

LEGISLATION FOR ACT SCHOOLS

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SECTION	REQUIREMENT	ADVICE	ONUS
ACT Teacher Quality Institute ACT 2010			
32	Eligibility for full registration as a teacher	No action	Principal
	<ul style="list-style-type: none"> (1) the person holds a teaching qualification prescribed by regulation for registration; and (2) in the 5-year period before the day the application is made the person taught for the period prescribed by regulation; and (3) the person has the oral and written English language communication requirements prescribed by regulation; and (4) the person is registered under the <i>Working with Vulnerable People (Background Checking) Act 2011</i>; and (5) the person is an Australian or New Zealand citizen, has permanent resident status, or has a valid work visa allowing the person to work in Australia; and (6) if the person has provisional registration or a permit to teach that is subject to 1 or more conditions—the person has fulfilled each condition; and (7) the person meets any requirements prescribed by regulation for full registration; and (8) the person’s registration or permit to teach has not been cancelled in the ACT or by a corresponding registering authority other than in accordance with a request by the person. 	<p>Information for Principal</p> <p>Advised that schools should ensure that employment terms and conditions include registration as a condition of employment for teachers, and compliance with the TQI requirements (as in place from time to time)</p>	

67

Obligation to notify institute about teacher

Principal

- (a) the teacher has become mentally or physically incapacitated and the incapacity prevents the person from performing an inherent requirement of their job as a teacher;
- (b) the teacher is given a negative notice under the *Working with Vulnerable People (Background Checking) Act 2011, section 40*;
- (c) the teacher's registration under the *Working with Vulnerable People (Background Checking) Act 2011*—
 - a. has lapsed; or
 - b. is made subject to a condition; or
 - c. is suspended or cancelled; or
 - d. is surrendered.

Principal (employer) has to advise institute, in writing of anything under section 67.

Schools may consider including in any internal policies about staff conduct and well-being that this mandatory disclosure will be made if the circumstances require it.

70A

Disclosure of information to institute

Principal

The institute may, by written notice, ask the employer of an approved teacher for any information that the institute believes on reasonable grounds is relevant to—

- (a) considering, under this part, whether there is a ground for suspending or cancelling an approved teacher's registration or permit to teach; or
- (b) imposing a condition on an approved teacher's registration or permit to teach under section 38 (Conditions of registration and permit to teach).

The Board and/or Principal, as the employer, should be aware of the obligation to provide this information on request.

Schools may consider including in any internal policies about staff conduct that this mandatory disclosure will be made if the circumstances require it.

70B

Employer to tell institute about notification event

Notification event means:

- (a) the employer of an approved teacher:
 - (i) tells the teacher that the employer has decided to begin a formal investigation of the teacher;
 - (ii) takes disciplinary action against the teacher under the terms of the teacher's employment;
 - (iii) removes, cancels or ends the access of the teacher to casual employment;

an approved teacher, who is the subject of a formal investigation or preliminary factual inquiry by the employer, resigns.

The employer commits an offence if—

- (a) a notification event happens in relation to the approved teacher; and
- (b) the employer does not, on the day of the notification event or within 5 working days after the event, give written notice of the event to the institute.

Schools may consider including in any internal policies about staff conduct and/or discipline that this mandatory disclosure will be made if the circumstances require it.

Principal
Board

70C

Institute may request further information

If the employer gives notice under section 70B, the institute may, by written notice, ask the employer to give further information within a stated time in relation to the notification event.

No specific provision making it an offence not to provide that further information.

Principal
Board

70D

Protection of information disclosed under this division

A person disclosing information to the institute is not civilly liable for anything done or omitted to be done honestly and without recklessness—

- (a) in complying with this division; or
- (b) in the reasonable belief that the disclosure complied with this division

Principal is protected if they give information to the institute

Principal
Board

Animal Welfare Act 1992 (ACT)

25	<p>Research, teaching and breeding</p> <p>A person commits an offence if the person:</p> <ul style="list-style-type: none">(a) uses or breeds an animal for research or teaching; and(b) the person does not have a licence to do so <p>unless the person uses an animal prescribed by regulation for teaching purposes in a preschool or primary school.</p> <p>The animals permitted without licence are:</p> <ul style="list-style-type: none">axolotlfrogbudgerigarchickencockatielfinchpigeonquail	<p>Principals need to ensure that their primary and/or pre-school teachers are aware of which animals can be brought in without a licence.</p> <p>If a licence is required either the school can obtain one or bring a body or entity to teach about animals that does have a licence.</p>	Principal
26	<p>Application for licence</p> <p>To obtain a licence the school may apply to the Animal Welfare Authority</p>		Principal
36	<p>Research and teaching using and breeding animals</p>		Principal

A person employed or engaged by a licensee (school with a licence) commits an offence if the person

conducts a program of teaching using or breeding animals and the person does not hold a teaching authorisation for the teaching.

Australian Education Act 2013 (Commonwealth)

71

Approved Authorities

An approved authority is the body to which recurrent funding under this Act is ultimately paid. For a non-government school, the approved authority is the body corporate approved by the Minister for the school.

Board

75

Requirements to be an approved authority

To become an approved authority a person must be:

- (a) a body corporate or body politic;
 - (b) that does not conduct for profit any school in relation to which the application is made;
 - (c) financially viable;
- a fit and proper person.

These criteria are assessed at the discretion of the Minister following an application under section 72. These applications, amongst other things, must specify the educational level the authority intends to oversee. Should one wish to vary the level of approval they have they may apply to do so under section 80.

Board

The specifics of these criteria are outlined in the regulation:

Not for Profit (section 26 of regulation)

Whether an authority is not for profit will depend on the financial policies of the school and 'the quality of those policies and practices' and whether money granted is or will be applied 'for the purposes of the functions of the School or whether it has been or will be distributed to an owner of the School. In other words, the Minister will assess the potential for the misappropriation of funds

based on the School's policies and practices, therefore Schools should ensure they implement a financial plan accordingly.

Financially Viable (section 27 of regulation)

The Minister will assess:

- (a) whether the authority is being wound up;
- (b) whether the authority is in any way being controlled externally under law;
- (c) whether the liabilities of the authority are greater than its assets;
- (d) whether the person may be unable to pay its debts;
- (e) whether any audit conducted produces concern.

Fit and Proper Person (Section 28 of regulation)

In determining whether an authority is a fit and proper person the Minister will have regard to:

- (f) the expertise and experience of the authority and 'key individuals' of the authority (the board and senior staff) in administering a school and educating students at a school;
- (g) the authority's governance arrangements including the arrangements for managing and supervising the provision of education at the School and the arrangements to ensure compliance with all Commonwealth, State and Territory laws;
- (h) whether the authority has arranged professional advice about its obligations under the ACT;

Ongoing policy requirements for approved authorities

Approved authorities must:

- (a) implement curriculum in accordance with the regulation;
- (b) ensure that the school participates in the national assessment program (NAPLAN) in accordance with the regulation;
- (c) provide information in accordance with the regulation;
- (d) cooperate with the State or Territory in which it operates to implement national policy initiatives (Quality Schools program) and the agreements that States and Territories have with the Commonwealth (you can find the ACT agreement [here](#));

- (i) whether there is a debt recovery process being undertaken by the Commonwealth in relation to an order to repay funds under section 110 of the Act;
- (j) the authority's, and its key individuals, record of financial management taking into account bankruptcy, insolvency and external administration;
- (k) whether the authority or any key person of the authority has been charged with, or convicted of any offence;

whether the authority or any of its key individuals has engaged in a deliberate pattern of immoral or unethical behaviour

For information in relation to the curriculum see section 42 of the Regulation below.

- (e) operate in accordance with the regulations;
provide information required by the regulations.

Australian Education Regulation 2013 (Commonwealth)

29(1)-(2) Spending Commonwealth Funding

Approved authorities (schools) must spend Commonwealth funding for the purpose of providing school education at a school for which the approved authority is approved.

The regulation gives some examples of what this purpose could encompass:

- (a) salaries and other expenses relating to staff at the school, including expenses related to the professional development of the staff;
- (b) developing materials related to the school's curriculum;
- (c) general operating expenses of the school;
- (d) maintaining the school's land and buildings;
- (e) purchasing capital equipment for the school;
in any case—administrative costs associated with the authority's compliance with the Act and this regulation.

29(3) Prohibited Spending

Commonwealth funding must not be spent:

- (a) as security for any form of loan, credit, payment or other interest; or
- (b) for the preparation of or in the course of any litigation, except litigation by a State or Territory to

recover a debt from an authority or body as mentioned in paragraph 11(4)(b); or

- (c) for a school other than a school whose capacity to contribute percentage is 0%—on any of the following:
- the purchase of land or a building for the school;
 - the construction of a building or a part of the building for the school;
 - capital improvements for the school;

any form of loan, credit or other interest in relation to expenditure mentioned in subparagraphs (i) to (iii).

37

Requirement to keep records

Schools must keep records relating to:

- (a) the authority or body's compliance with the Act and this regulation; and
- (b) the financial administration of the School and the board
- (c) capital expenditure in relation to land or buildings at or for the school, including expenditure by contractors and sub-contractors carrying out works in relation to that capital expenditure.
- (d) Enrolments and attendance rolls at School

These records must:

- (a) be identifiably separate from other records that the authority or School holds; and

- (b) identify all income and expenditure that relates to any financial assistance paid to the School/authority in accordance with the Act.

These records must be kept for 7 years.

These records may be inspected

38 Requirement to prepare and audit financial statements

Requirement

Financial statements must be prepared each year for all money received in accordance with the Australian Accounting Standards and those statements must be audited in accordance with the Australian Auditing Standards and generally accepted auditing practices

These statements may be inspected.

42 Student Assessments

Refer to [table](#) to see list of assessments.

46 School Census

The approved authority of a school (board) must each year provide to the government a census return for every campus. The census must be given to the Secretary of the department of Education no later than 7 days after the school's census day for the year. The government produces a manual to assist non-government schools complete the census and it can be found [here](#).

The information needed to be provided in the census is:

Information about the school:

- (a) the name of the school;
- (b) the street address of each location of the school;
- (c) the postal address of the school;
- (d) the school's email address;
- (e) the years of schooling offered by the school;

- (f) whether the school is a primary school, a secondary school or a combined school;
- (g) whether the school is a special school or a special assistance school;
- (h) the number of staff at the school in the following categories on the school's census day for the year:
 - (i) teaching staff,
 - (ii) staff who are not teaching staff,
 - (iii) full-time staff;
 - (iv) part-time staff;
 - (v) full-time equivalent staff;
 - (vi) Aboriginal and Torres Strait Islander staff;
 - (vii) if the school is a combined school—full-time equivalent staff providing primary education and full-time equivalent staff providing secondary education;
 - (viii) if students board at the school—full-time equivalent staff with boarding duties and full-time equivalent staff without boarding duties.

Information about the students

- (a) The number of students at the school for the year and the number of full-time and part-time students at the school for the year;
- (b) For each year of schooling – the number of students at the school in each category that is

defined by reference to the following characteristics as specified, in writing, by the Secretary:

- (i) Age;
 - (ii) Sex;
 - (iii) Aboriginal and Torres Strait Islander students;
 - (iv) Distance education students;
 - (v) Students who board
- (c) For each year of schooling, the number of:
- (i) Overseas students; and
 - (ii) students who hold or are included in a visa in force under the Migration Act 1958;

included in a non-government school's census day enrolment for a year must also be included in the school's census return for the year.

Information must not explicitly identify any student.

52-58B Information for a national program to collect data

It would be impractical to include all of the information that is required to be reported under this section. Instead see the following [link](#)

59 Student Reports

Schools must provide persons responsible for each student (parents & guardians) with a report on each student at least twice a year.

For students in grades 1-10 the reports must:

- (a) give an accurate and objective assessment of the student's progress and achievement,

Publicly available information

The following information must be made available to the public within 6 months of the end of a year:

- (a) contextual information about the school, including the characteristics of students at the school;
- (b) teacher standards and qualifications (as mandated in the State or Territory in which the school is located);
- (c) workforce composition, including Aboriginal and Torres Strait Islander composition;
- (d) student attendance at the school, including:
 - (i) the attendance rates for each year of schooling; and
 - (ii) a description of how non-attendance is managed by the school;
- (e) student results in NAP annual assessments;

including an assessment of the student's achievement:

- (i) against any available national standards; and
- (ii) relative to the performance of the student's peer group; and
- (iii) reported as A, B, C, D or E (or on an equivalent 5 point scale) for each subject studied, clearly defined against specific learning standards; or

contain the information that the Minister determines is equivalent to the information in paragraph (a).

The information must be publicly available on the internet be given to anyone parent or guardian who requests it should they not have access to the internet

- (f) parent, student and teacher satisfaction with the school, including (if applicable) data collected using the National School Opinion Survey;
- (g) school income broken down by funding source;
- (h) for a school that provides secondary education”
 - (i) senior secondary outcomes, including the percentage of year 12 students undertaking vocational training or training in a trade and the percentage of year 12 students attaining a year 12 certificate or equivalent vocational education and training qualification; and
 - (ii) post-school destinations.

