



Office of the
Director-General

Department of
Education

21 MAR 2022

Queensland Human Rights Commission
Email: adareview@qhrc.qld.gov.au

Dear Queensland Human Rights Commission

Thank you for the opportunity to provide a submission for the Queensland Human Rights Commission review of the *Anti-Discrimination Act 1991*.

The Department of Education acknowledges the importance of anti-discrimination laws that reflect contemporary society in protecting Queenslanders from the harmful impacts of discrimination. The department is committed to creating inclusive and diverse workplaces and schools where we all belong and every student has the best chance of succeeding.

The enclosed submission gives broad consideration to the Terms of Reference and key focus questions outlined in the Discussion Paper released in November 2021. It also includes the department's approach to creating a culture that prevents discrimination across Queensland.

Should you wish to discuss this matter further, I invite you to contact [REDACTED]

I trust the department's submission will assist with the review.

Yours sincerely

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Department of Education Submission
Anti-Discrimination Act 1991 Review

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1.0 Introduction

Inclusive and safe workplaces and schools are fundamental to the success, wellbeing and sense of belonging in our schools and communities. As such, the Queensland Department of Education (the department) is committed to fostering an environment that protects students and staff from discrimination across Queensland.

The department continues to invest in initiatives and programs that create positive working and learning spaces through challenging harmful attitudes and environments that may lead to direct or indirect discrimination. Inclusion is actively embedded in all aspects of work and school life, and is supported by culture, policies and every day practices¹.

The *Anti-Discrimination Act Review* (the Review) explores ways to reform the existing legislative framework towards building a preventative culture, enhance access to justice, and address systematic discrimination. It also considers where the *Anti-Discrimination Act 1991* (the Anti-Discrimination Act) should apply and its compatibility with human rights.

The department welcomes the opportunity to contribute to the Review and acknowledges the importance of ensuring that Queensland's Anti-Discrimination laws reflect the values and meet the needs of contemporary society.

1.1 Early Childhood Education and Care Sector

The department is also the Regulator of the Early Childhood Education and Care (ECEC) sector in Queensland and provides funding for the provision of kindergarten programs and some other early years services. Recent reforms to funding programs are designed to increase participation in kindergarten by making a quality kindergarten program more accessible for all kindy aged children no matter what their life circumstance.

As the Regulator, the department is required to monitor ECEC services for compliance with all relevant legislation, particularly obligations under the National Quality Framework, which includes the *Education and Care Services National Law and Regulations*. As outlined in the National Regulations, ECEC services are required to provide an inclusive environment with indoor and outdoor spaces that are organised and adapted to support every child's participation and to engage every child in quality experiences in both built and natural environments.

ECEC services are also required to comply with all relevant legislation such as the *Anti-Discrimination Act 1991* and the *Disability Standards for Education 2005*. It should be noted however, that ECEC services are generally private businesses, not owned and operated by the department, nor are ECEC staff employed by the department. As such this submission is focused on schools and staff that fall within the responsibility of the department.

2.0 Part A – Key Concepts

2.1 Defining Discrimination

The department recognises that there is a distinction between direct and indirect discrimination, they are not mutually exclusive. Our *Inclusive Education Policy* sets out the department's commitment to continue to work towards a more inclusive state education system and recognises that discrimination can be both direct **and** indirect. The examples below may assist in the review of the definition.

¹ <https://ppr.qed.qld.gov.au/attachment/inclusive-education-policy.pdf>



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Testing discrimination

The department adopts the “less favourable treatment test” in our definition of Discrimination as it applies to our employees. However, the “unfavourable treatment test” approach is used in our school context, which closer aligns to the Australian Capital Territory and Victoria. The nuance between the terms “less favourable” and “unfavourable” is notable when considering the complexity of the organisation. We acknowledge that constructing a hypothetical comparator when multiple, overlapping factors may be involved is problematic and can distract from the intent.

Inability to comply with a term

The department already looks at indirect discrimination in the context of disadvantaging a person with an attribute, rather than identifying a term and considering whether someone can or cannot comply. For example, while a student who is assigned male sex at birth, but whose gender identity is female, *could* use a male toilet, expecting a transgender student to go to a toilet based on their birth sex is considered unfair. The literal interpretation of “can and cannot comply” does not reflect the true impact of complying, disadvantaging the individual and, in turn, exacerbating the discrimination it seeks to prevent.

