



Mr Ian Burrage
Deputy Secretary, School Education Programs and Support
Department of Education and Training
41 St Andrews Place
EAST MELBOURNE VIC 3002

3 December 2020

Dear Mr Burrage

REGULATORY IMPACT STATEMENT FOR THE EDUCATION AND TRAINING REFORM (REGULATION OF STUDENT ACCOMMODATION) REGULATIONS 2020

I would like to thank your staff at the Department of Education and Training (the Department) for working with the team at Better Regulation Victoria on the preparation of the Regulatory Impact Statement (RIS) for the proposed Education and Training Reform (Regulation of Student Accommodation) Regulations 2020 (the Regulations).

The Regulations are proposed to be made following the passage of the *Education and Training Reform (Regulation of Student Accommodation) Act 2020* (the Amendment Act) on 4 November 2020.

As you know, under section 10 of the *Subordinate Legislation Act 1994* (the SLA), the Commissioner for Better Regulation is required to provide independent advice on the adequacy of the analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be clearly written so that it can provide a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 3 December 2020 meets the adequacy requirements of the SLA.

Background

There are currently approximately 3,000 children residing in school boarding premises in Victoria. Thirty schools in Victoria provide for boarding students to reside on their premises, mostly from the independent and Catholic sectors. Under the *Education and Training Reform Act 2006* (ETR Act), the Victorian Registration and Qualifications Authority (VRQA) regulates boarding schools' compliance with minimum standards for registration, including minimum standards related to managing the risk of child abuse. The Department explains in the RIS that, prior to the passing of the Amendment Act, the VRQA did not have clear regulatory oversight over boarding premises, in contrast to its coverage of day operations in schools, and that coverage of school boarding premises was inadequate.

The RIS notes that the Commonwealth Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) was established in 2012 to address the problem of child sexual abuse in Australia and that the Commission outlined the impacts of child sexual abuse in institutional settings (such as schools) in its final report. The Royal Commission recommended that all schools, including school boarding premises, implement the Royal Commission's 10 Child Safe Standards intended to make institutions safer for children.

To deliver on the Royal Commission's recommendations, the Department revised the *Education and Training Reform Act 2006* (ETR Act) to include a new regulatory scheme for boarding schools. This was facilitated through the Amendment Act. To support these changes, amendments to the ETR Regulations 2017 will be required, which are the subject of this RIS. These changes aim to:

- prescribe minimum standards for registration of school boarding premises, and
- prescribe the procedures and requirements for the registration and regulation of school boarding premises.

The Department explains in the RIS that the prescribed minimum standards and requirements for the registration of school boarding premises need to reflect the importance of regulating not only child safety (that is, protection from abuse), but also the broader quality of the boarding school sector (for instance, ensuring that all responsible staff are 'fit and proper persons', that the school demonstrates sound financial management and that it complies with all legal requirements). Both these aspects are conceptually distinct, but interconnected in practical terms in terms of providing a safe, healthy and productive environment for boarders.

Options and Analytical Method

In the RIS, the Department uses a Multi Criteria Analysis to assess options, based on the criteria of improving child safety, improving the overall quality of the sector (such as the holistic wellbeing of boarders, staff and effective governance), and reducing the costs imposed on the sector and the regulator. This approach was taken because, while the benefits of increased child safety to the community are clear, they are difficult to express in monetary terms.

The RIS includes discussion of non-regulatory approaches, such as awareness-raising campaigns, capacity-building and voluntary standards to address the problems outlined by the Royal Commission. The Department notes that the Royal Commission's Final Report states clearly that non-regulatory options on their own are not sufficient. The Department explains that therefore regulatory oversight is warranted for the protection of children against abuse.

Three options are assessed against a base case of the Amendment Act being in force, but with no regulations supporting the implementation of required standards. The RIS considers the following options:

Option 1: Prescribe minimum standards for boarding premises that closely align with existing standards for day schools.

Currently, all schools in Victoria must meet the minimum standards and requirements for school registration. However, school boarding premises have not been required to demonstrate compliance with these minimum standards because these were not prescribed in the ETR Act.

Under this option, boarding schools would need to comply, and demonstrate compliance with, minimum standards and requirements that closely align with existing standards and requirements for

other non-boarding schools. These include a requirement regarding 'Record of location of students' – a requirement that is specific to the residential nature of boarding facilities.

