



Queensland

Education (General Provisions) Amendment Regulation (No. 1) 2008

Regulatory Impact Statement for SL 2008 No. 281

made under the

Education (General Provisions) Act 2006

1 Short Title

Education (General Provisions) Amendment Regulation 2008.

2 Introduction

The proposed *Education (General Provisions) Amendment Regulation 2008* (the Regulation) is being developed as subordinate legislation under the *Education (General Provisions) Act 2006*, as proposed to be amended by the Higher Education (General Provisions) Bill 2008. The Regulation will introduce new fees to recover the costs incurred by the State in providing distance education services to non-State schools.

Under the *Statutory Instruments Act 1992*, if proposed subordinate legislation is likely to impose appreciable costs on the community or part of the community, a regulatory impact statement (RIS) must be prepared before the regulation is made. The purpose of this RIS is to explain the need for the new fees, how they have been calculated, how they are proposed to be implemented and to evaluate the likely costs and benefits that may arise from their implementation.

Comment is sought on information presented in this RIS. Written submissions must be received no later than 18 April 2008 and should be addressed to—

Mail—

Education (General Provisions) Amendment Regulation 2008 RIS Project
Legislative Services Unit
Department of Education, Training and the Arts
PO Box 1533
CITY EAST QLD 4002

Facsimile—

07 3237 9908

Email—

EGPARIS@deta.qld.gov.au

Submissions may be subject to Freedom of Information and other laws.

3 Background

The *Education (General Provisions) Act 2006* (the Act) commenced on 30 October 2006 following the extensive “Education Laws for the Future” review. The review was initiated by the Government to ensure that this key piece of legislation, within which the Queensland education system operates, reflects modern educational practice. The majority of the Act’s provisions relate to the establishment and management of State education institutions. The Act also gives power to the chief executive to charge a range of fees including fees for “distance education provided by a State school” (section 52).

The Department of Education Training and the Arts currently operates seven schools of distance education.¹

Broadly, there are four main user groups that access distance education services through State schools of distance education (SSDE)—

- 1 Students who are unable to attend a local State school for reasons including geographical isolation, the person’s state of health, living an itinerant lifestyle or due to carer responsibilities. Section 53 of the Act operates to exempt students in these (and some other) circumstances from the fee payable under section 52 of the Act.

1 Brisbane School of Distance Education, Cairns School of Distance Education, Capricornia (Emerald Campus) School of Distance Education, Charleville School of Distance Education, Charters Towers School of Distance Education, Longreach School of Distance Education and Mount Isa School of the Air.

- 2 Students who choose not to attend a local State school although they have access to one. Known as “by choice” students, these students are charged \$1026 per annum to access SSDE services (as prescribed under section 69 of the *Education (General Provisions) Regulation 2006*).
- 3 State-school-based students – State schools enrol their students in SSDE for reasons of teacher unavailability, timetable clashes or to extend subject offerings to their students because subject demand in the school is too low to warrant the subject being offered in the classroom setting. State school students are expressly excluded from the application of section 52 of the Act due to fact that the State meets the cost of the provision of this service.
- 4 Non-State school-based students – Non-State schools access SSDE for similar reasons to State schools. Currently, only three SSDE provide distance education services to non-State school students – Brisbane School of Distance Education, Cairns School of Distance Education and Charters Towers School of Distance Education.

At present, the State funds the provision of SSDE to both State school based-students and non-State school-based students. The purpose of the proposed Regulation is to address this inequity and ensure the efficient allocation of State education resources.

Current Non-State School use of State Supplied Distance Education

In 2007, approximately 695 students from 140 secondary and 2 primary non-State schools across Queensland accessed distance education services through SSDE.² This represented approximately 45% of all school-based SSDE enrolments. For secondary schools, this equated to just over 0.7% of the total non-State school secondary enrolments in Queensland.

The 695 students were enrolled in a total of 751 subjects, with approximately 77% of students enrolled in senior subjects (years 11-12), 22% in junior subjects (years 8-10) and less than 1% in primary subjects (year 7). Of the total subject enrolments, approximately 33% were language other than English (LOTE) subjects. Aside from LOTE, the other subjects with the highest number of enrolments included Ancient History, Mathematics C, Accounting and Economics at the senior level, and

2 Departmental Data, September 2007.

Graphics, Music and Information Communication Technology Information Education at the junior level.