Unified Approach

The department separates direct and indirect discrimination tests. Keeping these as two distinct ‘tests’ provides a platform to raise awareness of how discrimination may occur in ways that are not always obvious or conscious so that we can seek to address them. Both indirect and direct discrimination have effectively similar negative outcomes for the person experiencing discrimination, and the distinction between the two terms helps identify and provide justice for those who experience discrimination in any form.

2.2 Unjustifiable hardship and reasonable accommodations

The department is committed to ensuring that students and employees are provided equal opportunities and are supported to achieve success, reach their full potential, and perform in the work environment. Reasonable adjustments are made for students and staff to access and participate on the same basis as those without a disability in the same environment. This is a priority in the department’s *Every student with disability succeeding plan 2021–2025*² and the *Able. Valuing talent in all abilities*³ workforce strategy. The *Inclusive Education policy*⁴ and the *Reasonable Adjustment Procedure*⁵ demonstrate the department is commitment to ensuring that all students and staff are provided the same opportunities and are reasonably supported.

The department makes every effort to provide reasonable adjustments for staff with medical conditions, however, this is not always feasible and must necessarily be considered on a case-by-case basis. Schools limited teaching resources are appropriately allocated to classes and responsibilities for the safety and wellbeing of students, while at school. For example, a

² <https://education.qld.gov.au/initiatives-and-strategies/strategies-and-programs/every-student-with-disability-succeeding-plan>

³

<https://qed.qld.gov.au/workingwithus/induction/workingforthedepartment/humanresources/Documents/able-workforce-strategy.pdf>

⁴ <https://ppr.qed.qld.gov.au/pp/inclusive-education-policy>

⁵ <https://ppr.qed.qld.gov.au/pp/reasonable-adjustments-procedure>



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teacher who has an impairment which requires them to step away from classes for prolonged periods of time during teaching periods poses a serious challenge. A possible reasonable adjustment may be having two teachers teaching one class at the same time to allow for these periods of absence, however, this is an unreasonable adjustment, and would be considered an example of unjustifiable hardship, particularly in regional areas where additional teaching resources are not readily accessible. Additionally, the teacher stepping away from the classroom of young students requiring supervision creates child safety concerns. It may also create disruptions to learning, which may impact on a child's chance to succeed.

Reframing to a positive obligation

The department already seeks to take a preventative approach because we recognise this as important in making positive cultural shifts. We would, however, encourage consultation regarding legislative obligations prior to making reasonable adjustments a positive duty in new legislation given we already operate under an extensive legislative framework that we would need to reconcile these obligations with.

Reasonable accommodations beyond disability

The department's current approach to providing reasonable adjustments already goes above and beyond disability. We recognise that disability is one obvious area where an active approach to creating an even playing field exists, however, there are also other attributes which require intentional address. For example, an employee experiencing domestic and/or family violence may require reasonable adjustments to their working hours or duties while they work through these issues.

2.3 Discrimination on combined grounds

Given the size and reach of the department in Queensland, a student or employee exhibiting one or more protected attributes is not unusual. For example, a parent of a student from a family who had recently moved to Queensland from a non-English speaking country who requires English as an Additional Language or Dialect (EAL/D) support, and has autism, has, at the very least, two protected attributes of race and disability. The cumulative impact of these attributes would be significant for the parent during enrolment, as the support required to complete enrolment forms in English would not necessarily overlap with the support they require for their disability. Addressing these two needs separately would not necessarily be adequate to provide equal opportunity for the parent to enrol the student due to the interplay between the factors. As such, the department can see benefit in capturing discrimination on the basis of combined grounds to better protect people who experience intersectional discrimination.

2.4 Burden of proof

The department submits that the burden of proving a complaint of discrimination, under the Anti-Discrimination Act, should remain with the complainant.

The department's current processes for discrimination complaints requires the complainant to provide proof that discrimination occurred. This is our preferred approach in the context of the Anti-Discrimination Act, applied on the basis that:

- Shifting the burden of proof to create a *presumption* of discrimination unless the respondent can provide otherwise, creates a heavy administrative burden on the department and our school communities.
- Schools would be the ones responsible for providing proof in the large majority of cases. This would increase the administrative burden on staff and schools which would in turn take their attention away from providing high quality education for our students.



