**Briefing Note**

Regional Director

Department of Education

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| **Action required:** **For Decision** |
| **Action required by:** **N/A**  **Routine** – Decision to prosecute insert Parent/s full name/s |

**SUBJECT:** **SEEKING DECISION TO BRING PROCEEDINGS AGAINST PARENT/S’ FULL NAME/S FOR FAILURE TO ENROL CHILD’S FULL NAME IN A SCHOOL**

**Summary of key objectives**

* The Regional Director’s decision is sought on whether to bring proceedings against {insert parent/s’ full name/s} for failure to ensure that {insert child’s full name} is enrolled in a school, in contravention of section 176(1)(a) of *Education (General Provisions) Act 2006* (Qld) (the Act)*.*

**Key issues**

1. {Insert child’s full name} (DOB xx/xx/xxxx) is not currently enrolled at a school.
2. Despite attempts by {insert name of authorised officer}, {insert authorised officer’s position} over the past {insert number of months} months to ensure {insert child’s name}’s enrolment at a school, they are still not enrolled at a Queensland state school and no evidence has been found that they are enrolled at a non-state school.
3. The following information is provided to assist with the decision:

* **Attachment 1** provides the Chief Executive’s Delegate’s Certificate (Ref: xx/xxxxx).
* **Attachment 2** provides confirmation from the Home Education Unit that {insert child’s name}’s is not registered for home education (Ref: xx/xxxxx).
* **Attachment 3** provides a summary of the region’s interaction with {insert parent/s’ full name/s} to encourage compliance (Ref: xx/xxxxx).
* **Attachment 4** provides the Notice given on {insert date 1st notice was given} in accordance with section 178(2) of the Act (Ref: xx/xxxxx).
* **Attachment 5**  provides the Warning Notice given on {insert date 2nd notice was given} in accordance with section 178(4) of the Act (Ref: xx/xxxxx).
* **Attachment 6** provides copies of the Registered Post receipts for the Notices given on {insert date 1st notice was given} and {insert date 2nd notice was given, if applicable} respectively (Ref: xx/xxxxx).
* **Attachment 7** provides an extract copy of the *Instrument of Delegation under the Education (General Provisions) Act 2006* (Qld) authorising the Regional Director to consent to bring proceedings as the Chief Executive’s delegate.

**Background**

1. Section 176(1)(a) of the Act provides that each parent of a child of compulsory school age must ensure the child is enrolled at a state or non-state school, unless the parent has a reasonable excuse.

**Procedural requirements to prosecute**

1. Under section 179(1) of the Act, proceedings for an offence against section 176(1) may be brought against a parent—

(a) by the chief executive or with the chief executive’s consent; and

(b) only if the time when the parent is alleged to have committed the offence is after—

(i) the parent has been given a notice under section 178(2); and

(ii) at least 1 meeting has been held with the parent under section 178(3) or the parent has been given a warning notice under section 178(4).

1. This power has been delegated to regional directors by virtue of the *Instrument of Delegation under the Education (General Provisions) Act 2006* (Qld) signed by the Chief Executive.
2. Only an ‘authorised officer’ can give the prescribed notices under sections 178(2) and 178(4) of the Act and meet with a parent under section 178(3) of the Act. {Insert authorised officer’s name}, {insert authorised officer’s position}, {insert name of region}, is an authorised officer for the purposes of the Act.
3. The procedural requirements of section 179(1)(b) of the Act have been satisfied, as follows:

* On {insert date 1st notice was given}, in accordance with section 178(2), the authorised officer sent by regular mail and registered post {insert parent/s’ name/s} a notice in the approved form about the parent’s obligation under section 176(1) of the Act (**Attachment 4**).
* The notice extended an invitation to meet with the parent/s to discuss their obligation under section 176(1) of the Act.
* **INCLUDE IF A MEETING DID OCCUR** In accordance with section 178(3), a meeting took place between {insert authorised officer’s name} and the parent/s on {insert date meeting took place} (**Attachment 3**).
* **INCLUDE IF A MEETING DID NOT OCCUR** Despite the invitation to meet with the parent/s to discuss the obligation under section 176(1) of the Act, the meeting did not take place {state reasons if available}. The parent/s did not attend and did not reschedule the meeting.
* On {insert date 2nd notice was given}, in accordance with section 178(4) the authorised officer sent by regular mail and registered post to {insert parent/s’ name/s} a warning notice in the approved form **(Attachment 5)**.

**ADDITIONAL DETAIL MAY BE INSERTED IF RELEVANT – FOR EXAMPLE:**

* The notice/warning notice sent {insert date notice sent} was sent by registered post to the last known residential address of {insert name of parent/s}. This notice/warning notice was returned to the school/region on {insert date notice returned}. NOTE: Despite the parent not collecting the notices sent via registered post, the requirement to ‘give’ said notices to the parent under section 178(2) and section 178(4) has been satisfied. The notices were also sent via regular mail and those notices have not been returned to the region.
* {If notices/meetings have only been held with one parent of the child – please explain why. If the department is proposing to prosecute only one parent of the child, please explain why}

1. The region does not have a copy of the child’s birth certificate, so the QPS will need to obtain documentary evidence confirming parentage if required.

**Interaction to avoid prosecution**

1. The region has made appropriate attempts to communicate with the parent/s to encourage compliance with the compulsory schooling obligation under the Act. This interaction is detailed in **Attachment 3**.
2. The results of the interaction were:

* {insert details: e.g. failure to attend meetings, not returning phone calls}.

1. As at {insert date of most recent communication attempt}, {insert child’s full name} was still not enrolled at a state or non-state school.
2. The authorised officer and the regional office will continue to attempt to offer support to the parent/s to help with compliance until the child is enrolled.