Approximately 85% of the non-State school students accessing SSDE services in 2007 were located either in south-east Queensland (in locations such as Brisbane, the Sunshine Coast, the Gold Coast, Ipswich and Toowoomba), or in or near a Regional Centre (in locations such as Townsville, Mackay, Gladstone and Hervey Bay). The remaining 15% were located in a Rural or Remote area. These areas include locations such as Mount Isa, Thursday Island, Mareeba, Roma, Warwick and Gympie.³

Across the State, Catholic schools appear to be the largest single non-State school user group.⁴ In 2007, approximately 30% of non-State schools accessing distance education through SSDE had only one student enrolled, with the average number of SSDE enrolments per non-State school being slightly less than five. Of particular note, only one of the top ten non-State school users of SSDE in 2007 was located in a Rural or Remote area (Gympie). The top ten schools ranged from a school in Townsville with 45 students enrolled in 60 subjects, to a school in Ipswich with 14 students enrolled in 14 subjects.

The majority of non-State school students accessing distance education services through a SSDE are enrolled in one subject. In 2007, of the 7% of students that were enrolled in more than one subject, 88% were in years 11-12. Of the 24 non-State schools with students enrolled in two subjects, approximately 92% were located in either south-east Queensland or in or near a Regional Centre. Of the 4 non-State schools with students enrolled in three subjects, only one is located in a Rural area.

The Brisbane SSDE is the primary provider of distance education programs to non-State schools, with 676 non-State school enrolments in 2007.⁵ The Brisbane SSDE generally limits each student to two distance education subjects (although a small number are currently enrolled in three), and each base school's placement is limited to eight students per subject per year

3 Schools were classified as being located in south-east Queensland, a Regional Centre or a Rural or Remote area according to the Schools Directory maintained by the Department.

4 In 2007, Catholic schools represented approximately 39% of the total non-State schools that used SSDE.

5 In 2007, the Cairns School of Distance Education had 5 non-State school enrolments and the Charters Towers School of Distance Education had 14 non-State school enrolments. All other SSDE (Capricornia, Charleville, Longreach and Mount Isa) had only State school enrolments.

level. Each student's host school (State or non-State) is required to provide some level of teacher supervision or assistance to its SSDE-placed students.

Currently, State and non-State schools that access SSDE are charged a resource levy of up to \$300 per student per annum, depending on the subject taken (for example science based subjects attract a higher resource levy due to the need for laboratory materials). However, no teaching or overhead costs are recouped from non-State schools even though the non-State school still receives State and Commonwealth Government funding for the student as if they were receiving their full general education program at that non-State school. Non-State schools also charge student tuition fees.

Previous consultation on proposal to charge for non-State school use of State supplied distance education

The proposal to charge non-State schools that access SSDE has been under review for quite some time, with the first round of State-wide consultations undertaken by the then Department of Education and the Arts at the end of 2004. State and non-State school stakeholders (including parent representative bodies) were also consulted through an independent Public Benefit Test (PBT) review⁶ in 2006 regarding the concept of charging for services previously provided free of charge. During this latest consultation, stakeholders were advised that fees would most likely be determined on a cost recovery basis (though the quantum of the fees was not known at that time). The PBT review examined potential competition restrictions of the then draft Education (General Provisions) Bill 2006 and included an assessment of the proposal to charge non-State schools for accessing State supplied distance education.

The PBT found that the proposal was not restrictive of competition.⁷ Furthermore, the PBT found that the proposal *“has the advantage of ensuring that non-State schools use State distance education services efficiently – that is, having full regard to the costs of the services. However because the number of non-State school students involved is very low – less than 1% of the non-State school secondary student population – the positive and negative effects of the legislative provision are likely to be very*

6 *Draft Education Bill 2006 Public Benefit Test*, Economic Associates Pty Ltd, 31 March 2006.

7 Note 6, pp ix, 35.

small. Where hardship might arise negative impacts could be minimised by suitable fee waivers. ... (The proposal) will also have the effect of removing the current anomaly such that charges for State distance education services are not competitively neutral between the State and non-State schools that use those services”.^{8 9}

Costing methodology for proposed fee structure

Distance education provides school-based students with flexibility and choice through an “anywhere, anytime” approach to learning.

