**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 FAILING TO ENSURE YOUNG PERSON’S FULL NAME IS PARTICIPATING FULL-TIME IN AN ELIGIBLE OPTION**

**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 young person’s name} is participating full-time in an eligible option, in contravention of section 239 (1) of the *Education (General Provisions) Act 2006* (Qld) (the Act)*.*

**Key issues**

1. {Insert young person’s full name} (DOB xx/xx/xxxx) - *note young person must be in compulsory participation phase, please refer to definition in section 231 of the Act*} is a young person in the compulsory participation phase.
2. **INCLUDE IF THE YOUNG PERSON IS ENROLLED BUT REGULARLY ABSENT** {Insert young person’s name} is enrolled in an eligible option at {insert school and/or provider name} but is regularly absent without satisfactory explanation. Despite attempts by the school and regional office over the past {insert number of months} months to ensure {insert young person’s name}’s full-time participation, they are still regularly absent without satisfactory explanation.
3. **INCLUDE IF YOUNG PERSON IS NOT ENROLLED** {Insert young person’s name} is not enrolled full-time in an eligible option. Despite attempts by the regional office over the past {insert number of months} months to encourage full-time participation in an eligible option, {young person’s name} is still not enrolled in an eligible option.
4. The following information is provided to assist with the decision:
	* **Attachment 1** provides the Chief Executive’s Delegate’s Certificate (Ref: xx/xxxxx).
	* **INCLUDE IF APPLICABLE. IF NOT RE-NUMBER ATTACHMENTS BELOW.** **Attachment 2** provides a summary of {insert young person’s name}’s absences without a satisfactory reason commencing on {insert date} up to {insert date}. The date for first unexplained absence, when the offence is considered to have commenced, is {insert date} (Ref: xx/xxxxx).
	* **Attachment 3** provides a summary of the {school’s/provider’s} interaction with {insert parent/ carer’s name} to encourage compliance (Ref: xx/xxxxx).
	* **Attachment** **4** provides a summary of the region’s interaction with {insert parent/carer’s name} to encourage compliance (Ref: xx/xxxxx).
	* **Attachment 5** provides the Notice given on {insert date 1st notice was given} in accordance with section 241(2) of the Act (Ref: xx/xxxxx).
	* **Attachment 6** provides the Warning Notice given on {insert date 2nd notice was given} in accordance with section 241(4) of the Act (Ref: xx/xxxxx).
	* **Attachment 7** provides copies of the Registered Post receipts for the Notices given on {insert date 1st notices was given} and {insert date 2nd notice was given, if applicable} respectively (Ref: xx/xxxxx).
	* **Attachment 8** 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 239(1) of the Act provides that a parent of a young person in the compulsory participation phase must ensure the young person is participating full-time in an eligible option unless the parent has a reasonable excuse.
2. Section 232 of the Act provides a table of eligible options and the relevant providers for each option.

**Procedural requirements to prosecute**

1. Under section 242(1) of the Act, proceedings for an offence against section 239(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 241(2); and

(ii) at least 1 meeting has been held with the parent under section 241(3) or the parent has been given a warning notice under section 241 (4).

1. The Chief Executive’s 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 241(2) and 241(4) of the Act and meet with a parent under section 241(3) of the Act. {Insert authorised officer’s name}, {insert authorised officer’s position}, {insert school’s name}, is an authorised officer for the purpose of the Act.
3. The procedural requirements of section 242(1)(b) of the Act have been satisfied, as follows:
* On {insert date 1st notice was given}, in accordance with section 241(2), the authorised officer sent by regular mail and registered post to {insert parent/s name/s} a notice in the approved form about the parents’ obligation under section 239(1) of the Act (**Attachment 5**).
* The notice extended an invitation to meet with the parent/s to discuss their obligations under section 239(1) of the Act.
* **INCLUDE IF A MEETING DID OCCUR** In accordance with section 241(3), a meeting took place between {insert authorised officer’s name} and the parent/s on {insert date} (**Attachment** {choose **3 and/or 4** as applicable}).
* **INCLUDE IF A MEETING DID NOT OCCUR** Despite the invitation to meet with the parent/s to discuss the obligation under section 239(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 241(4) the authorised officer, {insert name and position of officer} sent by regular mail and registered post to {insert parent/s name/s} a warning notice in the approved form **(Attachment 6)**.

**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/s not collecting the notices, the requirement to ‘give’ said notices to the parent/s under section 241(2) and section 241(4) has been satisfied.
* {If notices/meetings have been sent or have only been held with one parent of the young person – please explain why. If the department is proposing to prosecute only one parent of the young person, please explain why}.
1. The school/region does not have a copy of the young person’s birth certificate, so the QPS will need to obtain documentary evidence confirming parentage if required.