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- Requiring school staff to bear the onus of proof would be a significant workforce issue requiring extensive stakeholder consultation. The *Public Service Act 2008* (PS Act) and the Directives⁶ are prescriptive about handling employee misconduct. Where discrimination is assumed, the department would need to consider how to deal with employees in the interim, until sufficient evidence is made available to demonstrate innocence in a way that aligns with our legislative obligations.

2.5 Meaning of sexual harassment

Under the department's *Preventing workplace bullying, sexual harassment and unlawful discrimination*⁷ policy, all employees are required to "Model appropriate behaviour and treat others with dignity and respect and promote a positive, inclusive and constructive workplace culture". The Public Sector is bound by a Code of Conduct⁸, with expectations for employee behaviour that upholds the values of the public service through demonstrating a high standard of workplace behaviour and personal conduct.

3.0 Part B – Dispute Resolution

3.1 Dispute processes

For the purpose of litigation, the department's current preferred approach is that the appropriate legal entity is the State of Queensland (through the Department of Education). As such, the department submits that with very limited exception, the correct respondent in all complaints of discrimination to the Queensland Human Rights Commission, involving Queensland state schools or the department, is the State of Queensland.

This approach has been adopted on the basis that complaints of discrimination can be better managed without individual employees being named. In cases where it is deemed necessary to name an individual, the current preference is for this to be limited to an officer at a level who can speak to the complaint with authority and objectivity, and is better placed to genuinely conciliate a matter and effect real change as and when needed in the school environment. In the past, the department has encountered employees being named as respondents who have a very tenuous link to the alleged discrimination.

With respect to the Commission assisting complainants to make a discrimination complaint instead of human rights complaint, the department recognises that under section 67(2) of the *Human Rights Act 2019* (HR Act), "If the commissioner is satisfied the complainant needs help to put the complaint in writing, the commissioner must give reasonable help to the complainant to put the complaint in writing."

The department's current expectation is that this would be limited to the format of the complaint and should not extend to providing advice to the Complainant in relation to potentially elevating their human rights complaint to a discrimination complaint under the Anti-Discrimination Act, noting that this is a matter on which the Complainant could reasonably be expected to obtain independent legal advice.

⁶ https://www.forgov.qld.gov.au/data/assets/pdf_file/0027/187182/directive-16-20-suspension-directive.pdf

⁷ <https://ppr.qed.qld.gov.au/pp/preventing-workplace-bullying-sexual-harassment-and-unlawful-discrimination-policy>

⁸ <https://www.forgov.qld.gov.au/working-in-the-public-service/conduct-and-performance/code-of-conduct-for-the-queensland-public-service>



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Section 139 of the Anti-Discrimination Act provides that:

- *The commissioner must reject a complaint if the commissioner is of the reasonable opinion that the complaint is—*
 - (a) *frivolous, trivial or vexatious; or*
 - (b) *misconceived or lacking in substance.*

The department's current expectation is that:

- the onus is on the Complainant to clearly particularise their complaint, including the remedies being sought. The department will often receive voluminous complaints which make little sense, let alone particularise the specific allegations of discrimination. Crown Law and the department are often left to try and determine the basis of the complaint;
- QHRC should seek to actively assess what constitutes a valid complaint that meets the elements of discrimination under the Act.

The department accepts that not all complainants would have knowledge or capacity to identify the elements of direct or indirect discrimination, and do not have legal representation, but notes that appropriate scrutiny of complaints or clarification of issues should be sought from the complainant, in the first instance, before accepting the complaint.

Also, where the QHRC has records showing that a complainant has previously made a complaint that has been unsuccessful, our current expectation is for a higher level of scrutiny of new complaints by the same complainant. Repeated complaints by vexatious complainants, or complainants pursuing the same complaint through multiple complaints processes, cause high levels of stress to department employees and incur unnecessary costs.

With respect to requirements for making a complaint, the department notes that complaints are often made to the Commission without the complainant having made use of the department's complaint management processes. The department notes section 140 of the Anti-Discrimination Act allows the commissioner to reject or stay complaints dealt with elsewhere.

The department notes that a number of other comparable legislative schemes also require complainants to attempt to resolve an issue through the department's administrative processes:

- under section 65 in the HR Act, a person may only make a human rights complaint to the commissioner if the commissioner is satisfied the person first made a complaint to the public entity, and did not receive an adequate response;
- in the *Ombudsman Act 2001*, under section 23, the Ombudsman may refuse to investigate a complaint if a complainant has not first raised their concerns with the relevant agency and/or exhausted their right of appeal, reference of review, or other remedies; and
- in the *Information Privacy Act 2009* (IP Act), under section 166, complainants must first speak with the agency that they believe has breached their privacy before making a complaint to the Information Commissioner.