The proposed fees for non-State school students enrolled at a SSDE are—

- for any LOTE subject (regardless of year level) – \$2947 per student, per annum; and
- for any senior subject other than LOTE – \$2543 per student, per annum; and
- for any junior subject other than LOTE – \$1939 per student, per annum.

There is no fee proposed for primary subjects other than LOTE as these subjects are not offered to non-State school students through SSDE.

The proposed fees have been calculated on a cost recovery basis in accordance with the Government’s *Principles for Fees and Charges*¹⁰, relevant Queensland Treasury guidelines and competitive neutrality provisions.

In calculating the full cost of providing a distance education subject to a school-based student (whether State or non-State), both direct and indirect costs were assessed. A significant proportion of the direct costs of providing a distance education subject relate to the lower student-to-teacher ratio for these subjects. The lower student-to-teacher ratio for distance education provides students with the opportunity for one-on-one teacher contact via telephone, email, web-based interaction (only available for some subjects), tutorial sessions and assessment

8 Note 6, p ix.

9 The aim of competitive neutrality policy is to ensure, that where a government business is competing with the private sector, adjustments are made to remove any net advantage (or disadvantage) that the government business has because it is owned by government.

10 Endorsed by the Queensland Government in 2002.

feedback. Indirect costs of distance education include the costs associated with providing teaching support, administration costs, public servant salaries, school grants, depreciation and maintenance.

The cost of providing a LOTE subject by distance education is higher than that of other distance education subjects due to the even lower student-to-teacher ratio for these subjects. Due to the complexity of LOTE subjects, school-based distance education students receive an enhanced level of service including scheduled lessons by telephone.

It also should be noted that the proposed fees for non-State schools are significantly higher than the \$1026 fee currently charged to home-based students who access SSDE “by choice” (*Education (General Provisions) Regulation 2006*, section 69). The “by choice” fee applies to students whose parents have decided will receive their State education via distance education. These students would otherwise attend their local State school. The fee was introduced as a measure designed to bring fairness into the system and defray the higher cost of providing these students with their State education via distance education. It was also introduced to encourage “by choice” families to use their local school and to enable an enhanced level of service to be provided to those who are willing to pay the fee. The “by choice” fee was not intended to recover the full cost of providing instruction to these students by distance education. This was noted by the Minister for Education, Training and the Arts in the Second Reading Debate of the Education (General Provisions) Bill 2006, “*Overall, the fees are intended to partially defray some of the cost of providing the special support required to assist those families who elect to educate their children at home; it does not cover the full cost.*”¹¹

Implementation of proposed fee structure

It is intended to implement the proposed new fee structure in time for the commencement of semester 1, 2009. The fees will be payable in respect of all new non-State school enrolments in a subject in any year level after the commencement of the fee structure.

However, to ensure that the introduction of the fees does not disadvantage students currently enrolled in senior subjects in achieving their Queensland Certificate of Education, it is proposed to provide a transitional exemption for students enrolled in year 12 in 2009. Under the proposed exemption,

11 Hon. Minister for Education, Training and the Arts, Rod Welford, Education (General Provisions) Bill, Second Reading Debate, 8 August 2006, p 2644 Hansard.

non-State schools will receive an exemption for students who were enrolled in the relevant subject in 2008 and continue their enrolment in semester 1, 2009 and beyond.

The fees will be payable by non-State schools in respect of any other student (year 7 -11) regardless of whether the student was enrolled in the subject prior to the commencement of the fees, or whether they undertake a distance education subject for the first time in 2009.

It should be noted that there will be capacity under the Regulation for pro-rata payment of the annual fee for students who enrol in a subject part-way through the year, and capacity for a pro-rata refund of the fee for students who withdraw from the subject in appropriate circumstances.

Use of State-supplied distance education services by non-State schools in other Australian jurisdictions

All jurisdictions, other than the Australian Capital Territory, provide State-supplied distance education services to non-State schools. Each of these jurisdictions charge fees for the provision of distance education to non-State schools (other than Tasmania, as there are currently no non-State school students enrolled in Distance Education Tasmania). However, the fees charged in those jurisdictions are not considered comparable to the proposed fees on the basis that it is not possible to determine the basis on which the fees in those jurisdictions have been calculated.