**Exemption from compliance with the compulsory schooling requirement or where the requirement does not otherwise apply**

1. The child’s parent/s has/have not indicated that {insert name of child} has an exemption from compliance with the compulsory schooling requirement under Chapter 9, Part 3 of the Act.
2. A search of departmental records does not reveal any record of an application or approval of an exemption under Chapter 9, Part 3 of the Act.
3. There is no evidence that any of the exceptions in Chapter 9, Part 4 of the Act (activities under Commonwealth law, home education, exclusion or suspension, child’s illness, infectious or contagious condition, pending application for enrolment, apprenticeship or traineeship) apply in this case.

**Possible defence of reasonable excuse**

1. In considering whether or not to give consent to the prosecution of {insert parent/s’ full name/s} for an offence against section 176(1), you are entitled to consider if the parent has a reasonable excuse for not enrolling {insert child’s full name}.
2. Section 176(2) provides that it is a reasonable excuse for a parent that:
   * + - 1. the child lives with another parent and the relevant parent believes, on reasonable grounds, the other parent is ensuring the child is enrolled at a school and attending every school day of the child’s educational program; or
         2. in all the circumstances, the relevant parent is not reasonably able to control the child’s behaviour to the extent necessary to ensure the child’s enrolment and attendance*.*
3. The reasonableness of any excuse should be assessed in accordance with the *Director-General’s* *Guideline for authorised officers on how to determine whether parents have a reasonable excuse for the purposes of sections 176 and 239 of the Education (General Provisions) Act 2006* (Qld) *– 01/2018*.

**IF AN EXCUSE IS PROVIDED BUT IS NOT ACCEPTED AS REASONABLE, COMPLETE CLAUSES 20-22 (if no excuse provided, delete clauses 20-22)**

1. {Insert child’s name}’s parent/s has/have provided the following excuse/s for not complying with the compulsory requirements under the Act:

* {insert reasons and evidence if available}

1. In light of the above Guideline, the excuse/s provided by the parent/s does/do not support a reasonable conclusion that there is a reasonable excuse as to why {insert child’s full name} is not enrolled as required by section 176(1).
2. {provide additional explanation of the above conclusion if appropriate}

**IF NO EXCUSE IS PROVIDED, COMPLETE CLAUSE 23 (if excuse provided above, delete clause 23)**

1. The child’s parent/s has/have provided no information or excuse as to why {insert child’s full name} is not enrolled in a state or non-state school. It is therefore not possible to determine that the parent/s has/have a reasonable excuse for the purpose of section 176 of the Act.

**Evidentiary certificate**

1. In order to assist the prosecution of this matter, a draft evidentiary certificate (Chief Executive’s Delegate’s Certificate) pursuant to section 407 of the Act is attached (**Attachment 1**) for your signature, should you decide to consent.

**Recommendation**

That the Regional Director:

* **Decide** whether or not to bring proceedings against {insert parent/s’ full name/s} for failure to ensure that {insert child’s full name} is enrolled in a school, in contravention of section 176(1)(a) of *Education (General Provisions) Act 2006* (Qld) by choosing:

**🞎 A.** **Consent** to bring proceedings against {insert parent/s’ full name/s} for failure to ensure that {insert child’s full name} is enrolled in a school, in contravention of section 176(1)(a) of *Education (General Provisions) Act 2006* (Qld) and **sign** the attached certificate to be used for evidentiary purposes by the QPS Prosecution Corps (**Attachment 1**); or

**🞎 B.** **Do not consent** to bring proceedings against {insert parent/s’ full name/s} for failure to ensure that {insert child’s full name} is enrolled in a school, in contravention of section 176(1)(a) of *Education (General Provisions) Act 2006* (Qld)*.*

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| **{INSERT NAME OF REGIONAL DIRECTOR}** |  |
| **Regional Director**  **{insert name of region}**  **Department of Education** |  |
| **/ /** |  |

**Regional Director’s comments**

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| Action Officer |
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| Tel: |
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**Attachment 1**

**s.407, *Education (General Provisions) Act 2006* (Qld)**

**CHIEF EXECUTIVE’S DELEGATE’S CERTIFICATE**

**Prosecution of**

**{Insert Name of Parent/s}**

I, {insert name of regional director}, Regional Director, delegate of the Chief Executive of the Department of Education do hereby:

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| s.407(1)(b) | A | Certify that the document attached and marked “A” is a copy of the Instrument of Authorisation authorising Name, Authorised Officer, Region to take action pursuant to s.178 of the *Education (General Provisions) Act 2006* (Qld)*.* |
| s.407(1)(c) | B | Certify that on the dates that notices pursuant to ss.178(2) and 178(4) of the *Education (General Provisions) Act 2006* were given to Parent Name, namely Date and Date respectively, Name of Authorised Officer was an authorised officer for the purposes of s.178 of the *Education (General Provisions) Act 2006* (Qld)*.* |
| s.407(1)(d) | C | Certify that in respect of Child Name there is no exemption issued under Chapter 9, Part 3 of the *Education (General Provisions) Act 2006* (Qld) in force. |
| s.407(1)(f) | D | Certify that on Date, Parent Name was given a notice pursuant to s.178(2) of the *Education (General Provisions) Act 2006* (Qld). |
| s.407(1)(f) | E | Certify that on Date, Parent Name was given a notice pursuant to s.178(4) of the *Education (General Provisions) Act 2006* (Qld). |
| s.407(2)(b) | F | Certify thatI give consent to bring proceedings against Parent Name for an offence against s.176(1)(a) of the *Education (General Provisions) Act 2006* (Qld). |

**{insert name of regional director}**

Regional Director (insert name of region)

Delegate of the Chief Executive

Department of Education

This day of 20