As a result of these provisions, in practice the majority of complainants who seek to make their complaint to the Queensland Ombudsman or QHRC in the first instance are directed to the department, which will deal with the complaint under an established departmental complaints process, such as the Customer Complaints Management Framework. This approach provides the department with an opportunity to try and resolve the complaint locally before it is escalated to an oversight body.



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The department also acknowledges the broader complaints management environment Queensland Government departments must adhere to. This includes processes under the PS Act, HR Act and the IP Act. The complaints models across these processes are not always consistent in terms of steps and requirements, which create complexity for departments and complainants.

The department uses a combination of “complaint-based” terminology with the term “grievances”⁹. The choice of the word “Grievance” in our *Individual employee grievances procedure* reflects *Directive 11/20: Individual employee grievances*, which supersedes *Directive 02/17: Managing Employee Complaints*.

Accessibility

The department is committed to removing barriers in our complaints management, by accepting complaints in various formats, including:

- Telephone
- Email
- In person
- SmartService Queensland
- QGov website
- Departmental social media
- Letter.

The department recognises the need to provide accessible options for complainants and would be supportive of exploring options for anti-discrimination complaints. At present, our Customer Complaints Management Framework¹⁰ allows complaints to be made through a variety of channels, allows support persons to be present, and offers reasonable assistance, such as translation services. However, it is important that any accessibility arrangements support an impartial and bias-free complaints management process with the complainant still maintaining the onus to particularise their complaint.

Additionally, the department operates, under its Principal Health and Wellbeing Strategy, a Principal Hotline and Complex Matters Referral Team. A significant component of the Complex Matters Referral Team is the employment of three very experienced accredited mediators who work with school leaders and community members/parents to restore a working relationship when there has been conflict. This is either a self-referral process by the school leaders to the service or through the region where there have been customer complaints and/or where the region is aware a school leader requires support. In operation since October 2020, initially with one mediator, and from the start of 2022, three mediators, 16 mediations have been undertaken with school leaders across Queensland.

The service also provides Early Resolution Assistance (ERA) for school leaders – this is a one-on-one coaching model where school leaders can talk about the issue they are facing (with parents / community or staff), how they are going to approach it with the mediators who can then offer further advice and ideas for consideration. To date, 37 ERAs have been undertaken with school leaders across Queensland.

⁹ <https://ppr.qed.qld.gov.au/pp/individual-employee-grievance-procedure>

¹⁰ <https://ppr.qed.qld.gov.au/attachment/customer-complaints-management-framework.pdf>



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Conciliation

The Commission's current practice includes the naming of individual employees as respondents to complaints. The conciliation process is not enhanced when the complaint is accepted against an individual employee (or multiple employees) of a school or the department. Rather, the Commission has discretion as to who it accepts a complaint against as evidenced by:

- Section 132 of the Anti-Discrimination Act, which provides that one of the purposes of the Act is to promote equality of opportunity for everyone by making a person liable for certain acts of the person's workers or agents.
- Section 133 of the Anti-Discrimination Act, which provides that *"If any of a person's workers or agents contravenes the Act in the course of work or while acting as agent, both the person and the worker or agent, as the case may be, are jointly and severally civilly liable for the contravention, and a proceeding under the Act **may** be taken against either or both."* [our highlighting]

This is reinforced and supported by section 26C of the PS Act which provides that, "A State employee does not incur civil liability for engaging, or for the result of engaging, in conduct in an official capacity" and, instead, liability attaches to the State. Further, the acceptance of complaints against individual employees has further implications from a well-being and human resources perspective in that:

- the emotional toll that these matters take on the department's employees cannot be underestimated;
- neither can the time needed to defend the matter and participate in the commission's processes. This is all time that has to be managed and accounted for at the school level i.e. additional resources.

The department acknowledges a complainant's right to make a complaint and have the allegations properly considered. The department also acknowledges and understands that "the State" as a respondent may be viewed as a large and intimidating organisation against an individual complainant. However, by limiting the respondent to the State only, it would in fact reduce the number of respondents i.e. individuals involved in the conciliation process. The department has dealt with complaints in the past, which have had up to four or more individually named respondents when this could have been reduced to just two (i.e. a Crown Law Lawyer and a departmental representative who can make decisions, or obtain instructions, in relation to settlement).