4 Authorising Law

Section 52 (Fee for distance education provided by a State school) of the Act provides the head of power to charge non-State schools for accessing SSDE. A minor amendment to section 52 is currently being progressed as part of the Higher Education (General Provisions) Bill 2008 to clarify the head of power and give effect to its original policy intent.

5 Policy Objectives

The policy objective is to ensure the efficient and equitable use of State education resources.

This objective is consistent with the goal of Government to “continue to place a priority on the provision of schools of distance education assistance

to students who have little or no educational choice because of their geographic isolation, their medical or other family circumstances”.¹²

6 Legislative Intent

The State is currently providing non-State schools with access to SSDE either free of charge or for a nominal contribution (in the form of resource levies) that does not reflect the actual cost of providing the service.

The proposed Regulation will introduce the following new fees in respect of non-State school students enrolled at a SSDE—

- for any LOTE subject (regardless of year level) – \$2947 per student, per annum;
- for any senior subject other than LOTE – \$2543 per student, per annum; and
- for any junior subject other than LOTE – \$1939 per student, per annum.

The introduction of this fee structure will give effect to the policy intent underpinning section 52 of the Act to enable the State to recover the full cost of providing distance education to non-State school students.

The legislative intent is that the fee will be payable by the student’s school, unless waived under section 54 of the Act.¹³

Non-State schools are funded through grants provided by both the State and Commonwealth Governments. In addition to this government funding, non-State schools have the option of charging per student fees. As these grants and fees are not abated proportionately when a non-State student enrolls in an SSDE subject, it would be reasonable to expect that the non-State school could absorb the cost of the new fees.

7 Consistency with Authorising Law

Subject to Parliament’s consideration of the Higher Education (General Provisions) Bill 2008, the proposed Regulation will be consistent with the

12 Hon. Minister for Education, Training and the Arts, Rod Welford, Education (General Provisions) Bill, Second Reading Debate, 8 August 2006, p 2644 Hansard.

13 See section 54 of the Education (General Provisions) Act 2006 for full application.

authorising law as it will allow the State to defray the costs associated with providing SSDE services to non-State school students.

The proposed Regulation is also consistent with the overall objectives of the Act and in particular the objective “to make available to each Queensland child or young person a high-quality education...” (s.5(1)(a)). The proposal is relevant to this objective in two ways.¹⁴ Firstly, the State will continue to make distance education and other State school services available to non-State schools to ensure the widest possible subject choice for students. Secondly, charging for the service according to cost ensures that—

- (a) State school services are used by non-State schools only when necessary – in other words that they are not used by non-State schools solely for reasons of convenience or cost minimisation; and
- (b) State school services, the provision of which is resource and budget constrained, are available to students who need them. This includes students who live in isolated areas; students who for a range of reasons (for example, illness or parental work-related travel) may not be able to participate in classroom settings; and students who attend school in areas where teaching resources are limited.

8 Consistency with Other Legislation

The proposed Regulation is consistent with other legislation.

9 Options and Alternatives

This RIS considers the following two options—

Option 1 Introduce the proposed new fees. Waiver provisions will be available under section 54 of the Act. Existing resource fees will continue to be charged.

The Government currently funds approximately \$1.979 million per annum of non-State school enrolments in SSDE. Under option 1, the State will be able to recover these costs, and non-State schools will use SSDE services more efficiently. As a result of having to pay for SSDE services, non-State schools will be more likely to use these services only when necessary (and

¹⁴ Note 6, p 20.

not for reasons of convenience or cost minimisation).¹⁵ Further, the fact that only 0.7% of non-State school secondary students currently access SSDE (even less for primary) means the overall impact of this option will be small. Where hardship might arise, negative impacts will be able to be minimised by section 54 fee waivers. A summary of the anticipated costs and benefits of this option (as assessed against option 2) is considered in section 10, below.

Option 2 Do not introduce the proposed new fees.