This is the minimum information required and Schools are not prevented from providing more to the public.

Board of Senior Secondary Studies Act 1997

5 Functions of board

- (a) to accredit or register courses taught by recognised educational institutions;
- (b) to approve, consistent with national agreements, recognised educational institutions for teaching vocational education courses;
- (c) to establish guidelines for the development of courses by the board or by a recognised educational institution;

For information

Principal

- (d) to establish principles and procedures for the assessment of attainments of students and the moderation of the assessments;
- (e) to provide to people who have undertaken courses, or units of courses, certificates and transcripts of their attainments;
- (f) to provide information on—
 - (i) the performance of students and former students; and
 - (ii) the policies and procedures of the board.

8

Membership of board

One person appointed after consultation with the body known as the Association of Independent Schools

One person appointed after consultation with the body known as the ACT Principals' Association Inc

For information

Principal

Capital Grants Program Guidelines 2019 (Commonwealth)

Schools make applications through the ACT Block Grant Authority Incorporated <https://actbga.org.au/>

Principal Board

Charitable Collections Act 2003 (ACT)

8

Conducting a collection

A person *conducts* a collection if the person organises or manages, or assists in organising or managing, the

collection in any capacity other than as an employee or agent, including being a volunteer.

14 Unlawfully conducting collections

A person commits an offence if—

1. the person conducts a collection; and
2. the person is not authorised by a licence to conduct the collection.

21 Application for licence

An entity may apply in writing to the director-general for a licence authorising the entity to conduct a collection.

44 Proceeds of collections

A licensee commits an offence if the licensee fails to ensure that the proceeds of a collection conducted by the licensee are applied only for the purposes of the collection.

The moneys collected or other proceeds must be used for the purposes of the collection.

50 Keeping of records

Children and Young People Act 2008

25 Director-general may ask for assistance

The director-general may ask a School to provide assistance, facilities or services relevant to the physical or emotional wellbeing of a child or young person.

The School must comply with the request promptly Principal

353

Voluntary Report

If a person believes or suspects that a child or young person—

- 3. is being abused; or
- 4. is being neglected; or
- 5. is at risk of abuse or neglect.

That person may make a voluntary report of the belief or suspicion, and the reasons for the belief or suspicion, to the director-general. Non-Teaching Staff

356

Mandatory reporting of abuse

A person commits an offence if—

- (a) the person is a mandated reporter; and
- (b) the person is an adult; and
- (c) the person believes on reasonable grounds that a child or young person has experienced, or is experiencing—
 - (i) sexual abuse; or
 - (ii) non-accidental physical injury; and
- (d) the person's reasons for the belief arise from information obtained by the person during the course of, or because of, the person's work (whether paid or unpaid); and
- (e) the person does not, as soon as practicable after forming the belief, report (a *mandatory report*) to the director-general—

Staff to be made aware of their obligations to report, and training be provided about what circumstances or behaviours may signal a need for a report to be made.

Staff employed at the school which may include:

- (a) teacher, including teacher's assistant or aide;
- (b) nurse;
- (c) enrolled nurse;
- (d) psychologist;
- (e) person employed to counsel children or young people.

(a) the child's or young person's name or description; and

(b) the reasons for the person's belief.

357

Mandatory reporting—exceptions

A person does not have to make a mandatory report if the person believes on reasonable grounds that—

(i) someone else has made a report to the director-general about the same child or young person in relation to the same abuse or non-accidental physical injury; and

(ii) the other person has reported the same reasons for their belief as the person has for their belief.

School must have procedures in place to register mandatory and voluntary reports and direct them through a coordinated channel

Principal

371

Care and protection appraisal—visual examination and interview at school

If the director-general suspects on reasonable grounds that obtaining agreement to carry out an appraisal from a parent or other person with daily care responsibility for a child or young person—

6. is not in the best interests of the child or young person; or

7. would be likely to jeopardise a criminal investigation,

the director-general—

Principal to be aware of potential entry by Director-General, and the identity verification requirements provided in s371.

Principal

8. may enter the school to visually examine or interview the child or young person; and
9. if entering the school, must—
 - (a) produce the director-general's identity card; and
 - (b) tell the person in charge of the school, the purpose of the entry

Disability Discrimination Act 1992 (Cth)

3

Objects

The objects of this Act are:

10. to eliminate, as far as possible, discrimination against persons on the ground of disability in the areas of:
11. work, accommodation, education, access to premises, clubs and sport and
12. to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law as the rest of the community, and
13. to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.

The person (the action planner) who, is prohibited from discriminating against another person on the ground of a disability of the other person may develop an action plan

Principal and Board

The action plan must include provisions relating to:

- (a) the devising of policies and programs to achieve the objects of this Act; and
- (b) the communication of these policies and programs to persons within the action planner; and
- (c) the review of practices within the action planner with a view to the identification of any discriminatory practices; and
- (d) the setting of goals and targets, where these may reasonably be determined against which the success of the plan in achieving the objects of the Act may be assessed; and

(e) the means, other than those referred to in paragraph (d), of evaluating the policies and programs referred to in paragraph (a); and
the appointment of persons within the action planner to implement the provisions referred to in paragraphs (a) to (e) (inclusive).

4

Definitions

educational authority means a body or person administering an educational institution.

educational institution means a school, college, university or other institution at which education or training is provided.

education provider means:

- (i) an educational authority; or
- (ii) an educational institution; or
- (iii) an organisation whose purpose is to develop or accredit curricula or training courses used by other education providers referred to in paragraph (a) or (b).

22(1) & (2)

Unlawful Conduct

It is unlawful for an educational authority to:

- (1) discriminate against a person on the ground of the person's disability:
 - (a) by refusing or failing to accept the person's application for admission as a student; or

(b) in the terms or conditions on which it is prepared to admit the person as a student.

(2) It is unlawful for an educational authority to discriminate against a student on the ground of the student's disability:

(a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority; or

(b) by expelling the student; or

(c) by subjecting the student to any other detriment.

22((A)

It is unlawful for an education provider to discriminate against a person on the ground of the person's disability:

(a) by developing curricula or training courses having a content that will either exclude the person from participation, or subject the person to any other detriment; or

(b) by accrediting curricula or training courses having such a content.

3

It is not unlawful to discriminate against a person on the ground of the person's disability in respect of admission to an educational institution established wholly or primarily for students who have a particular disability where the person does not have that particular disability

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Harassment in education

It is unlawful for a person who is a member of the staff of an educational institution to harass another person who:

(a) is a student at that educational institution or is seeking admission to that educational institution as a student; and

(b) has a disability;

in relation to the disability.

45

Special Measures

It is not unlawful to do an act that is reasonably intended to:

afford persons who have a disability or a particular disability, goods or access to facilities, services or opportunities to meet their special needs in relation to education, or

afford persons who have a disability or a particular disability, grants, benefits or programs, whether direct or indirect, to meet their special needs in relation to education

Disability Discrimination Amendment (Education Standards) Act 2005 (Commonwealth)

2

It is unlawful for an education provider to discriminate against a person on the ground of the person's disability or a disability of any of the person's associates

Disability Standards for Education 2005 (Cth)

Making reasonable adjustments

3, 3.4, 3.7 & 3.8

An adjustment is deemed reasonable (in relation to a student with a disability) if it balances the interests of all parties affected.

It is not unlawful for an education provider to fail to comply with a requirement of these standards if, and to the extent that, compliance would impose unjustifiable hardship on the provider.

3.7 The education provider must take reasonable steps to ensure adjustments are made within a reasonable time, dependent on whether and when the student (or their associate) has provided (in a timely manner) relevant

When considering an adjustment, consider relevant circumstances and interests, including:

1. The student's disability
2. The views of the student and/or their associate
3. The effect of the adjustment on the student's ability to achieve learning outcomes, participate in courses/programs, and independence
4. The effect of the adjustment on anyone else affected, including education provider, staff and other students

Principal & Board & Designated Officers

information regarding the effect of the disability on the student in relation to education/training, and opinion about the potential adjustments.

3.8 Where building work is required as (or as part of) an adjustment, these standards do not require building work to meet specifications more onerous than those required by the premises standards.

If a school acts in accordance with the Standards, they comply with the *Disability Discrimination Act 1992*. A school must comply with the Standards or it will be acting unlawfully and will generate a right of complaint to the Human Rights and Equal Opportunity Commission (HREOC).

4

Standards for enrolment

The school has taken reasonable steps to ensure the admission or enrolment of prospective students with disabilities is done on the same basis as a prospective

5. The costs and benefits of making the adjustment
6. Whether the adjustment may need to be changed over the course of the student's education/training

Note: a detailed assessment (and/or an independent expert assessment) may be necessary to determine the exact adjustment/s the student requires, if any.

When considering 'unjustifiable hardship', first, determine whether the adjustment is *reasonable*. Then, consider whether the adjustment would none-the-less impose the specific concept of unjustifiable hardship on the provider.

You must consult the student and/or their associate regarding:

- (a) whether the adjustment is reasonable;
- (b) the extent to which the adjustment would achieve the aims referred to in this legislation; and
- (c) whether there exists any other reasonable adjustment that would be less disruptive and intrusive and no less beneficial.

Premises Standards means disability standards, formulated by the Attorney-General under section 31 of the Act, that deal, in whole or in part, with the access to or the use of any premises.

Building work includes the construction of a new building.

The provider must:

1. consult the prospective student and/or their

student without a disability, including the provision of reasonable adjustments that are necessary to ensure that they are able to enrol on the same basis as prospective students without disabilities.

associate to determine whether the disability affects the student's ability to seek admission to, or apply for enrolment in, the institution; then,

2. decide whether an adjustment is necessary; and
3. make a reasonable adjustment, if that adjustment/s will achieve the aim of standards for enrolment.

Potential measures that may be implemented include ensuring that:

1. information about the enrolment processes addresses the needs of and is accessible to students with disabilities, and is available within a reasonable timeframe in a variety of formats, as is necessary and reasonable;
2. procedures are designed with a view to reducing the potential for undue difficulty

when being completed by a student with a disability or their associate;

3. information about:

- (a) entry requirements
- (b) choice of, progression through, and educational settings of courses or programs

is accessible to the student and/or their associates in a way that allows them to make informed choices.

Meaning of *on the same basis*

- 2.2(1) The person has opportunities and choices in admission or enrolment that are comparable with those offered to other prospective students without disabilities (relevant to subsection 4.2(1)).
- 2.2(2) The provider makes decisions about admission or enrolment on the basis that reasonable adjustments will be provided in accordance with section 5.2 (relevant to subsection 4.2(2)). Further, should an institution refuse enrolment of a prospective student with a disability on the grounds that the student would be able to enrol in another institution, but does not refuse students without disabilities on the same grounds, that institution is not treating prospective students on the same basis.

5

Standards for participation

The school has taken reasonable steps to ensure students are able to participate in courses and programs offered by the school, and to use services and facilities, on the same basis as a prospective student without a disability.

Meaning of *on the same basis*

2.2(3) The person has opportunities and choices in the courses or programs and in the use of facilities and services that are comparable with those offered to other students without disabilities. (relevant to subsection 5.2(1).

The provider must:

- (a) consult the prospective student and/or their associate to determine whether the disability affects the student's ability to participate in the courses/programs and use the facilities or services at the school; then,
- (b) decide whether an adjustment is necessary; and
- (c) make a reasonable adjustment, if said adjustment/s will achieve the aim of standards for participation, noting that further adjustments may be required to allow for the changing needs of the student over time.

5.3 Appropriate measures should ensure that:

- (a) courses/programs are sufficiently flexible

- (b) course/program requirements are reviewed to include activities the student is able to participate in
- (c) appropriate programs that enable participation are negotiated, agreed and implemented
- (d) additional support to achieve learning outcomes is provided to the student, where necessary
- (e) reasonable and comparable (in terms of the aims of the course/program) substitutes are offered where a course/program includes an activity in which the student cannot participate
- (f) non-classroom activities, associated extra-curricular activities, and activities that are part of the broader educational program are designed to include the student.

6

Standards for curriculum development

The school has taken reasonable steps to ensure that courses and programs are designed such that a student with a disability is able to participate in the learning experiences (including assessment and certification requirements) and

Meaning of *on the same basis*

2.2(3) The person has opportunities and choices in the courses or programs and in the use of facilities and services that are comparable with those offered to

any supplementary programs on the same basis as a prospective student without a disability.

other students without disabilities. (relevant to subsection 6.2(1).

The provider must:

1. consult the prospective student and/or their associate to determine whether the disability affects the student's ability to participate in the learning experience of the courses/programs or supplementary course/program; then,
2. decide whether an adjustment is necessary; and
3. make a reasonable adjustment, if said adjustment/s will achieve the aim of standards for participation, noting that further adjustments may be required to allow for the changing needs of the student over time.