4.0 Part C – Eliminating discrimination

Positive Duties

The department takes a preventative approach to discrimination. We have a number of strategies under the *We All Belong* workplace inclusion and diversity framework:

- *Able. Valuing talent in all abilities:* Opportunities, inclusion and support for employees of all abilities.
- Inclusive workplaces: Workplaces where everyone with a diverse perspective can contribute.
- Aboriginal and Torres Strait Islander People: Valuing, respecting, supporting and involving Aboriginal and Torres Strait Islander employees.
- Many cultures: Inclusion for employees of all cultural and linguistic backgrounds.
- Flexible working: Inclusive workplaces where staff can participate fully.
- Generational diversity: empowered employees, feeling valued regardless of age.
- Pathways to parity: Women and men thrive equally at work.
- Proud at work: Including and supporting LGBTQ+ people and allies.



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5.0 Part E – Coverage of the Act

5.1 Consideration of current attributes

Disability

The department's *Able. Valuing talent in all abilities* workforce strategy and our *Every student with disability succeeding plan 2021–2025*¹¹ both use the language of “living with disability”. This aligns the language used in the *Disability Discrimination Act 1992 (Cwth)*. The department is of the view that this language is more appropriate in contemporary society. The department adopted the word disability as an overarching term to cover “mental health conditions” and “psychosocial disability”. Our approach focuses largely on educating our staff, students and wider community about what is meant by “disability”. Separating attributes to emphasise forms of disability that are protected, risks inadvertently excluding certain groups that are meant to be protected in the attribute.

Assistance animals

The department's *Assistance animals and support animals at school* procedure¹² recognises and has provisions so that *animals*, may be used for support in certain circumstances and provides clear guidelines about the use of assistance animals. The department sees the advantage of revising this definition.

Gender Identity

The department's *Diversity in Queensland schools* suite of resources assists schools to support students who are transgender or gender diverse. These documents define gender identity as “a word or series of words that a person of any sexuality may use to describe their gender, for example, girl, boy, woman, man, transgender, gender diverse”.

According to the department's *Proud at Work*¹³ resources for including and supporting LGBTIQ+ staff, “Gender identity is part of how a person understands who they are and how they interact with other people... Gender identity can be expressed in different ways, such as through behaviour or physical appearance that may align or differ from gender norms”¹⁴. The department sees benefit in updating the current definition in the Act.

Sexuality and Gender

The department's *Proud at Work* strategy refers to sexuality, or a person's romantic or sexual attraction as “sexual orientation”. The department recognises sex and gender as separate concepts. The considerations to avoid discrimination against gender in educational settings, including how to refer to students and staff, school dress code and toilet and change room use, are different to considerations to avoid sex discrimination¹⁵.

¹¹ <https://education.qld.gov.au/initiatives-and-strategies/strategies-and-programs/every-student-with-disability-succeeding-plan>

¹² <https://ppr.qed.qld.gov.au/pp/assistance-animals-and-support-animals-at-school-procedure>

¹³

<https://qed.qld.gov.au/workingwithus/induction/workingforthedepartment/humanresources/Documents/workforce-inclusion-strategy.pdf>

¹⁴

<https://qed.qld.gov.au/workingwithus/induction/workingforthedepartment/humanresources/Documents/workforce-inclusion-strategy.pdf>

¹⁵ <https://education.qld.gov.au/student/Documents/diversity-information-for-principals.pdf>.



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The department's *Diversity in Queensland schools* suite of resources assists schools to avoid discrimination against and support students who are diverse in their sex, gender identity and sexuality.

The department's *Gender Affirmation in the workplace* guidelines refer to the Pride in Diversity's *Let's talk Gender* guide to define 'gender' as a "part of a person's personal and social identity. It refers to the way a person feels, presents and is recognised within the community. A person's gender expression refers to outward social markers, including their name, outward appearance, mannerisms and dress." This is markedly different from the definition of 'sex' as "the chromosomal, gonadal, and anatomical characteristics associated with biological sex."¹⁶ The department observes that reviewing definitions relating to sexuality and gender to reflect contemporary society is valuable.