This option is not preferred as the legislative intent of section 52 of the Act will not be achieved. Under this option, non-State (and State) schools will continue to be charged resource fees, but the State will continue to fund both State and non-State schools who access SSDE.

Previous consideration of other possible options

It is noted that the PBT Review considered a third option, which was to reduce the allocation of funding to non-State schools based on the proportion of State-provided services accessed by the non-State school sector. This option would reduce funding to the non-State school sector as a whole to reflect the costs of services provided to the sector by State schools of distance education. This option was not considered to be feasible for a number of reasons, including that it would have the effect of drawing funding away from those schools that do not rely on distance education; it would provide no incentive to non-State schools to use SSDE services efficiently and it would be difficult to justify given the relatively small number of non-State school students accessing SSDE services. This option also has the disadvantage of necessitating the renegotiation of long standing arrangements for funding of the non-State school sector.¹⁶ For these reasons, this option has not been considered for the purpose of this Regulatory Impact Statement.

10 Cost/Benefit Assessment

Impacts on stakeholders are summarised in the following table, relative to the current situation.

¹⁵ Note 6, p 20.

¹⁶ Note 6, pp vii, 31.

Option 1 (assessed against Option 2, the status quo)

Stakeholder	Cost	Benefit
<p>Non-State Schools (NSS)</p>	<p>The introduction of the proposed new fee structure may result in some schools choosing not to extend their subject offerings through use of distance education provided by SSDE.</p> <p>The impact of the fees is potentially greater for schools where teaching resources are limited (e.g. smaller, less affluent, rural or remote schools). However, given that rural or remote schools represent only 15% of the total non-State schools using the service (impacting on only around 0.1% of the overall NSS population), and the fact that these schools are more likely to be able to obtain a waiver under section 54, any impact is likely to be very small.</p> <p>In terms of other schools that rely heavily on SSDE, these schools have the option of accessing the services of private providers of distance education. They may also choose to make a reciprocal arrangement with another school for the sharing of teachers, or they may decide not to extend subject offerings.</p> <p>Based on current SSDE enrolments, if no waivers are provided, the cost to non-State Schools that use SSDE services will be approx \$1.979m pa. A sensitivity analysis using waiver amounts of 5%, 10% and 15% reduces the costs to approx \$1.88m pa, \$1.78m pa and \$1.68m pa, respectively. However, due to the proposed transitional arrangements, these costs will be significantly lower in 2009. The estimated per annum amounts are also expected to reduce over time as the number of enrolments decrease due to more efficient use of SSDE services.</p> <p>There will be costs associated with administering the new fees. While these costs are unable to be quantified, they are likely to be low as only a small proportion of all enrolled non-State students access SSDE.</p>	<p>SSDE services would be provided only to those schools that place a value on them at least equal to their cost.</p> <p>The competitive environment for those schools that do not rely on SSDE will be fairer.</p>

Stakeholder	Cost	Benefit
<p>Non-State School Parents/ Students</p>	<p>To the extent non-State schools continue to access the services of SSDE or access the services of private providers of distance education or enter into reciprocal arrangements with other schools for the sharing of teachers, there will be no reduction in subject availability.</p> <p>However, if non-State schools choose to reduce their subject offerings as a consequence of the introduction of the fees, then students may be affected by reduced subject availability.</p> <p>The impact of reduced subject availability is likely to be proportionately more significant in those schools where teaching resources are limited (e.g. smaller, less affluent, rural or remote schools). However, given that rural or remote schools represent only 15% of the total non-State schools using the service, and the fact that these schools are more likely to be able to obtain a waiver under section 54, any impact is likely to be small.</p> <p>Non-State schools are funded through grants provided by both the State and Commonwealth Governments.</p> <p>In addition to this government funding, non-State schools have the option of charging per student fees.</p> <p>As these grants and fees are not abated proportionately when a non-State student enrolls in an SSDE subject, it would be reasonable to expect that the non-State school could absorb the cost of the new fees rather than passing that cost onto parents.</p>	<p>The proposal will ensure sustainable access to SSDE if their services are required.</p>
<p>State Schools and State School Parents/ Students</p>	<p>No significant impacts.</p>	<p>It is expected that the proposed Regulation will result in a more efficient and equitable application of State school resources.</p>