**Interaction to avoid prosecution**

1. The authorised officer and regional office have made appropriate attempts to communicate with the parent/s to encourage compliance with the obligation to ensure full-time participation under the Act. This interaction is detailed in **Attachment** {choose **3 and/or 4** as applicable}.
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 absence. Note: this day must be after the date the meeting was held or the warning notice was sent}, {insert young person’s full name} was still not enrolled in an eligible option OR continued to be regularly absent from school/provider without satisfactory explanation.
2. The authorised officer/school/provider and the regional office will continue to attempt to offer support to the parent/s to help with compliance until the prosecution process is resolved.

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

1. The young person’s parent/s has/have not indicated that {insert young person’s full name} has an exemption from compliance with the compulsory participation requirement under Chapter 10, Part 5 of the Act.
2. There is no evidence that any of the exceptions in section 240 of the Act apply in this case.
3. There is no evidence that section 236 (allowed absence), section 237 (suspension or exclusion) and section 238 (participation in an apprenticeship or traineeship) of the Act 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 239(1) of the Act, you are entitled to consider if the parent/s has/have a reasonable excuse for not ensuring that {insert young person’s full name} is participating full-time in an eligible option.
2. Section 239(2) provides that it is a reasonable excuse for a parent that:
	* + - 1. the young person lives with another parent and the relevant parent believes, on reasonable grounds, the other parent is ensuring the young person participates full-time in an eligible option;

or

* + - * 1. in all the circumstances, the relevant parent is not reasonably able to control the young person’s behaviour to the extent necessary to ensure the young person participates full-time in an eligible option.
1. 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 – 01/2018*.

**IF AN EXCUSE IS PROVIDED BUT IS NOT ACCEPTED AS REASONABLE COMPLETE CLAUSES 22-24 (if no excuse provided, delete CLAUSES 22-24)**

1. {Insert young person’s name}’s parent/s has/have provided the following excuse/s for not complying with the compulsory participation 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 young person’s name} is not participating full-time in an eligible option as required by section 239(1).
2. {provide additional explanation of the above conclusion if appropriate}

**IF NO EXCUSE IS PROVIDED, COMPLETE CLAUSE 25 (if excuse provided above, delete clause 25)**

1. The young person’s parent/s has/have provided no information or excuse as to why {insert young person’s name} is not participating full-time in an eligible option as required by section 239(1). It is therefore not possible to determine that the parent/s has/have a reasonable excuse for the purpose of section 239 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 sections 407 and 410 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 young person’s name} is participating full-time in an eligible option, in contravention of section 239(1) of the *Education (General Provisions) Act 2006* (Qld) (the Act) by choosing:

**🞎 A. Consent** to bring proceedings against {insert parent/s’ full name/s} for failure to ensure that {insert young person’s name} is participating full-time in an eligible option, in contravention of section 239(1) of the *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 young person’s name} is participating full-time in an eligible option, in contravention of section 239(1) of the *Education (General Provisions) Act 2006* (Qld).

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

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

**ss.407 and 410, *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:

s.407(1)(b) A Certify that the document attached and marked “A” is a copy of the Instrument of Authorisation authorising [insert name and position of authorised officer] to take action pursuant to s.241 of the *Education (General Provisions) Act 2006* (Qld).

s.407(1)(c) B Certify that on the dates that notices pursuant to s.241(2) and 241(4) of the *Education (General Provisions) Act 2006* (Qld)were given to [insert name of parent/s], namely [insert date s.241(2) notice was posted] and [insert date s.241(4) notice was posted] respectively, [insert name and title of authorised officer] was an authorised officer for the purposes of s.241 of the *Education (General Provisions) Act 2006* (Qld).

s.407(1)(e) C Certify that in respect of [insert name of young person] there is no exemption issued under Chapter 10, Part 5 of the *Education (General Provisions) Act 2006* (Qld) in force.

s.407(1)(f) D Certify that on [insert date s.241(2) letter was posted] [insert name of parent] was given a notice pursuant to s.241(2) of the *Education (General Provisions) Act 2006* (Qld).

s.407(1)(f) E Certify that on [insert date s.241(4) letter was posted] [insert name of parent] was given a notice pursuant to s.241(4) of the *Education (General Provisions) Act 2006* (Qld).

s.410 F Certify that I give consent to bring proceedings against [insert name of parent] for an offence against s.239(1) 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….