5.2 Consideration of special and additional attributes

Physical features

The department is committed to creating inclusive and diverse workplaces and schools where we all belong. As an example, the department recognises that weight discrimination is common in Australian workplaces, even though almost one in four Australian adults are considered obese¹⁷. While physical features remain excluded from the list of protected attributes, discrimination in the form of being fired, demoted or refused work because of weight can continue, unless a medical condition applies. The public service prides itself on impartiality in the recruitment process and the department has a large focus on training to reduce unconscious bias in our selection and recruitment, the human element involved means that where issues occur, those who are discriminated against should be protected.

Sex Characteristics

According to Intersex Human Rights Australia, almost one in five intersex people leave school early, without any qualifications¹⁸. Reasons appear to include bullying on the basis of physical characteristics, developmental delays, the impact of medical interventions during puberty, and lack of inclusive curricula. Historically, intersex has been included in LGBTIQ+ activism, however, the department acknowledges that many intersex people choose not to be involved in the LGBTIQ+ community discussions due to their unique experiences associated with having secondary sex characteristics¹⁹.

The department's *Diversity in Queensland schools* suite of resources can assist schools to provide support for intersex students, including considerations for use of toilet and change room facilities, dress code, camps and sport.

Being subject to domestic or family violence

The department is committed to supporting members of our workforce and communities who are being subject to domestic or family violence in accordance with the *Domestic and Family Violence Protection Act 2012*. Our *Supporting Staff Affected by Domestic and Family*

¹⁶ <https://www.prideindiversity.com.au/content/uploads/2016/01/Lets-Tak-Gender-Publication-2015.pdf>

¹⁷ <https://discriminationclaims.com.au/weight-discrimination-is-rife-in-australia/>

¹⁸ <https://ihra.org.au/discrimination/>

¹⁹ <https://www.ilga-europe.org/what-we-do/our-advocacy-work/trans-and-intersex/intersex;>
<https://www.glaad.org/amp/debunking-10-intersex-myths>



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*Violence*²⁰ policy includes a range of provisions available to support our employees who are impacted. Additionally, resources have been developed to assist schools with supporting students impacted by domestic and family violence, including resources that examine student safety, while at school. Schools have access to a range of support staff to assist students impacted by domestic and family violence and to facilitate referral to external specialist services. Departmental Domestic and Family Violence Liaison Officers (DFVLOs) are also available in each region to provide training, consultancy advice and general information to schools and workplaces on employee and student related domestic and family violence issues.

The department sees benefit in including domestic and family violence as a protected attribute, aligning the Anti-Discrimination Act with Human Rights and other legislation in this space, as well as complementing our strategies to address the serious impact of domestic and family violence, identified within the Queensland Government's *Domestic and Family Violence Prevention Strategy 2016 – 2026* and corresponding action plans.

Accommodation status

The department is responsible for providing facilities to meet the educational needs of students residing within a school's catchment area²¹. Where schools are close to capacity, School Enrolment Management Plans are introduced to ensure that sufficient facilities are available for students in catchment. While we are not required to collect address details under the *Education (General Provisions) Act 2006* (EGPA), the department currently has accommodation as a mandatory field for enrolment in order to validate that a student resides in Queensland, within the catchment area for the school²². We recognise that this is problematic in cases where students do not have a permanent residence due to various factors.

As such, schools do have the capacity to make case-by-case decisions in unusual circumstances. The department's School Enrolment Management Plan²³ advice lists a range of circumstances where students will be entitled to enrol at a school, even though they may reside outside the school's catchment area. These include but are not limited to students who are subject to child protection orders that grant guardianship or custody to the Chief Executive Officer of the Department of Children, Youth Justice and Multicultural Affairs. Principals are also able to provide consideration to enrolling students out of catchment, who have been required to change schools, as a result of domestic and family violence.

These provisions, coupled with the capacity for principals to make decisions on a case-by-case basis, provide principals with the opportunity to make decisions in the best interests of individual students. Ultimately, the department is committed to giving all children a great start. To do this, however, we need some form of information about accommodation status for planning and placing students in Queensland state schools.