These standards would require schools to provide evidence including:

- a register of student details, as well as a record of location of students;
- a governance structure that enables effective strategic direction-setting, management of finances and the fulfilment of legal obligations (including responsible staff being 'fit and proper' persons);
- compliance with relevant State and Commonwealth laws, such as working with children checks, student acceptance policies (e.g. religious denomination preference) and building safety;
- a statement of the philosophy of the education provider; and
- information to be available to the boarding school community about its financial activities and any other reporting requirements as part of State or Commonwealth funding agreements.

Option 2: Prescribe minimum standards that are significantly more detailed than existing standards for regular day schools.

The key difference between Option 1 and 2 is the imposition of the following additional requirements:

- specifying the frequency, details and circumstances of when a student's location should be recorded;
- prescribing how staff are to be kept informed of State and Commonwealth requirements regarding the care, safety and wellbeing of students; and
- prescribing a broader range of information on school performance, as well as specific policies and procedures that school boarding premises must have in place (such as student absence and systems to monitor student wellbeing).

Option 3: Prescribe Boarding Standard AS5725 as the minimum set of standards for registration of school boarding premises

The Boarding Standard for Australian Schools and Residences (Boarding Standard AS5725) is a regulatory framework established by the Australian Boarding Schools Association for promoting and protecting the well-being of boarders, and is intended to complement a school's compliance with legislative requirements. Boarding Standard AS5725 covers a broader range of policy areas compared to Options 1 and 2. It includes areas such as students' holistic development and staff professional development.

Under all three options, all school boarding premises would be required to submit documents demonstrating compliance with the six standards identified in the national standards – to the VRQA (for independent schools), and the relevant VRQA-approved school review bodies, such as the Catholic Education Commission of Victoria (CECV) and the Department.

Preferred Option and Impacts

The Department proposes Option 1 as the preferred option: prescribing minimum standards that closely align with existing standards for day schools. It expects this will significantly improve child safety outcomes and the quality of care by the sector, while avoiding the additional costs associated with the other options.

The total cost of implementing the proposed Regulations is estimated to be \$1.563 million (in Net Present Value terms) over the next 7 years, until their expiry. This estimate can be broken down into a cost of \$554,000 to providers of boarding services and the CECV as a presumed VRQA-approved review body for Catholic schools, and around \$1 million to Government (to the VRQA and to the Department as a VRQA-approved review body for government schools).

The RIS notes that, under the Department's preferred option, boarding schools must be able to demonstrate compliance with registration requirements under the amended ETR Act, as well as compliance with the prescribed minimum standards contained in Option 1.

The main cost to boarding schools is the additional workforce costs incurred to ensure documents and relevant systems are in place for the boarding premises to be registered or re-approved for registration.

The Department has identified that costs for implementing the regulatory requirements to the VRQA relate to:

- engaging VRQA staff to do a range of tasks to support consistent, effective regulation;
- engaging external contractors to conduct school reviews;
- developing boarding schools' guidelines, and other materials and communications; and
- upgrading and maintaining the IT system to accommodate expanded regulatory responsibility.

Implementation and Evaluation

The Department proposes that there will be transitional arrangements for existing boarding premises in order to minimise the upfront workload for the boarding school sector. On commencement, (anticipated in June 2021), existing boarding schools will be registered automatically with the VRQA and will remain registered if the school self-assesses within three months of commencement. New school boarding premises that start providing services after the commencement date, will be required to provide the VRQA with full documentation demonstrating that the premises meet the prescribed minimum standards and other requirements for registration.

The VRQA or VRQA-approved review bodies will review all existing boarding schools within three years of commencement of the scheme – and subsequently, at least every five years. Scheduled reviews of schools for compliance with the prescribed minimum standards, and other requirements for registration for day use activities, will take place concurrently with reviews of each school's boarding premises, to minimise the disruption the reviews impose. For existing school boarding premises, where the associated schools do not have a review scheduled within three years of commencement, the school review will be brought forward to occur within this timeframe.

The VRQA will issue guidelines and host information sessions on how to demonstrate compliance with standards and ongoing review of boarding premises. The VRQA and the Department will also prepare communication materials to help the boarding school sector understand the new regulatory requirements.

The ETR Regulations are due to sunset on 14 June 2027, at which time the regulations for boarding schools, along with regulations for schools and other education institutions, will be reviewed. A review of the proposed Regulations' effectiveness will also be captured as part of a broader assessment of the implementation of the Royal Commission's recommendations in 2027. The

Department notes that where possible, both review processes (the ETR Regulations review and the Royal Commission review) will inform the other, to ensure any changes are consistent and no inherent contradictions emerge.

Should you wish to discuss any of the issues raised in this letter, please do not hesitate to contact my office on 03 7005 9772.

Yours sincerely



Anna Cronin
Commissioner for Better Regulation