Appropriate measures should ensure that:

- (a) the curriculum, teaching materials, and the assessment and certification requirements are appropriate and accessible to the student
- (b) delivery modes and learning activities take account of intended education outcomes and learning capacities/needs of the student

- (c) materials are made available in a format that is appropriate for the student and the student is not disadvantaged (whether in content or by time taken to provide) by conversion of materials into alternative accessible formats
- (d) teaching and delivery strategies are adjusted to meet the learning needs of the student and address any disadvantage in the student's learning, including provision of additional support (bridging and/or enabling courses), or development of disability-specific skills
- (e) non-classroom activities (field trips, industry site visits, work placements, broader related activities) are designed to include the student
- (f) assessment procedures and methodologies are adapted to enable the student to demonstrate the knowledge, skills or competencies being assessed.

7

Standards for student support services

The school has taken reasonable steps to ensure that a student with a disability is able to use the support services

Meaning of *on the same basis*

The person has opportunities and choices in the courses or programs and in the use of facilities and

used by the students of the school on the same basis as a prospective student without a disability, and without experiencing discrimination.

The standards also provide the prospective student/s the right to access specialised services needed for them to participate in education, including specialist expertise, personal educational support or support for personal and medical care.

Where specialised support service/s is necessary, and is provided by the education provider, the school has taken reasonable steps to ensure that the student has access to the service.

services that are comparable with those offered to other students without disabilities.

The school must facilitate and take reasonable steps to ensure the student has access to any relevant and required specialised services (noting that it may be necessary to arrange for the service to be provided by another person or agency where the school does not provide the service). Provision of access and/or facilitation by the school to specialised support services are considered adjustments.

The provider must:

- (a) consult the prospective student and/or their associate to determine whether the disability affects the student's ability to access support services used by the students at the school, and/or whether a specialised service is required; then,
- (b) decide whether an adjustment is necessary; and
- (c) make a reasonable adjustment, if said adjustment/s will achieve the aim of standards for participation, noting that further adjustments may be required to allow for the changing needs of the student over time.

Appropriate measures should ensure that:

- (a) school staff are informed and aware of the specialised services available to

the student so that staff may assist the student to access said services

- (b) collaborative arrangements with specialised service providers (such as health, personal care and therapy, speech therapists, occupational therapists and physiotherapists) are facilitated where necessary
- (c) specialised equipment (such as adaptive technology and assistive devices) is provided to support the student in participating in their education
- (d) appropriately trained support staff (such as specialist teachers, interpreters, note-takers, and teachers' aides) are available to students with disabilities.

8

Standards for harassment and victimisation

The school has developed and implemented strategies and programs to prevent harassment or victimisation of a student with a disability.

This standard requires strategies and programs to support the right of students with disabilities to education or training in an environment that is free from discrimination caused by harassment or victimisation on the basis of their

Meaning of *harassment*

Harassment includes an action taken in relation to the person's disability that is reasonably likely to humiliate, offend, intimidate or distress.

Harassment in relation to a person who has an associate with a disability, includes an action taken in relation to the associate's disability that is reasonably

disability. Rights of students who have an associate with a disability are also supported by the standards.

Of note, exceptions relating to compliance that imposes unjustifiable hardship on the school do not apply to this section.

likely to humiliate, offend, intimidate or distress the person or the associate.

Recommendations:

1. the school must develop and implement strategies and programs to prevent harassment or victimisation
2. the school must take reasonable steps to ensure that staff and students are informed about their obligation not to harass or victimise, the appropriate actions to be taken if this occurs, and the complaint mechanisms available to students with, or students who have associates with, disabilities.

Appropriate measures should ensure that:

- (a) the school's policies, procedures and codes of conduct for staff and students
 - (i) explicitly prohibit harassment and victimisation of students with disabilities, on the basis of their disability,
 - (ii) include the requirement for strategies and adjustments for the student, and the student's need for supports (including wheelchair, hearing aid,

breathing support interpreter services, a reader, an assistant or carer or a guide or hearing dog or other appropriately trained animal);

- (b) explicitly prohibit harassment and victimisation of associates of students with disabilities, on the basis of disability;
- (c) procedures for handling cases and complaints of harassment or victimisation relating to disability are fair, transparent and accountable
- (d) effectively inform and remind them, at appropriate intervals, of their ongoing rights and responsibilities in maintaining an environment free from harassment and victimisation on the basis of disability
- (e) professional development programs offered to the staff of the school ensure that policies, procedures and codes of conduct are known and understood by staff and that staff are trained to detect and deal with harassment in the school setting
- (f) any cases or complaints of harassment or victimisation on the basis of disability are handled promptly and

with due regard to the severity of the matter.

10

Exceptions

In the event that an exception is invoked, it is the responsibility of the school to demonstrate that the exception operates.

The school must comply with the Standards to the maximum extent not involving unjustifiable hardship.

The concepts of reasonable adjustment and unjustifiable hardship seek to provide a balance between the interests of providers and others, and the interests of students with disabilities.

Discrimination Act 1991 (ACT)

10

Discrimination in work

Employer cannot discriminate against a person—

- (a) in the arrangements made for the purpose of deciding who should be offered employment; or
- (b) in deciding who should be offered employment; or
- (c) in the terms or conditions on which employment is offered.

Employer cannot discriminate against an employee—

- (a) in the terms or conditions of employment that the employer affords the employee; or
- (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training or to any other benefit associated with employment; or
- (c) by dismissing the employee; or
- (d) by subjecting the employee to any other detriment.

Training for staff having Human relations roles is important in this area

Regular review of employment practices, policies and documentation should be conducted to ensure compliance.

Principal
Board

Specifically, an employer discriminates against an employee if the employer denies the employee access to a benefit associated with employment because the employee is in a same-sex relationship.

11

Employees—religious practice

Employer cannot discriminate against an employee by refusing the employee permission to carry out a religious practice during working hours, being a practice—

- (a) of a kind recognised as necessary or desirable by people of the same religious conviction as that of the employee; and
- (b) the performance of which during working hours is reasonable having regard to the circumstances of the employment;
- (c) that does not subject the employer to unreasonable detriment.

Internal policies need to ensure compliance with this requirement, subject to the exemptions set out below.

Policies need to be communicated to and accessible by all staff.

Principal
Board

18

Education

School must not discriminate against a person—

- (a) by failing to accept the person's application for admission as a student; or
- (b) in the terms or conditions on which it is prepared to admit the person as a student.

School must not discriminate against a student—

- (a) by denying the student access, or limiting the student's access, to any benefit provided by school;
or

Enrolment policies need to ensure there is no discrimination due to a protected reason, subject to the exemptions set out below.

Principal
Board

(b) by expelling the student; or

(c) by subjecting the student to any other detriment.

36	Schools for members of one sex Exemption to Section 18 School may discriminate on the ground of sex by not accepting a person's application for admission as a student at the School if the school is conducted solely for students of the opposite sex to that of the applicant	Enrolment policies need to make clear the permitted discrimination on the ground of sex. To ensure compliance, such policies must be made available to parents and on the website at the time of enrolment	Principal Board
44	Exemptions -Religious Workers Exemption to Section 10 School may discriminate on the ground of religious conviction in relation to employment or work in the School conducted by the School owner if the duties of the employment or work involve, or would involve, the participation by the employee or worker in the teaching, observance or practice of the relevant religion.	Recruitment and internal policies need to make clear the permitted discrimination. Policies need to be communicated to and accessible by all staff.	Principal Board
46(1)	Religious educational institutions Exemption to Section 18 School may discriminate on the ground of religious conviction by not accepting a person's application for admission as a student at the School if the School is conducted solely for students having a religious conviction other than that of the applicant	Enrolment policies need to make clear the permitted discrimination on the ground of religious conviction. The School must have published its policy ; and the policy must be readily accessible by prospective and current students (and parents).	Principal Board
46(2)	Religious educational institutions Exemption to Section 10	Recruitment and internal policies need to make clear the permitted discrimination.	Principal Board

School may discriminate on the ground of religious conviction in relation to staff matters if—

- (a) the school is conducted in accordance with the doctrines, tenets, beliefs or teaching of a particular religion or creed; and
- (b) the discrimination is intended to enable, or better enable, the institution to be conducted in accordance with those doctrines, tenets, beliefs or teachings.

49

Work related discrimination

Exemption to Section 10

Schools may discriminate against a person on the ground of disability if the School believes on reasonable grounds that, because of a disability—

- (a) the person is, or would be, unable to carry out work that is essential to the position concerned; or
- (b) the person requires, or would require, to carry out the work, services or facilities that would not be required by a person who does not have the disability and providing the services or facilities would impose unjustifiable hardship on the first person.

51

Discrimination by educational institutions

Exemption to Section 18

Schools may discriminate on the ground of disability by not accepting a person's application for admission as a student

The School must have published its policy; and the policy is readily accessible by prospective and current employees and contractors of the School

Schools need to have a clear policy in place, as well as a clear understanding of the limitations of the campus and facilities.

Schools should also ensure that job descriptions and expectations of employees are clear, so that a transparent assessment can be made about whether a person is able to carry out the work essential to the position.

Consultation may also be required to ensure that assumptions are not made about a person's physical capabilities.

Principal
Board

Schools need to have a clear policy in place, as well as a clear understanding of the limitations of the campus and facilities.

Principal
Board

at a School if it is conducted solely for students with a disability that the applicant does not have.

Schools may discriminate on the ground of disability by not accepting a person's application for admission with a disability if the person, if so admitted, would require services or facilities that are not required by students who do not have a disability, the provision of which would impose unjustifiable hardship on the relevant educational authority

Consultation may also be required to ensure that assumptions are not made about a person's physical capabilities.

57E

Education—minimum-age admissions

Exemption to Section 18

Schools may discriminate against a person on the ground of age in relation to the admission of the person to the School if the level of education or training sought is provided only for students older than a particular age.

Enrolment policies and other documentation should clearly identify any age restrictions relating to each level of education, and be readily accessible.

Principal
Board

Sexual Harassment

60

Schools

A member of staff must not subject a student at that School or a person seeking admission to the School as a student, to sexual harassment.

A student at a School must not subject—

- (a) another student at the institution; or
- (b) a member of the staff of the institution

to sexual harassment.

Schools must have in place clear sexual harassment policies for both staff and students, including:

- (a) a clear statement that sexual harassment will not be tolerated; and
- (b) a transparent process for complaints to be made and investigated.

Principal
Board

Education Act 2004 (ACT)

10AA

Student Movement Register

The Principal of a school must record the information prescribed by the regulation in the student movement register for each of the following (a *student movement event*):

- (a) a student is enrolled at the school, having been previously—
 - (i) enrolled at another education provider; or
 - (ii) registered for home education, whether under this Act or a corresponding law;
- (b) a student's enrolment ends for any of the following reasons:
 - (i) the student is unenrolled from the school;
 - (ii) the student is enrolled at another education provider;
 - (iii) the student is registered for home education;
 - (iv) the school terminates the enrolment contract for the student;
 - (v) the student is transferred, expelled or excluded from the school under chapter 2A (Suspension, transfer, expulsion and exclusion of students).

The Student Movement Register is to be set up and kept by the director-general. Although the legislation does not provide for how Schools will be given access to the Register we assume that the director-general will facilitate this through the procedures mentioned in section 10AB (below).

The 'information prescribed by the regulation' is provided for in section 2AA of the *Education Regulation 2005*.

The information required for when a student is enrolled at the school after previously being enrolled or educated elsewhere:

- (a) the name of the school;
- (b) the name of the student;
- (c) the day the student was enrolled at the school;
- (d) if the student was previously—
 - (i) enrolled at another education provider—the name of the education provider (if known); or
 - (ii) registered for home education—whether the student was registered for home education in the ACT or

Principal must record the information outlined in (a) and (b)

Information, outlined above must be recorded within 5 days after the event happens

Information recorded for the Register must be recorded within 5 days after the event happens.

another State or Territory (if known);

- (e) the name and contact details of the student's parents

The information required if a student's enrolment ends:

- (a) the name of the school;
- (b) the name of the student;
- (c) the day the enrolment ended;
- (d) the reason the enrolment ended;
- (e) if the student is, or is to be, enrolled at another education provider—the name of the new education provider (if known);
- (f) if the student is, or is to be, registered for home education—whether the registration is in the ACT or another State (if known);
- (g) if the student is not to be enrolled at another education provider, and is not to be registered for home education—the proposed arrangements for the student's education after the enrolment ends (if known);

10AB

Student Movement Register – Procedures

The director-general will establish procedures for recording information in the student movement register and will tell principals about these procedures. Principals must comply with the procedures when recording information in the register.

(h) the name and contact details of the student's parents.

Principal must comply with the procedures established by the director-general in regard to recording information in the student movement register.

