, and the boards that govern them), may be inadvertently captured as either a core public entity under section 9(1)(a), or as a functional public entity under section 9(1)(f) of the HR Act. This is because Queensland grammar schools (such as Brisbane Girls Grammar, Brisbane Grammar and others) are established under the *Grammar Schools Act 2016* (Grammar Schools Act).

The Grammar Schools Act also establishes a board of trustees for each grammar school, to oversee the operation of that school. The Grammar Schools Act provides that grammar school boards are statutory bodies under the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*.

¹ Sections 3(b) and 4(b) *Human Rights Act 2019*

Capturing grammar schools and grammar school boards as public entities is inconsistent with the position, specifically provided for in section 9(1)(h) of the HR Act, that non-state schools are not to be considered public entities.

The purpose of the Regulation is to bring the application of the HR Act to grammar schools into line with its application to other non-state schools. Non-state schools are not captured by the HR Act as it is recognised that while educating students is a public function, it is not being delivered by or on behalf of the state.

The HR Act allows for the prescription by regulation of entities that are not to be public entities (section 9(4)(c)). The Regulation prescribes grammar schools, and the boards that govern them, not to be public entities. This ensures that all non-state schools, including Queensland grammar schools, are not to be considered public entities under the HR Act.

Achievement of policy objectives

The Regulation declares grammar schools, and the boards that govern them, not to be public entities under the HR Act. By doing so, it will put the ambiguity described above beyond doubt and will reflect the position that non-state schools, including grammar schools, are not to be considered public entities under the HR Act.

Consistency with policy objectives of authorising law

The Regulation is consistent with the policy objectives of the authorising law.

Inconsistency with policy objectives of other legislation

The Regulation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

There is no alternative way of achieving the policy objective.

Benefits and costs of implementation

There are no costs to Government in implementing the Regulation. The benefits of making the Regulation include clarifying current ambiguity in the application of the HR Act.

Consistency with fundamental legislative principles

The Regulation is consistent with fundamental legislative principles as set out in the *Legislative Standards Act 1992*.

Consultation

The Queensland Productivity Commission was not consulted as a self-assessment by the Department of Justice and Attorney-General determined that no Regulatory Impact Analysis is required as the regulatory proposal is excluded under category (g) of the

Queensland Government Guide to Better Regulation – regulatory proposals that are of a machinery nature.