Stakeholder	Cost	Benefit
SSDE	There will be administrative costs associated with managing the new fees. While these costs are unable to be quantified, they are likely to be low and should decrease over time as SSDE services are used more efficiently.	It is expected that there will be more efficient use of and less pressure on resources as non-State schools have full regard to the costs of SSDE services and use these services only when necessary.
Department of Education, Training and the Arts	There will be administrative costs associated with management of waivers. While these costs are unable to be quantified, they are not expected to be significant. Based on current SSDE enrolments, a sensitivity analysis using waiver amounts of 5%, 10% and 15% will result in costs to the Government of approx \$98,950 pa, \$197,900 pa and \$296,850 pa, respectively. Given that costs are currently in the order of \$1.979m pa, the waiver amounts are relatively insignificant. However, due to the proposed transitional arrangements, the costs to the Department will be higher until the proposed Regulatory changes come into effect fully in 2010.	Depending on the number of waivers that are granted, the Government will be able to recover a proportion of the costs of providing services to non-State schools (currently in the order of \$1.979m pa). This amount is expected to decrease over time as SSDE services are used more efficiently by the non-State school sector and enrolments decrease.
Private providers of distance education	None expected.	The introduction of the new fee structure may create opportunities for growth in this part of the market.

One of the key stakeholders consulted during the PBT review process expressed concerns that the proposed fees may inhibit equitable access to subject offerings for their students. In 2007, the Queensland Catholic Education Commission (QCEC) had approximately 56 schools using the services of SSDE. Of these schools, around 28 are from areas outside south-east Queensland; and of those 28 schools, 12 are not in or near a major regional centre.¹⁷ Some of these more isolated Catholic schools may have students with few options for extending their curriculum choices and the school and its students could therefore be disadvantaged by the imposition of a fee. This could also be the case with other non-State schools in rural/remote areas. However, section 54 of the Act, which allows

¹⁷ Departmental data, September 2007.

for a waiver of the fee, mitigates the likely imposition of appreciable costs associated with the introduction of the proposed fee.

The PBT Report described the school-based education market as a segmented one, with many characteristics influencing parental choice of school. Characteristics such as fee levels, faith/philosophy, values and curriculum are further segmented by locational preferences (for example, schools close to home or work or in a prestigious suburb).¹⁸ The Report also states that “as parental income increases to the point where private school fees are affordable, parents will switch away from government schools provided that private school quality is adequate”.¹⁹ Subject choice, therefore, plays only a small part in school choice. This suggests that even if some non-State schools elect to reduce subject offerings via SSDE as a result of the proposed fees, it would be unlikely to affect their enrolment numbers.

The above cost/benefit assessment table indicates that while there will be some costs as a result of the new fees, the impact of these costs are likely to be relatively small. The most significant impacts are likely to occur in those schools where teaching resources are limited or in those schools that rely heavily on SSDE services. As noted in the above table, given that rural or remote schools represent only 15% of the total non-State schools using the service, and the fact that these schools are more likely to be able to obtain a waiver under section 54, any impact is likely to be small. Additionally, the fact that only 0.7% of non-State school secondary students currently access SSDE (even less for primary) means the overall costs associated with the proposed Regulation will be small. In terms of schools with higher levels of SSDE enrolments, some may choose not to extend subject offerings, while others may make reciprocal arrangements with another school for the sharing of teachers.²⁰ Costs will be further reduced by the proposed transitional arrangements.

Conversely, while the overall benefits of the proposed Regulation will also be small due to the proportion of the population likely to be affected, it is considered that they outweigh the costs. In particular, the proposal will result in a more competitively neutral environment between State and non-State schools that access SSDE services. The introduction of the fees may also create opportunities for growth for private providers of distance

18 Note 6, p 14.

19 Note 6, p 15.

20 Note 6, p 26.

education. The more efficient and equitable application of State school resources is a significant impact and is likely to provide benefits not only to the identified stakeholders, but to the community as a whole. Further, the proposed Regulation will ensure that the original policy intent of section 52 of the Act will be met.

11 Consistency with Fundamental Legislative Principles

The proposed Regulation is consistent with Fundamental Legislative Principles.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Education, Training and the Arts.

© State of Queensland 2008