Director-general will inform the Principal about the procedures.

Suspension

17G

Suspension to ensure safe and effective learning environment

The decision maker (Principal) for an independent school may suspend a student at the school only for the purpose of ensuring a safe and effective learning environment for the school.

'Decision maker' for an Independent School is defined as the school's principal in Section 17C.

Because of the definition in Section 17C, it is the Principal who must suspend the student (notwithstanding that the Principal may take advice from a number of senior staff -none of them has the legislative authority to carry out the suspension).

17H

Suspension

(1) The Decision-Maker for a school may suspend a student at the school if satisfied:

- (a) the student has engaged in unsafe or noncompliant behaviour; and
- (b) the school has exhausted all reasonable alternatives to suspending the student; and
- (c) it is reasonable to suspend the student considering all the circumstances, including any views of the student and their parents about the proposed suspension.

(2) However, the Principal must not suspend a student unless:

- (a) for an independent school—the decision maker has complied with the requirements for involving the student and their parents in the decision-making process under section 17L. (see below)

Unsafe or noncompliant behaviour

‘Unsafe or noncompliant behaviour’ is defined in section 17B as behaviour that reduces the safety or effectiveness of the learning environment at the school because it—

- (a) is persistently or disruptively noncompliant; or
- (b) poses an unacceptable risk to the safety or wellbeing of—
 - (a) another student at the school; or
 - (b) a member of staff of the school; or
 - (c) someone else involved in the school’s operation.

Behaviour may be unsafe or noncompliant even if the behaviour does not happen on school premises or during school hours. The act provides an example of this: ‘using social media outside school hours to encourage violence against a student at school the next day’.

Exhausted all reasonable alternatives

Section 17D (b) states that to ‘exhaust all reasonable alternatives’ in relation to suspension a school must be satisfied that no other reasonable alternative is

- 14. Principal must take reasonable steps to tell the student, and give their parents written notice, about the proposed suspension, including:
- 15. Grounds for suspension including details of:
- 16. the student’s unsafe or noncompliant behaviour; and
- 17. how they have exhausted reasonable alternatives to suspending

likely to be suitable or successful for managing the student's unsafe or noncompliant behaviour.

the student;
and

18. the length of the suspension;
and

19. how the school intends to support the student to continue their education during the suspension;
and

20. the decision-making process for the suspension, and how the student and their parents may take part in the process and have their views heard

17I

Suspension – notice

If a Principal suspends a student, the Principal must:

- (i) tell the student, and give their parents written notice (a suspension notice), about the suspension, including—
 - a. the grounds for the suspension; and
 - b. the length of the suspension; and
 - c. how the school intends to support the student to continue their education during the suspension.

Principal tells the student and writes to the parents

17J

Suspension – length

The length of a suspension is for the period the Principal considers necessary to ensure a safe and effective learning environment at the school. The suspension of a student must not be for a period longer than 20 school days.

A suspension:

- (a) begins on the later of the following:
 - (i) the day the decision maker gives a suspension notice to the student’s parents;
 - (ii) the day stated in the suspension notice; and
- (b) ends on the earlier of the following:
 - (i) the end day stated in the suspension notice;
 - (ii) 20 school days after the suspension begins.

Principal decides on length of suspension up to 20 school days

A suspension must not start immediately after another suspension ends.

17L

Suspension – involving student and parents

If the principal of an independent school proposes to suspend a student at the school, **before taking the proposed action**, the principal must take reasonable steps to tell the student, and give their parents written notice, about the proposed suspension, including:

- (a) the grounds for the suspension including details of—
 - (i) the student’s unsafe or noncompliant behaviour; and
 - (ii) how they have exhausted reasonable alternatives to suspending the student; and
- (b) the length of the suspension; and
- (c) how the school intends to support the student to continue their education during the suspension; and
- (d) the decision-making process for the suspension, and how the student and their parents may take part in the process and have their views heard.

S 17L(3) However, the principal may suspend a student before giving parents written notice if:

- (a) the student’s unsafe or noncompliant behaviour presents an immediate or imminent risk of harm to a person; and
- (b) the principal tells the student and their parents, orally, about the proposed suspension, including—

Section 17I states what must be in the suspension notice.

Section 17L states what the Principal must do (orally to the student and in writing to the parents), **before actually suspending** the student.

See the onus at 17H

Examples of behaviour that presents an immediate or imminent risk of harm to a person include:

- (i) the student was physically violent to another student
- (ii) the student threatened to be physically violent to a staff member

Principal may act more urgently under circumstances of 17L

- (i) the information required in a written notice; and
- (ii) that the suspension starts immediately.

If the principal notifies the parents orally, they must, as soon as possible, give the parents a written notice with the required details.

If the parents were notified orally and a student is suspended before any views of the student and their parents about the suspension may be considered, the principal may, after considering the views of the student and their parents, revise the suspension in any way the principal considers reasonable. If the principal revises a suspension they must tell the student, and give the student's parents a revised suspension notice.

Principal may revise the suspension

17M

Suspension – student's education and counselling

If a student at a school is suspended, the principal of the school must ensure the student is given the materials and support needed to continue their education during the period of suspension.

If a student at a school is suspended for a total of 7 or more school days in a school term (consecutively or otherwise), the principal of the school must ensure that the student is given a reasonable opportunity to attend counselling.

Principal may delegate to relevant senior staff/teachers to provide the student with the materials and support required.

17N

Suspension – review of student's circumstances

If a student at a school is suspended, the principal of the school must-

- (a) review any reasonable adjustments in place for the student, including reviewing the way an adjustment is implemented; and

'adjustments' are defined in section 3.3 of the *Disability Standards for Education 2005* (Cth) as:

- (a) a measure or action (or a group of measures or actions) taken by an education provider that has the effect of assisting a student with a disability:

Principal can delegate the review but ultimately takes responsibility for the adjustments

(b) make any reasonable adjustments the principal considers would support the student, including changing the way an adjustment is implemented.

(i) in relation to an admission or enrolment — to apply for the admission or enrolment; and

(ii) in relation to a course or program — to participate in the course or program; and

(iii) in relation to facilities or services — to use the facilities or services;

on the same basis as a student without a disability, and includes an aid, a facility, or a service that the student requires because of his or her disability;

(b) the provision of access to specialised support services and the facilitation by the provider of the provision of specialised support services,

(c) if a change is made to an adjustment mentioned in paragraph (a) or (b) — the adjustment as affected by the change.

‘Reasonable’ is defined in section 3.4:

‘An adjustment is reasonable in relation to a student with a disability if it balances the interests of all parties affected’

In assessing whether a particular adjustment for a student is reasonable, regard should be had to all the relevant circumstances and interests, including the following:

(a) the student’s disability;

(b) the views of the student or the student’s associate, given under section 3.5;

(c) the effect of the adjustment on the student, including the effect on the student’s:

- (i) ability to achieve learning outcomes; and
- (ii) ability to participate in courses or programs; and
- (iii) independence;
- (d) the effect of the proposed adjustment on anyone else affected, including the education provider, staff and other students;
- (e) the costs and benefits of making the adjustment.

Expulsion

17U

Expulsion

A principal for an Independent school may expel a student at the school if satisfied-

- (a) the student has engaged in unsafe or noncompliant behaviour; and
- (b) the school has exhausted all reasonable alternatives to expelling the student; and
- (c) it is not in the best interests of 1 or more of the following for the student to remain at the school:
 - (i) the student;
 - (ii) another student;
 - (iii) a member of staff of the school; and
- (d) it is reasonable to expel the student considering all the circumstances, including any views of the student and their parents about the proposed expulsion.

Process to be followed is set out.

Principal takes responsibility

However the principal may expel a student only if the principal has complied with the requirements for involving the student and their parents in the decision making process under section 17X.

In considering the interests of the student in remaining at the school the principal may consider whether the relationship between the student and the school has deteriorated to such an extent that remaining at the school is no longer in the student's best interests.

17V

Expulsion – notice

If the Principal for an independent school expels a student, they must-

- (a) tell the student, and give their parents written notice, about the expulsion, including—
 - (i) the grounds for the expulsion; and
 - (ii) the day the expulsion takes effect; and

- 21. The decision maker must:
- 22. tell the student,
- 23. and give their parents the written expulsion notice about the expulsion, including:
- 24. the grounds for the expulsion; and

17X

Expulsion – involving student and parents

If a principal **proposes to expel** a student, before taking the proposed action, they must tell the student, and give their parents written notice, about the following:

- (a) the grounds for the proposed expulsion including details of—
 - (i) the student’s unsafe or noncompliant behaviour; and
 - (ii) how they have exhausted reasonable alternatives to expelling the student; and
- (b) the day the proposed expulsion is to take effect;
- (c) the decision making process for the proposed expulsion, and how the student and their parents may take part in the process and have their views heard.

See above definitions for ‘unsafe or noncompliant behaviour’ and ‘reasonable alternatives’

Before expulsion, reasonable alternatives must be exhausted

- 25. the day the expulsion takes effect.¹
- 26. Principal takes responsibility
- 27.
- 28. **Before** taking the proposed action, the principal must take reasonable steps to tell the student, and
- 29. give their parents written notice, about the proposed expulsion, including:

¹ S17V

30. the grounds for the proposed expulsion including details of:
31. the student's unsafe or noncompliant behaviour; and
32. how they have exhausted reasonable alternatives to expelling the student; and
33. the day the proposed expulsion is to take effect; and
34. the decision-maki

ng process for
the proposed
expulsion,

35. and

36. how the
student and
their parents
may take part
in the process
and have their
views heard

Principal to ensure
counselling available
(as with suspension)

17Y

Expulsion – counselling

If a student at an Independent school is expelled, the principal of the school must ensure the student is given a reasonable opportunity to attend counselling.

Principles

72

Principles

The chapter in the Act which addresses non-government schools is based on the following principles:

- (a) the non-government school sector consists of schools from a range of different educational and religious philosophies;
- (b) the variety of schools in the sector reflects the diversity of the community in the ACT and the preferences of parents for a particular style of education for their children;

This is a new section. The former legislation did not contain a section 72.

School policies setting out a school's charism or objects should reflect section 72 principles but may adopt language fitting the school's ethos without simply quoting the words in section 72

For consideration by
Principal and Board
on an ongoing basis

- (c) the non-government schools sector is committed to—
 - (i) developing the spiritual, physical, emotional and intellectual welfare of its students; and
 - (ii) innovation, diversity and choice; and
 - (iii) maximising student outcomes; and
 - (iv) teacher, parent and student participation in school education; and
 - (v) promoting the partnership between home and school; and
 - (vi) preparing students for their full participation in all aspects of a democratic society.

73

The Minister must appoint a person as the Registrar of Non-Government Schools

Similar to other states

74

The registrar has the following functions:

- (a) to administer the registration of non-government schools and keep the register of non-government schools;
- (b) to develop an annual registration review program, in collaboration with the registration standards advisory board;
- (c) to carry out registration reviews of registered schools;
- (d) any other function given to the registrar under this Act or another territory law

For noting by
Principal and Board

Registration

75-83 Registration standards advisory board

These provisions establish and regulate the 'registration standards advisory board'.

The board advises the minister on applications for registration, annual registration review programs and any proposed regulatory action to be taken against schools.

The Association of Independent Schools nominates 1 member to sit on the board.

84 Non-government schools registration standards

Regulation may prescribe standards for the registration of non-government schools.

The regulations have been amended. Section 5 of the *Education Regulations 2005* refers to the standards. These can be found in Schedule 2 of the *Education Regulation 2005* and are set out below at page 136 under *Education Regulation 2005*.

85 Registration standards guidelines

The registrar must make guidelines about how a registered school is to comply with the registration standards (the registration standards guidelines). These are to be made in conjunction with the registration standards advisory board, the Catholic Education office and the AISACT

The amendment now provides that the registrar *must* make guidelines about how a registered school is to comply with the guidelines rather than *may* make regulations.

86 In principle approval – application

(1) A person may apply for in principle approval to register a non-government school if the person is—

- (a) the proposed proprietor of the school; and
- (b) a corporation.

(2) The application must be in writing and include—

The dictionary directs to the definition of 'corporation' in the *Legislation Act 2001* which says: 'corporation includes a body politic or a corporate. This would include incorporated associations and companies incorporated under the *Corporations Act 2001* (Cth)

- (a) the following information for each campus at which the person proposes to operate the school (a proposed campus):
 - (i) the location of the campus;
 - (ii) the day the school is to begin operating from the campus (the proposed starting day);
 - (iii) the levels of education to be provided at the campus;
 - (iv) the day each level of education is to start being provided at the campus;
 - (v) whether residential boarding services are to be provided at the campus; and
 - (b) evidence that there is, or is likely to be, demand in the community for the proposed school; and
 - (c) any information or documents prescribed by regulation.
- (3) A proposed starting day must be at least 2 years, but not more than 4 years, after the day the application is made
- (4) If the Minister receives an application, the registrar must give public notice of the following:
- (a) that an application has been made;

Section 6 of the Regulation prescribes the following information for an application for in principle approval:

- (a) the proposed name of the school (if known);
- (b) the applicant's name and contact details;
- (c) the applicant's ACN or ABN;
- (d) the name and contact details for the proposed principal of the school (if known);
- (e) any proposed educational courses, characteristics of the school, or objectives for the school that the applicant believes will assist the Minister's consideration of the application.