²⁰ <https://education.qld.gov.au/parents-and-carers/parent-participation/parent-resources/not-now-not-ever>

²¹ <https://education.qld.gov.au/parents-and-carers/enrolment/management-plans>

²² <https://ppr.qed.qld.gov.au/attachment/application-for-student-enrolment-form.pdf>

²³ <https://education.qld.gov.au/parents-and-carers/enrolment/management-plans>



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6.0 Part F – Exemptions

6.1 Exemptions relating to state schools

Sport exemptions

All students should have both opportunity and encouragement to participate in sporting activities and events, regardless of their physical characteristics or gender identity. The department's *Internal Guidance Materials to Assist Queensland State Schools in Supporting Gender Diverse Students*, highlight that discrimination in sport is only permissible on the basis of gender-based restrictions where a student is aged 12 years or older and where the sport is a competitive sporting activity. In these situations, the guidance materials indicate that decisions about a student's participation must take into account the strength requirements, stamina requirements or physique requirements of the activity, not of the individual student. All situations are to be dealt with on a case-by-case basis. Consultation may occur with the Queensland School Sport Unit.

Where the school or the school-based sport organiser restricts participation in a competitive sporting activity on the basis of gender identity for those aged 12 years or older (because it is considered the restriction is reasonable having regard to the strength requirements, stamina requirements or physique requirements of the activity), the reason/s should be documented, explained to the parents and student, and the decision maker prepared to provide an explanation if necessary if there is a claim of discrimination.

In line with the Sport Australia *Guidelines for the inclusion of transgender and gender diverse people in sport*²⁴, the department agrees that if someone is going to be excluded, we must ensure that we have done everything possible to show why that is and give the person a chance to be included. Physical Education is a key part of the Australian curriculum and our priority is to encourage success and wellbeing for all children and students through each stage of learning in an inclusive education system²⁵. As such, we are continuously looking at ways to make sport and physical education more inclusive in our schools. However, the department sees the benefit in having allowance for case-by-case decisions to be made.

Working with Children

In order to foster an ethical and transparent workplace culture in which any actual, perceived or potential conflict of interest (COI) is resolved or appropriately managed, the department requires staff to declare any other employment²⁶. Failure to declare other employment and/or volunteering that involves a significant commitment may be in breach of the department's Standard of Practice, the Code of Conduct for the Queensland Public Service and the employee may be liable to disciplinary action. The department assesses additional work in the context of whether there is a conflict of interest that could impact on the employee's official duties.

6.2 General exemptions for discrimination

Citizenship or visa requirements to receive state government services

The department's existing arrangements are predicated on the application of specific criteria to support government strategic objectives and specific visa class holders through the current citizenship or visa status exemption.

²⁴https://www.sportaus.gov.au/data/assets/pdf_file/0008/706184/Trans_and_Gender_Diverse_Guidelines_2019.pdf

²⁵<https://education.qld.gov.au/students/inclusive-education>

²⁶<https://ppr.qed.qld.gov.au/pp/notification-of-other-employment-procedure>



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Any changes to the citizenship/visa status exemption should consider national legislation for international students as there could be significant implications if the citizenship or visa status exemption is changed or repealed.

The services offered by the department are available to all visa holders and nationalities and the charging of fees to student visa (500 Schools) holders is lawful and mandatory under the *Education Services for Overseas Students Act 2000* (Cwlth) (ESOS Act)²⁷. The authority to charge fees to children of other temporary visa holders is also provided under the EGPA²⁸.

The cost of managing and supporting the enrolment and tuition of international and temporary resident students in Queensland state schools is funded from the lawful charging of fees under the ESOS Act and the EGPA.

Students who are not Australian citizens/residents or refugees (and certain others listed in the EGPA) generally do not attract federal government funding and therefore the revenue the department receives from fees collected from these students reimburses the cost to the department of providing education to this group of students as well as covers the administrative cost of managing and supporting the enrolment of these students into Queensland state schools.

The inclusion of immigration status as a protected attribute will significantly impact the delivery of education services in Queensland state schools.

7.0 Part H – Human Rights Analysis

In addition to points made earlier in this paper, the department's *Human Rights Framework*²⁹ outlines our commitment to respecting, protecting and promoting human rights in everyday decisions and actions. Our approach reflects the duties and protections enshrined within the HR Act. We celebrate human rights and support the Queensland Government's Human Rights Strategy.

8.0 Final Remarks

The department is committed to inclusive and safe workplaces and schools. This is fundamental to the success, wellbeing and sense of belonging in our schools and communities. As such, the department is committed to fostering an environment that protects students and staff from discrimination across Queensland.

²⁷ <https://www.legislation.gov.au/Details/C2021C00586>

²⁸ <https://www.legislation.qld.gov.au/view/html/inforce/current/act-2006-039>

²⁹ <https://qed.qld.gov.au/programs/initiatives/department/Documents/human-rights-framework.pdf>