- (b) the information mentioned in subsection (2)(a);
- (c) how a person may make submissions about the application to the Minister, including the day, at least 60 days after notice is given, by which a submission must be made.

87 In-principle approval – further information

The Minister may ask an applicant for further information in order to decide the application. If the applicant does not comply the Minister may refuse to consider the application.

88 In-principle approval – decision on application

The Minister must be satisfied that it is appropriate to issue in principle approval having regard to:

- the level of interest in the proposed school, including the projected enrolments for the school; and
- any submissions made under section 86 (4) (c).

89 Registration – application

- (1) A person may apply to the Minister to register a non-government school only if the person—
 - (a) is a corporation; and
 - (b) is the proposed proprietor of the non-government school; and
 - (c) holds an in principle approval to register the school.
- (2) The application must—

The following information is prescribed by section 6A of the Regulation for registration applications:

- (a) the proposed name of the school (if known);
- (b) the applicant’s name and contact details;
- (c) the applicant’s ACN or ABN;
- (d) evidence showing that the applicant is registered under the Australian Charities and Not-for-profits Commission Act 2012 (Cwlth);

- (a) be made at least 9 months before the proposed starting day for the school; and
 - (b) be in writing; and
 - (c) set out any proposed change to the matters mentioned in section 86(2)(a) for which in principle approval was given; and
 - (d) include the name and contact details of each key individual for the applicant;
 - (e) include any information or documents prescribed by regulation.
- (3) Despite subsection (2) (a), the application may be made less than 9 months before the proposed starting day with the written approval of the Minister.

90

Registration – further information

The Minister may ask an applicant for further information in order to decide the application. If the applicant does not comply the Minister may refuse to consider the application

Compliance with requests is crucial

Principal
and
Board

91

Registration – referral to registration standards advisory board

The Minister must refer applications for registration to the standards board. The board must consider the application in light of the registration standards (set out below). The board may request further information of an applicant.

92

Registration – decision on application

The Minister must approve an application for registration if, after considering the board’s assessment, is satisfied that the proposed school would comply with the registration standards (set out below),

93

Registration – conditions

A non-government school's registration is subject to the following conditions (each of which is a registration condition):

- (a) the school must comply with any registration standards;
- (b) the school must make and keep records about complying with any registration standards;
- (c) the school must have a principal;
- (d) any condition imposed by the Minister under section 125A (Taking regulatory action);
- (e) any other condition prescribed by regulation;
- (f) any other condition the Minister considers appropriate.

94

Registration – duration

Registration of a school continues until the registration is cancelled or surrendered.

95

Registration – register and registration certificate

If a school is registered then the Minister must enter the school on the register of non-government schools and give the proprietor of the school a registration certificate.

Amending registration

96

Proprietor must tell registrar about notifiable changes

If the proprietor of a registered school wishes to make any of the following changes:

- (a) stop operating at a registered campus;
- (b) stop providing a level of education at a registered campus;
- (c) stop providing residential boarding services at a registered campus;
- (d) restart operating at a previously registered campus within 2 years after stopping operating at the campus;
- (e) restart providing a level of education at a registered campus (or previously registered campus) within 2 years after stopping providing the level of education at the campus;
- (f) restart providing residential boarding services at a registered campus (or previously registered campus) within 2 years after stopping providing residential boarding services at the campus.

The proprietor must give the registrar written notice of the change

The proprietor must also tell the parents of each student at the school, in writing, about the change, at least 6 months before the change happens.

This section does not apply if the change is an urgent temporary change made in response to a natural disaster or other unforeseeable emergency (see requirement at s103).

The notice must-

- (a) be given at least 6 months before the day the change to the operation of the school is proposed to begin (the proposed change day); and
- (b) be in writing; and
- (c) state the proposed change day; and
- (d) include any information or documents prescribed by regulation.

Principal and Board

97

Proprietor must apply for registrable changes

If the proprietor of a registered school intends to make any of the following changes:

- (a) start operating the school at a new campus;

This section does not apply if the change is a notifiable change (as outlined in s96) or an urgent temporary change made in response to a natural disaster or other unforeseeable emergency (see requirement at s103)

Principal and Board may seek an amendment to cover

- (b) start providing a new level of education at a registered campus;
- (c) start providing residential boarding services at a registered campus;
- (d) transfer the school's registration to a new proprietor.

The proprietor must apply to the Minister for amendment of the school's registration

The criteria on which a registrable change is approved is found in section 101. The Minister must approve an application to amend a school's registration if the Minister is satisfied that-

- (a) after considering the board's assessment given under section 100, the school as proposed to be changed or transferred would, if registered, comply with the registration standards; and
- (b) the proposed change is appropriate, having regard to—
 - (i) the level of interest in the school as proposed to be changed, including the projected enrolments for the school as proposed to be changed; and
 - (ii) any submissions made under section 98(3)(c).

the 4 points of section 97

98

Registration amendment – application

An application for amendment of a school's registration must-

- (a) be made at least 9 months before the day the change is proposed to begin (the proposed change day); and
- (b) be in writing; and
- (c) state the proposed change day; and
- (d) for an amendment to operate at a new campus, state—
 - (i) the location of the new campus; and

An application may be made less than 9 months before the proposed change day with the written approval of the Minister.

If the Minister receives an application, the registrar must give public notice of the following:

Section 6C of the Regulation prescribes the following information for a registration amendment application:

- (a) the name of the school;
- (b) the applicant's name and contact details;
- (c) for an amendment to operate at a new campus—

Principal and

Board must meet the timeframe

- (ii) the levels of education the proprietor proposes the school to provide at the new campus; and
- (iii) whether the proprietor proposes the school provide residential boarding services at the new campus; and
- (iv) if not all proposed levels of education are to be provided at the new campus on the proposed change day—the day the proprietor proposes to start providing each level of education at the new campus; and
- (e) for an amendment to provide a new level of education at an already registered campus, state—
 - (i) the new level of education to be provided; and
 - (ii) the registered campus where the new level of education is to be provided; and
- (f) for an amendment to provide new residential boarding services at an already registered campus—state the registered campus where the new residential boarding services are to be provided; and

- (i) information about proximity of the new campus to existing campus grounds (for example, the new campus is adjoining the existing campus, the new campus shares a public transport route with the existing campus); and
- (ii) any proposed change to the location of the school's administration office.
- (d) for an amendment to stop operating at a registered campus—the location of the campus;
- (e) for an amendment to stop providing a level of education at a registered campus—the education level;
- (f) for an amendment to transfer the school's registration to a new proprietor—
 - (i) the proposed new proprietor's name and contact details; and
 - (ii) evidence showing that the new proprietor is a corporation; and
 - (iii) the proposed new proprietor's ACN or ABN; and

- (g) for an amendment to transfer the school's registration to a new proprietor
 - (i) state—
 - (A) the name of the proposed new proprietor; and
 - (B) the name and contact details of each key individual for the proposed new proprietor; and
 - (ii) include evidence to show the proposed new proprietor knows about and understands the purpose of the application; and
 - (h) include any information or documents prescribed by regulation.
- (iv) evidence showing that the proposed new proprietor is registered under the Australian Charities and Not-for-profits Commission Act 2012 (Cwlth);
 - (g) for an amendment to transfer the school's registration to a new proprietor—
 - (h) a summary of the reasons for the proposed amendment;
 - (i) evidence of consultation with students, parents and staff about the proposed amendment.

99

Registration amendment – further information

The Minister may, by written notice, require the applicant, or proposed new proprietor, to give the Minister further information within a stated time that the Minister reasonably needs to decide the application. If the applicant does not comply with a requirement in the notice, the Minister may refuse to consider the application further.

100

Registration amendment – referral to registration standards advisory board

The Minister must refer an application under section 97 to the registration standards advisory board.

The board may, by written notice, require an applicant or proposed new proprietor to give the board further information that the board reasonably needs to assess the application, within a stated time.

102 **Registration amendment – conditions**
If the Minister amends a school’s registration, the Minister may also impose or amend a registration condition for the school in any way the Minister considers appropriate.

However, the Minister must not amend a registration condition requiring compliance with the registration standards.

103 **Urgent temporary change**
If a school implements an urgent temporary change to the operation of the school in response to a natural disaster or other unforeseeable emergency then the school must:

The registrar may at any time require the change to be treated as a notifiable change.

(a) tell the registrar about the change within 5 days of making the change

(b) keep the registrar informed about progress returning to the arrangements for which the school is registered

(c) tell the registrar when the arrangements for which the school is registered have been restored.

Registration offences

104 **Offence – operate unregistered non-government school**
It is an offence to operate a non-government school that is not registered.

The maximum penalty for this is 50 penalty units.

105 **Offence – operate registered school other than within scope of registration**
The proprietor of a registered school must not operate the school at a campus unless the school is registered to operate at the campus.

The maximum penalty for each of these offences is 10 penalty units.

Principal and Board must not change a campus where education is

The proprietor of a registered school must not provide a level of education at a campus unless the school is registered to provide the level of education at the campus.

The proprietor of a registered school must not provide residential boarding services at a campus unless the school is registered to provide residential boarding services at the campus.

provided without first obtaining registration amendment

Register of non-government schools

106

Register of registered non-government schools

The registrar must keep a register of registered schools

The register will be made public on the ACT government website.

107

Proprietor must update details

107(1)

37. If any of the following information for a registered school changes, the proprietor of the school must tell the registrar about the change, in writing, within 7 days after the change happens:

Principal to update registrar within 7 days

May delegate

(a) the name or contact details of the principal of the school.

107(2)

(b) the name or contact details of the chair of the school's governing body (if any).

If either of the following changes happen, the proprietor of a registered school must tell the registrar about the change, in writing, within 28 days after the change happens:

(a) a person becomes a key individual for the proprietor.

- (b) a person stops being a key individual for the proprietor.

Registration review

108 Meaning of registration review

A 'registration review' of a registered school means an assessment by the registrar of whether the school is complying with the Act.

A registration review includes reviews undertaken under an **annual registration review program** and reviews undertaken **after a concern is raised** with the registrar about a registered school's compliance with the Act.

109 Annual registration review program

The registrar must, before the end of each calendar year, prepare a program for registration reviews of registered schools that the registrar intends to conduct in the next calendar year (an *annual registration review program*).

In developing an annual registration review program, the registrar must consult the registration standards advisory board, particularly in relation to identifying—

- (a) the registered schools to be reviewed during the year; and
- (b) areas of focus for registration reviews during the year.

110 Registration review after concern raised

Anyone can raise a concern with the registrar and the registrar must take reasonable steps to consider every concern.

Under section 111, the registrar gives the registration standards advisory board a report about concerns raised under section 110

112-113

Reasons not to carry out registration review

There are many reasons why the registrar does not need to carry out a review after receiving a concern. These include if the concern was frivolous or vexatious or if the concern is withdrawn.

114

Referral to school

Concerns must be referred to the relevant school in question so that the school can handle the concern using their complaint handling procedures.

However, the registrar need not refer the concern to the school if—

- (i) the matter has already been considered by the school; or
- (ii) the registrar is satisfied that the nature or circumstances of the matter are so serious or urgent that the matter should be considered by the registrar or another entity.

If the registrar refers the concern to the school, the registrar may require the school to give the registrar a written report about—

- (a) how the school investigated the concern; and
- (b) the results of the school’s investigation; and
- (c) any action taken, or proposed to be taken, in relation to the concern.

Principal and Board

Principal may delegate any investigation

115

Referral to another entity

If the registrar can refer a concern to another entity if it thinks that concern could be better dealt with by that other entity.

This provision encompasses circumstances where it might be appropriate to refer a concern directly to child protective services, the police, human rights commission or some other entity with specialised expertise.

116

Registration review procedure

In carrying out a registration review, the registrar must—

- (a) apply natural justice and procedural fairness; and

The registrar is bound by its own guidelines.

	(b) comply with the registration review guidelines.		
117	The registrar must make guidelines about how a registration review may be carried out. They will be a notifiable instrument under the Act.	The guidelines must be developed in consultation with the Association of Independent Schools of the ACT	Principal and Board may make representations to the Association of Independent Schools of the ACT (although this is not a specific eligibility under the Act)
118(2)	Request for further information or verification from complainant The registrar may, at any time, request the person to give the registrar— (a) further information about the concern raised; or (b) a written statement verifying all or part of the concern.	This relates to a registration review for a school initiated by a person raising a concern with the registrar	No action by School
119(1)	Completion of Registration Review If the registrar has completed a registration review of a registered school, the registrar must— (a) if satisfied that the school has failed, is failing, or is at risk of failing to comply with this Act— (i) give the proprietor of the school information about how the school may comply with the Act; or (ii) give the proprietor of the school a compliance direction; or	If the registration review was initiated by a person raising a concern about the school's compliance with this Act, the registrar must tell the person, in writing, about— (a) the results of the review; and (b) any action taken, or proposed to be taken, in relation to the concern.	Principal to note contents of Registrar's finding and comply with action required or determine what action to take (no provision for disputing finding in the Act).

- (iii) refer the matter to the registration standards advisory board to consider for regulatory action under section 123; or

(b) if not satisfied that any action needs to be taken in relation to the school—take no further action.

Compliance directions

120

Compliance directions

If the registrar is satisfied that a registered school is failing to comply with a provision of this Act then the registrar may direct the proprietor of the school to take action to ensure the school complies with this Act within a reasonable period of time.

A compliance direction must be in writing and state—

- (a) the provision of the Act that is not being complied with; and
- (b) the action required; and
- (c) the period of time for compliance with the direction; and
- (d) that the Minister may take regulatory action against the proprietor of the school under division 4.4.5 if the proprietor does not comply with the Act.

Principal
and
Board

Regulatory action

121

Meaning of regulatory action

Principal to note
'regulatory action'

Regulatory action, against the proprietor of a registered school, means 1 or more of the following actions:

- (a) imposing, or amending, a condition on the school's registration;
- (b) cancelling the school's registration;
- (c) cancelling the school's registration and disqualifying the proprietor of the school from applying for registration of a school for a stated period or until a stated thing happens.

122-125C

Taking regulatory action

These provisions set out how regulatory action can be undertaken. Regulatory action can only be undertaken if the Minister is satisfied on reasonable grounds that the school has contravened a conditions of its registration or the proprietor of the school has failed to comply with a provision of the Act.

The process involves consultation with the registration standards advisory board and various notices to schools.

Principal
and
Board

Approved educational courses

125

Approved educational courses

The principal of a registered school may approve an educational course for students at the school that may be provided to the student at a place other than the school (an *approved educational course (non-government)*).

The principal may approve an educational course at a place only if satisfied that –

This provision covers approval for excursion or any teaching conducted outside normal school grounds.

Principal

- (i) the standard of the course is appropriate; and
- (ii) there are adequate facilities at the place for conducting the course; and
- (iii) the place complies with any relevant territory laws about health and safety standards.

Register of enrolments and attendances

125E- 125F School must keep a register of enrolments and attendances. Non-compliance can result in fines being imposed on a Principal.

The register needs to include:

- (a) the full name of each student enrolled at the school; and
- (b) record of attendance of each student on every day the school is open.

The Principal must not be ‘reckless’ with these entries.

Under section 5 of the Education Act, the term ‘recklessness’, takes the meaning as defined in section 20 of the ACT Criminal Code 2002.

125G

Producing registers of enrolments and attendances

The Principal must allow ‘authorised persons’ to inspect the register and must provide information in relation to the register and assist and allow them to copy the register if asked.

- (a) ‘Authorised persons’ are appointed by the ACT government (section 125M of the Act).\
- (b) Note that once a principal is satisfied that someone is an ‘authorised person’ there is no discretion in relation to providing that person with the information required so that the inspection and copying can occur

Principals should take reasonable steps to confirm that a person seeking to inspect the register:

Has made the request in writing under s125G; and;
is an ‘authorised person’ who produces an identity card (s 125O).

Once a principal is satisfied that someone is an 'authorised person', the Principal must comply with the notice and take reasonable steps to assist the authorised person. The authorised person may examine and copy a register of enrolments and attendances.

125J Nonattendance at registered schools

If a student at a registered school has not been attending school regularly, the principal of the school may, by written notice, require the student's parents and the student to meet with an authorised person (non-government) at a stated place and time.

Non-government schools – authorised people

125L-125P Authorised people

Authorised people are appointed by the Minister and exercise a number of powers under the Act.

They are given ID cards which must be shown when exercising power under the act.

125Q

Entry to premises

An authorised person may –

125Q(1)

125Q(2)
“advice”

- (a) at any reasonable time, enter registered school premises to find out whether the school is complying with this Act; or
- (b) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
- (c) at any time, enter premises with the occupier’s consent.

The rules regarding obtaining consent are set out in s125S

‘At any reasonable time’, for entering registered premises, includes at any time the school is open for operation.

‘Necessary assistance’, for an authorised person (non-government) entering premises, includes the attendance of 1 or more people who, in the opinion of the authorised person (non-government), have knowledge or skills that could assist the authorised person (non-government) to carry out their function.

- (a) If the premises are used to provide residential boarding services, the authorised person may only enter if:
 - (i) the entry is after 8 am and before 6 pm; and
 - (ii) the residents are given reasonable notice of the entry, including the purpose of the entry; and
 - (iii) a member of staff of the school is present during the entry and any exercise of powers under section 125T (General powers on entry to premises); and
- (b) in any other case—subsection (1) (a) and (b) do not authorise entry into a part of the premises that is being used only for residential purposes.

Principal to confirm proper process has been followed

125R An authorised person (non-government) and any other person, other than a police officer, who is accompanying the authorised person (non-government), may not remain at premises entered under this part if the authorised person (non-government) does not produce their identity card when asked by the occupier

125S

Consent to entry

- (1) if an authorised person (non-government) intends to ask the occupier of premises to consent to the authorised person (non-government) entering the premises.
- (2) Before asking for the consent, the authorised person (non-government) must—
 - (a) produce their identity card; and
 - (b) tell the occupier—
 - (i) the purpose of the entry; and
 - (ii) the reason for, and identity of, any other person accompanying the authorised person (non-government); and
 - (iii) that consent may be refused.
- (3) If the occupier consents, the authorised person (non-government) must ask the occupier to sign a written acknowledgment (an *acknowledgment of consent*)—
 - (a) that the occupier was told—
 - (i) the purpose of the entry; and

Principal or delegate needs to be assured of authority of authorised person and see the identity Card

- (ii) the reason for, and identity of, any other person accompanying the authorised person (non-government); and
 - (iii) that consent may be refused; and
- (b) that the occupier consents to the entry; and
- (c) stating the time and date when consent was given.
- (4) If the occupier signs an acknowledgment of consent, the authorised person (non-government) must immediately give a copy to the occupier.
- (5) A court must find that the occupier did not consent to entry to the premises by the authorised person (non-government) under this part if—
 - (a) the question whether the occupier consented to the entry arises in a proceeding in the court; and
 - (b) an acknowledgment of consent for the entry is not produced in evidence; and
 - (c) it is not proved that the occupier consented to the entry.

125T

General powers on entry to premises

An authorised person who enters premises under the Act may –

- (a) examine anything;

A person must take reasonable steps to comply with a requirement made of the person. There is a maximum penalty of 10 penalty units for not doing so

- (b) examine and copy, or take extracts from, documents relating to a contravention, or possible contravention, of this Act;
- (c) take photographs, films, or audio, video or other recordings;
- (d) require the occupier, or anyone at the premises, to give information, answer questions, or produce documents or anything else (whether the information, document or other thing is at the premises or elsewhere) that the occupier or person at the premises has, or has access to, that are reasonably necessary to exercise a function under this Act;
- (e) require the occupier, or anyone else at the premises, to give the authorised person (non-government) copies of documents produced under paragraph (d) that are reasonably necessary to exercise a function under this Act;
- (f) require the occupier, or anyone else at the premises, to give the authorised person (non-government) reasonable help to exercise a power under this part.

125U

Power to obtain information

An authorised person (non-government) may, in writing, require any of the following people to give the authorised person (non-government) information, or produce

A person must take reasonable steps to comply with a requirement made of the person under this section.

documents or anything else, that the person has, or has access to, that are reasonably required by the authorised person (non-government) for this Act:

- (a) a proprietor of a non-government school;
- (b) a member of staff of a non-government school;
- (c) any other person who has, or has access to, information or documents or anything else that is reasonably required by the authorised person (non-government)

125V

Abrogation of privilege against self-incrimination

A person is not excused from answering a question or providing information or a document under this part on the ground that the answer to the question, or the information or document, may tend to incriminate the person or expose the person to a penalty.

However, any information, document or thing obtained, directly or indirectly, because of the giving of the answer or the production of the document is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for an offence arising out of the false or misleading nature of the answer, information or document.

125W

Warning to be given

Before requiring compliance under sections 125T and 125U, an authorised person must warn the person in question that failure to comply constitutes an offence and the effect of section 125V.

If this section is not explained to the person by the authorised person then it is not an offence to refuse to answer questions.

Nothing in this section prevents an authorised person (non-government) from obtaining and using evidence given to the authorised person (non-government) voluntarily by any person.

125D	The principal of a registered school may approve an educational course for students at the school that may be provided to the student at a place other than the school (an approved educational course (non-government))	The principal may grant an approval subject to conditions (which are not specified).	Principal
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- Note must be satisfied that:
- (a) the standard of the course is appropriate; and
 - (b) there are adequate facilities for conducting the course;
 - (c) the place complies with any relevant health and safety laws.

Transitional provisions

308	<p>Non-government school suspensions</p> <p>If a student was suspended under the old Education Act provisions and the suspension has not ended at the time the new Act comes into force, the old Act will continue to apply to the suspension.,</p>
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This applies to an ‘immediate suspension’ under the old Act also.

312	<p>Transitional regulations</p> <p>Regulations may be made in relation to the enactment of the <i>Education Amendment Act 2022</i>.</p>
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Education and Care Services National Law Act 2000 (Cth)

Dealt with in the *Education and Care Services National Law Application (ACT) Act 2011*

Education and Care Services National Law Application (ACT) Act 2011

In the ACT the applicable legislation is contained as the Schedule to the **Education and Care Services National Law Act 2010 No. 69 of 2010 of Victoria**

School to apply for provider approval

The objectives of the framework are:

- (a) to ensure the safety, health and wellbeing of children attending education and care services;
- (b) to improve the educational and developmental outcomes for children attending education and care services;
- (c) to promote continuous improvement in the provision of quality education and care services;
- (d) to establish a system of national integration and shared responsibility between participating jurisdictions and the Commonwealth in the administration of the national education and care services quality framework;
- (e) to improve public knowledge, and access to information, about the quality of education and care services;
- (f) to reduce the regulatory and administrative burden for education and care services by enabling information to be shared between participating jurisdictions and the Commonwealth.

The Guiding principles of the framework are:

- (a) that the rights and best interests of the child are paramount;
- (b) that children are successful, competent and capable learners;
- (c) that the principles of equity, inclusion and diversity underlie this Law;
- (d) that Australia's Aboriginal and Torres Strait Islander cultures are valued;
- (e) that the role of parents and families is respected and supported;

that best practice is expected in the provision of education and care services.

**Schedule
Clause 10**

Application for provider approval

A person may apply to the Regulatory Authority for a provider approval.

**Schedule
Clause 11**

Form of application

An application for provider approval must—

- (a) be made to the Regulatory Authority of the participating jurisdiction—
 - (i) in which the applicant, or any of the applicants, is ordinarily resident; or
 - (ii) if the applicant or applicants are not individuals, in which the principal office of the applicant or any of the applicants is located; and

- (b) be in writing; and
- (c) include the prescribed information; and
- (d) include the prescribed fee.

The prescribed information is set out in the *Education and Care Services National Regulations 2022 (NSW)* (Regulations).

Section 15 of the Regulations sets out the contents of an application made by a person **other than an individual** as follows:

- (a) the applicant's name and any trading or other name used by the applicant;
- (b) the applicant's street address and postal address or, if there is more than one address, the street address and postal address of the applicant's principal office;
- (c) the name and contact details of the contact person for the purposes of the application;
- (d) documentary evidence of the legal status of the applicant and its constitution;
- (e) a financial declaration regarding the applicant;

**Schedule
Clause 12**

If the applicant is not an individual, the applicant must satisfy the Regulatory Authority that—

- (a) each person who will be a person with management or control of an education and care service to be operated by the applicant is a fit and proper person to be involved in the provision of an education and care service; and
- (b) the applicant is a fit and proper person to be involved in the provision of an education and care service.

Regulatory Authority means a person declared by a law of a participating jurisdiction to be the Regulatory Authority for that jurisdiction or for a class of education and care services for that jurisdiction;

**Schedule
Clause 17**

Duration of provider approval

A provider approval granted under the Law continues in force until it is cancelled or surrendered under this this Law as applying in a participating jurisdiction.

Suspension or cancellation of provider approval

25

Grounds for suspension of provider approval

- (f) for each individual who will be a person with management or control of an education and care service to be operated by the applicant, the information set out in regulation 14.

Under the ACT Adoption of National Law, that person is defined under section 10 of *Education and Care Services National Law (ACT) Act 2011* as the director-general is the Regulatory Authority which is the Education Directorate .

The Regulatory Authority may suspend a provider approval if the approved provider:

- (a) has been charged with:
 - (i) an indictable offence, or
 - (ii) with an offence that if committed in this jurisdiction would be an indictable offence, or
 - (iii) any other circumstance indicates that the approved provider may not be a fit and proper person to be involved in the provision of an education and care service;
- (b) has failed to comply with a condition of the provider approval; or
- (c) has failed to comply with this Law; or
- (d) is the subject of action being taken under Part 7 (Compliance with this Law) in respect of more than one education and care service that it operates
- (e) has not operated any education and care service for a period of more than 12 months (including any period of suspension); or

(f) purported to transfer or receive a transfer of an approved education and care service without the consent of the Regulatory Authority; or

(g) has not paid any outstanding prescribed fees.

31

Grounds for cancellation of provider approval

The Regulatory Authority may cancel a provider approval if: the Regulatory Authority

- (a) is satisfied that the approved provider or a person with management or control of an education and care service operated by the approved provider is not a fit and proper person to be involved in the provision of an education and care service; or
- (b) is satisfied that the continued provision of education and care services by the approved provider would constitute an unacceptable risk to the safety, health or wellbeing of any child or class of children being educated and cared for by an education and care service operated by the approved provider; or
- (c) has been found guilty of an indictable offence or an offence that if committed in this jurisdiction would be an indictable offence; or

- (d) has been found guilty of an offence under this Law as applying in any participating jurisdiction; or
- (e) has breached a condition of the provider approval; or
- (f) has not operated any education and care service for a period of more than 12 months (including any period of suspension)

36(2) Notice to parents of suspension or cancellation

The Regulatory Authority may require the person who is or was the approved provider to give written notice of the suspension or cancellation and its effect to the parents of children enrolled at all or any of the education and care services operated by that person.

Director or Principal of the education and care service

43(1) An approved provider may apply to the Regulatory Authority for a service approval for an education and care service.

43(2) An approved provider may only apply for a service approval for an education and care service if the approved provider is or will be the operator of the education and care service and is or will be responsible for the management of the staff members and nominated supervisors of that service.

44 An application for a **service approval** must—

- (a) be made to the Regulatory Authority of the participating jurisdiction in which the service is to be located; and

The prescribed information is set out in the *Education and Care Services National Regulations 2022 (NSW)* (Regulations).

- (b) be in writing; and
- (c) include the prescribed information;
- (d) nominate one or more individuals to be nominated supervisors of the service; and
- (da) include from each nominated individual (other than the approved provider) the written consent to the nomination; and
- (e) include payment of the prescribed fee

The prescribed information is set out in **Section 24** of the Regulations about the proposed education and care service premises, as follows:

- (a) the applicant's full name and—
 - (i) provider approval number; or
 - (ii) if the applicant has applied for a provider approval but the application has not been decided, the applicant's contact details;
- (b) the name of the proposed education and care service;
- (c) the proposed date on which the education and care service will commence operation;
- (d) if known, the contact details, including an after-hours telephone number, for the proposed education and care service;

- (e) the proposed ages of children to be educated and cared for by the education and care service;
- (f) the proposed maximum number of children to be educated and cared for by the education and care service;
- (g) the proposed hours and days of operation of the education and care service;
- (h) a description of the nature of the education and care service;
- (i) the details of any associated children's service for which approval is sought;
- (j) a statement that the applicant has prepared the policies and procedures referred to in regulation 168;
- (k) the full name and contact details, including the after-hours telephone number, of each nominated supervisor.

An application for a **service approval for a centre based service** must

- (a) be made to the Regulatory Authority of the participating jurisdiction in which the service is to be located; and
- (b) be in writing; and

- (c) include the prescribed information;
- (d) nominate one or more individuals to be nominated supervisors of the service; and
- (da) include from each nominated individual (other than the approved provider) the written consent to the nomination; and
- (e) include payment of the prescribed fee

The prescribed information is set out in **Section 25** of the Regulations about the proposed education and care service premises, as follows:

- (a) the location and street address of the proposed education and care service premises;
- (b) plans prepared by a building practitioner of the proposed education and care service premises showing the following—
 - (i) the location of all buildings, structures, outdoor play areas and shaded areas;
 - (ii) the location of all entries and exits;
 - (iii) the location of all fences and gates, specifying the type of fence or gate used or to be used;
 - (iv) the location of toilet and washing facilities, nappy changing areas and any food preparation areas;

- (v) the boundaries of the premises;
 - (vi) the landscape of, or landscaping plans for, outdoor spaces that will be used by the education and care service, specifying the natural environments that are or will be provided;
 - (vii) a floor plan indicating unencumbered indoor and outdoor spaces suitable for children;
 - (viii) the location of any associated children's service;
 - (ix) calculations, carried out by a building practitioner, of the areas referred to in regulations 107 and 108 relating to unencumbered indoor and outdoor space;
 - (x) the elevation plans of the premises;
- (c) if a swimming pool or other water hazard is situated on the proposed education and care service premises, a copy of the service's proposed water safety policy;
- (d) one of the following—
- (i) a soil assessment for the site of the proposed education and care service premises;

- (ii) if a soil assessment for the site of the proposed education and care service premises has previously been undertaken, a statement to that effect, specifying when the soil assessment was undertaken;
 - (iii) a statement made by the applicant that states that, to the best of the applicant's knowledge the site history does not indicate that the site is likely to be contaminated in a way that poses an unacceptable risk to the health of children;
- (e) a copy of the planning permit for the proposed education and care service premises if a planning permit is required under the planning and development law of the participating jurisdiction;
- (f) a statement that the applicant has the right to occupy and use the premises and any document evidencing this;
- (g) unless the education and care service premises is a government or registered school, either—
 - (i) a copy of any occupancy permit, certificate of final inspection, building certificate, certificate of classification or building surveyor's

statement issued or given in respect of the final construction and fit out of the education and care service premises; or

- (ii) a statement made by a building practitioner that states that the education and care service premises complies with building requirements under a building law or planning and development law of the participating jurisdiction

Suspension or cancellation of service approval

70

Grounds for suspension of service approval

A Regulatory Authority may suspend a service approval if

- (a) the Regulatory Authority reasonably believes that it would not be in the best interests of children being educated and cared for by the service for the service to continue; or
- (b) a condition of the service approval has not been complied with; or
- (c) the service is not being managed in accordance with this Law; or
- (d) the service has operated at a rating level as not meeting the National Quality Standard and—

- (i) a service waiver or temporary waiver does not apply to the service in respect of that non-compliance; and
 - (ii) there has been no improvement in the rating level; or
- (e) the approved provider has contravened this Law as applying in any participating jurisdiction; or
- (f) the approved provider has failed to comply with a direction, compliance notice or emergency order under this Law as applying in any participating jurisdiction in relation to the service; or
- (g) the approved provider has:
 - (i) ceased to operate the education and care service at the education and care service premises for which the service approval was granted; and
 - (ii) within 6 months of ceasing to operate the service, has not transferred the service to another approved provider; or
- (h) the approved provider has not, within 6 months after being granted a service approval, commenced ongoing operation of the service; or

- (i) the approved provider has not paid the prescribed annual fee for the service approval

103(1) Offence to provide an education and care service without service approval

A person must not provide an education and care service unless:

- (a) the person is an approved provider in respect of that service; and
- (b) the education and care service is an approved education and care service.

104 A person must not knowingly publish or cause to be published an advertisement for an education and care service unless it is an approved education and care service.

ASSESSMENTS AND RATINGS

Assessment and rating

133 Assessment for rating purposes

The Regulatory Authority that granted the service approval for an education and care service may at any time assess the service in accordance with the national regulations to determine whether and at what rating level the service meets the National Quality Standard and the requirements of the national regulations.

Regulation 55 - Quality improvement plans

- 38. The approved provider of an education and care service must ensure that, within 3 months of the grant of the service approval, a quality improvement plan is prepared for the service that—

- (a) includes an assessment by the provider of the quality of the practices of the service against the National Quality Standard and these Regulations; and
- (b) identifies any areas that the provider considers may require improvement; and
- (c) contains a statement of the philosophy of the service.

39. The approved provider must submit the quality improvement plan to the Regulatory Authority on request.

Note—A compliance direction may be issued for failure to comply with subregulation (1).

56 Review and revision of quality improvement plans

- (1) The approved provider of an education and care service must review and revise the quality improvement plan for the service having regard to the National Quality Standard—
 - (a) at least annually; and
 - (b) at any time when directed by the Regulatory Authority.

(2) The approved provider must submit the current quality improvement plan to the Regulatory Authority on request.

161-175 Offences under the National Law

161 Offence to operate education and care service without nominated supervisor

161A Offence for nominated supervisor not to meet prescribed minimum requirements

162 Offence to operate education and care service unless responsible person is present

166

Regulation 150 - Responsible person

The staff record must include the name of the responsible person at the centre-based service for each time that children are being educated and cared for by the service.

To use inappropriate discipline

(a) any form of corporal punishment; or

(b) any discipline that is unreasonable in the circumstances

Principal
and
Board

167

Protection of children from harm and hazards

Every reasonable precaution is taken to protect children being educated and cared for by the service from any hazard likely to cause injury

168(1) Required Programs

Regulation 73(2) - Educational Program

An educational program is to contribute to the following outcomes for each child—

A Program must be delivered to all children being educated and cared for by the service that

- (a) is based on an approved learning framework; and
- (b) is delivered in a manner that accords with the approved learning framework;
- (c) is based on the developmental needs, interests and experiences of each child; and
- (d) is designed to take into account the individual differences of each child.

- (a) the child will have a strong sense of identity;
- (b) the child will be connected with and contribute to his or her world;
- (c) the child will have a strong sense of wellbeing;
- (d) the child will be a confident and involved learner;
- (e) the child will be an effective communicator.

Regulation 74(1) - Documenting of child assessments or evaluations for delivery of educational program

The approved provider of the education and care service must ensure that, for the purposes of the educational program, the following are documented—

- (a) for a child preschool age or under—
 - (i) assessments of the child's developmental needs, interests, experiences and participation in the educational program; and
 - (ii) assessments of the child's progress against the outcomes

of the educational program;
and

(b) for a child over preschool age, evaluations of the child's wellbeing, development and learning.

(2) In preparing the documentation, the approved provider must—

(a) (a) consider—

(i) the period of time that the child is being educated and cared for by the service; and

(ii) how the documentation will be used by the educators at the service; and

(b) prepare the documentation in a way that is readily understandable by the educators at the service and the parents of the child.

Regulation 75 - Information about educational program to be kept available

The approved provider of an education and care service must ensure that—

(a) information about the contents and operation of the educational program for the service is displayed at the education and care service premises at a place accessible to parents of

children being educated and cared for by the service; and

- (b) a copy of the educational program is available at the following places for inspection on request—
 - (i) in the case of a centre-based service, at the education and care service premises;

Regulation 76 - Information about educational program to be given to parents

The approved provider of an education and care service must ensure that a parent of a child being educated and cared for by the service is provided with the following information on request—

- (a) information about the content and operation of the educational program so far as it relates to that child;
- (b) information about the child's participation in the program;
- (c) a copy of the documents kept

Regulation 122 - Educators must be working directly with children to be included in ratios

- (1) An educator cannot be included in calculating the educator to child ratio of a centre-based

169

Staffing arrangements

relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose.

qualification requirements relevant to the educator's role as prescribed

service unless the educator is working directly with children at the service.

Regulation 123 - Educator to child ratios—centre-based services

The minimum number of educators required to educate and care for children at a centre-based service is to be calculated in accordance with the following ratios—

- (a) for children from birth to 24 months of age—1 educator to 4 children;
- (b) for children over 24 months and less than 36 months of age—1 educator to 5 children;
- (c) for children aged 36 months of age or over (not including children over preschool age)—1 educator to 11 children;
- (d) for children over preschool age, 1 educator to 15 children.

See ACT Specific Provisions under section 260

- (2) The educator to child ratio for children over preschool age at a centre-based service is 1 educator to 11 children

Regulation 126 Centre-based services—general educator qualifications

- (1) The qualification requirements for educators at a centre-based service educating and caring

for children preschool age or under are as follows—

- (a) at least 50 per cent of the educators who are required to meet the relevant educator to child ratios for the service must have, or be actively working towards, at least an approved diploma level education and care qualification; and
 - (b) all other educators who are required to meet the relevant educator to child ratios for the service must have, or be actively working towards, at least an approved certificate III level education and care qualification.
- (1A) The qualification requirements in subregulation (1)(b) do not apply to an educator if the educator has been employed by an approved provider on a probationary basis for not more than 3 months, at one or more centre-based services operated by the approved provider.
- (2) The qualification requirements for educators at a centre-based service educating and caring for children over preschool age in a jurisdiction are the qualification requirements (if any) set out in Chapter 7 for that jurisdiction.

170

171

172

Fail to display prescribed information

Information is to be clearly visible to anyone from the main entrance to the education and care service premises—

- (a) the provider approval;
- (b) the service approval;
- (c) each nominated supervisor of the service;
- (d) the rating of the service;
- (e) any service waivers or temporary waivers held by the service;
- (f) any other prescribed matters

Unauthorised persons on education and care service premises

Direction to exclude inappropriate persons from education and care service premises

Regulation 173(2) – The prescribed information for 172(f) is:

- (a) the hours and days of operation of the education and care service;
- (b) the name and telephone number of the person at the education and care service to whom complaints may be addressed;
- (c) in the case of a centre-based service, the name and position of the responsible person in charge of the education and care service at any given time;
- (d) the name of the educational leader at the service;
- (e) the contact details of the Regulatory Authority;
- (f) if applicable—
 - (i) in the case of a centre-based service, a notice stating that a child who has been diagnosed

as at risk of anaphylaxis is enrolled at the service; or

- (g) if applicable—
 - (i) in the case of a centre-based service, a notice stating that there has been an occurrence of an infectious disease at the premises; or

173

Fail to notify certain circumstances to Regulatory Authority

- (a) a change in the name of the approved provider;
- (b) any appointment or removal of a person with management or control of an education and care service operated by the approved provider;
- (c) a failure to commence operating an education and care service within 6 months (or within the time agreed with the Regulatory Authority) after being granted a service approval for the service

174

Fail to notify certain information to Regulatory Authority

An approved provider must notify the Regulatory Authority of the following information in relation to the approved provider or each approved education and care service operated by the approved provider-

- (a) any change relevant to whether the approved provider is a fit and proper person to be involved in the provision of an education and care service;
- (b) information in respect of any other prescribed matters.

An approved provider must notify the Regulatory Authority of the following information in relation to an approved education and care service operated by the approved provider-

- (a) any serious incident at the approved education and care service;
- (b) any complaints alleging—
 - (i) that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the approved education and care service; or
 - (ii) that this Law has been contravened;

Requirement to keep enrolment and other documents

Part 9—Monitoring and Enforcement

195

- (1) Keep the prescribed documents available for inspection by an authorised officer

The required documents are

- (a) the documentation of child assessments or evaluations for delivery of the educational program as set out in regulation 74;
- (b) an incident, injury, trauma and illness record as set out in regulation 87;
- (c) a medication record as set out in regulation 92;
- (d) n/a
- (e) in the case of a centre-based service, a staff record as set out in regulation 145;
- (f) a record of volunteers and students as set out in regulation 149;
- (g) the records of the responsible person at the service as set out in regulation 150;
- (h) in the case of a centre-based service, a record of educators working directly with children as set out in regulation 151;

- (i) a record of access to early childhood teachers as set out in regulation 152;
- (j) in the case of a family day care service, a record of staff engaged or employed by the service kept under regulation 154;
- (k) (k) a children's attendance record as set out in regulation 158;
- (l) (l) child enrolment records as set out in regulation 160;
- (m) (m) a record of the service's compliance with the Law as set out in regulation 167;
- (n) (n) a record of each nominated supervisor and any person in day-to-day charge of the education and care service under section 162 of the Law.

195

Authorised officer:

any person who the Regulatory Authority is satisfied is an appropriate person to be an authorised officer for the purposes of this Law.

196

Regulatory Authority must issue to each authorised officer an identity card in the form prescribed by the national regulations

197

Powers of entry for assessing and monitoring approved education and care service

The consent of the school is not required before an authorised officer can enter a school

An authorised officer may, at any reasonable time and with such assistants as may reasonably be required, enter any education and care service premises and do any of the following:

- (a) inspect the premises and any plant, equipment, vehicle or other thing;
- (b) photograph or film, or make audio recordings or make sketches of, any part of the premises or anything at the premises;
- (c) inspect and make copies of, or take extracts from, any document kept at the premises;
- (d) take any document or any other thing at the premises; (e) ask a person at the premises—
 - (i) to answer a question to the best of that person's knowledge, information and belief; or
 - (ii) (ii) to take reasonable steps to provide information or produce a document

200

Powers of entry to business premises

The authorised officer, with the consent of the occupier of the premises, may enter the premises and do any of the following

- (a) search any part of the premises;

The consent of the school is required before an authorised officer can enter business premises

- (b) inspect, measure, test, photograph or film, or make audio recordings of, any part of the premises or anything at the premises;
- (c) take a thing, or a sample of or from a thing, at the premises for analysis, measurement or testing;
- (d) copy, or take an extract from, a document, at the premises;
- (e) take into or onto the premises any person, equipment and materials the authorised officer reasonably requires for exercising a power under this subsection;
- (f) require the occupier of the premises, or a person at the premises, to give the authorised officer information to help the authorised officer in conducting the investigation.

200A

An authorised officer must not enter and search the premises under this section unless, before the occupier consents to the entry, the authorised officer has:

- (a) produced the authorised officer's identity card for inspection; and
- (b) informed the occupier—

- (a) of the purpose of the search and the powers that may be exercised; and
- (b) that the occupier may refuse to consent to the entry and search or the taking of anything found during the search; and
- (c) that the occupier may refuse to consent to the taking of any copy or extract from a document found on the premises during the search

Division 4—Offences relating to enforcement

207

Offence to obstruct authorised officer

208

Offence to fail to assist authorised officer

A person must not, without reasonable excuse:

- (a) refuse to answer a question lawfully asked by an authorised officer (other than a question asked under section 197(2)(e) to answer a question to the best of that person's knowledge, information and belief; or (ii) to take reasonable steps to provide information or produce a document.); or
- (b) refuse to provide information or produce a document lawfully required by an authorised officer; or
- (c) fail to comply with a requirement made by an authorised officer under clause 5(2)(f)

(require the occupier of the premises, or a person at the premises, to give the authorised officer reasonable help to exercise the authorised officer's powers) or (g) (require the occupier of the premises, or a person at the premises, to give the authorised officer information to help the authorised officer in conducting the investigation) of Schedule 2

209 Offence to destroy or damage notices or documents

210 Offence to impersonate authorised officer

301(1) & (3) **National regulations**

The national regulations may provide for the following:

- (a) fees (including application fees and annual fees) for approvals and other things done under this Law;
- (b) the indexation of fees;
- (c) standards for education and care services;
- (l) the records, policies and procedures to be kept by approved providers and family day care educators including enrolment and attendance information;

- (m) requirements and standards about first aid and management of children's medical conditions including:
 - (i) the training of educators and staff members; and
 - (ii) plans, policies and procedures used to manage medical conditions and first aid; and
 - (iii) the keeping and storage of first aid kits and medications;
- (n) information required to be submitted for applications made under this Law;
- (o) requirements and standards for the provision and display of information by approved providers;
- (p) the publication of information about enforcement actions taken under this Law, including notice and review of proposals to publish information;
- (q) matters relating to the application of this Law to partnerships, eligible associations or prescribed entities;
- (r) requirements relating to the receipt and payment and distribution of fees and monetary penalties payable under this Law

301(3) (a) requirements for educational programs, including the quality of those programs and their development, documentation and delivery; See Offences section 168 and regulations on page 76

301(3) (d) requirements and standards to be complied with for the safety, health and wellbeing of children being educated and cared for by an education and care service;

(e) requirements and standards to be complied with for safety, security, cleanliness, comfort, hygiene and repair of premises, outdoor spaces, fencing, gates, resources and equipment used for providing education and care services

Regulation 77 - Health, hygiene and safe food practices.

The approved provider of an education and care service must ensure that nominated supervisors and staff members of, and volunteers at, the service implement—

- (a) adequate health and hygiene practices; and
- (b) safe practices for handling, preparing and storing food—

to minimise risks to children being educated and cared for by the service.

A nominated supervisor of an education and care service must implement, and ensure that all staff members of, and volunteers at, the service implement—

- (a) adequate health and hygiene practices; and
- (b) safe practices for handling, preparing and storing food

to minimise risks to children being educated and cared for by the service.

Regulation 78 - Food and beverages

(1) The approved provider of an education and care service must ensure that children being educated and cared for by the service:

- (a) have access to safe drinking water at all times; and
- (b) are offered food and beverages appropriate to the needs of each child on a regular basis throughout the day.

(2) A nominated supervisor of an education and care service must ensure that children being educated and cared for by the service—

- (a) have access to safe drinking water at all times; and
- (b) are offered food and beverages on a regular basis throughout the day.

Regulation 79 - Service providing food and beverages

(1) The approved provider of an education and care service that provides food or a beverage to children being educated and cared for by the service must ensure that—

- (a) the food or beverage provided is nutritious and adequate in quantity; and
- (b) the food or beverage provided is chosen having regard to the dietary requirements of individual children taking into account—

- (i) each child's growth and development needs; and
 - (ii) any specific cultural, religious or health requirements.
- (2) A nominated supervisor of an education and care service that provides food or a beverage to children being educated and cared for by the service must ensure that—
 - (a) the food or beverage provided is nutritious and adequate in quantity; and
 - (b) the food or beverage provided is chosen having regard to the dietary requirements of individual children taking into account—
 - (i) each child's growth and development needs; and
 - (ii) (ii) any specific cultural, religious or health requirements.

Regulation 80 - Weekly menu

- (1) The approved provider of an education and care service that provides food and beverages (other than water) to children being educated and cared for by the service must ensure that a weekly menu—

- (a) is displayed at a place at the education and care service premises accessible to parents of children being educated and cared for by the service; and
 - (b) accurately describes the food and beverages to be provided by the service each day.
- (2) A nominated supervisor of an education and care service that provides food and beverages (other than water) to children being educated and cared for by the service must ensure that a weekly menu—
- (a) is displayed at a place at the education and care service premises accessible to parents of children being educated and cared for by the service; and
 - (b) accurately describes the food and beverages to be provided by the service each day.

Regulation 81 - Sleep and rest

- (1) The approved provider of an education and care service must take reasonable steps to ensure that the needs for sleep and rest of children being educated and cared for by the service are met, having regard to the ages, development stages and individual needs of the children .
- (2) A nominated supervisor of an education and care service must take reasonable steps to ensure that the needs for sleep and rest of children being educated and cared for by the service are met,

having regard to the ages, development stages and individual needs of the children.

Regulation 82 - Tobacco, drug and alcohol-free environment

- (1) The approved provider of an education and care service must ensure that children being educated and cared for by the service are provided with an environment that is free from the use of tobacco, illicit drugs and alcohol

Regulation 83 - Staff members not to be affected by alcohol or drugs

- (1) The approved provider of an education and care service must ensure that a nominated supervisor or a staff member of, or volunteer at, the service is not affected by alcohol or drugs (including prescription medication) so as to impair the person's capacity to supervise or provide education and care to children being educated and cared for by the service

Regulation 84 - Awareness of child protection law

The approved provider of an education and care service must ensure that nominated supervisors and staff members at the service who work with children are advised of—

- (a) the existence and application of the current child protection law; and

- (b) any obligations that they may have under that law.

Regulation 85 - Incident, injury, trauma and illness record

- (1) The approved provider of an education and care service must ensure that an incident, injury, trauma and illness record is kept in accordance with this regulation.
- (2) A family day care educator must keep an incident, injury, trauma and illness record in accordance with this regulation.
- (3) The incident, injury, trauma and illness record must include—
 - (a) details of any incident in relation to a child or injury received by a child or trauma to which a child has been subjected while being educated and cared for by the education and care service or the family day care educator, including—
 - (i) the name and age of the child; and
 - (ii) the circumstances leading to the incident, injury or trauma; and
 - (iii) the time and date the incident occurred, the injury was

received or the child was
subjected to the trauma;

- (b) details of any illness which becomes apparent while the child is being educated and cared for by the education and care service or the family day care educator including—
 - (i) the name and age of the child;
and
 - (ii) the relevant circumstances surrounding the child becoming ill and any apparent symptoms; and
 - (iii) the time and date of the apparent onset of the illness;
- (c) details of the action taken by the education and care service or family day care educator in relation to any incident, injury, trauma or illness which a child has suffered while being educated and cared for by the education and care service or family day care educator, including—
 - (i) any medication administered or first aid provided; and
 - (ii) any medical personnel contacted;

- (d) details of any person who witnessed the incident, injury or trauma;
 - (e) the name of any person—
 - (i) whom the education and care service notified or attempted to notify, of any incident, injury, trauma or illness which a child has suffered while being educated and cared for by the education and care service or family day care educator; and
 - (ii) the time and date of the notifications or attempted notifications;
 - (f) the name and signature of the person making an entry in the record, and the time and date that the entry was made.
- (3) The information referred to in subregulation (3) must be included in the incident, injury, trauma and illness record as soon as practicable, but not later than 24 hours after the incident, injury or trauma, or the onset of the illness.

Regulation 88 - Infectious diseases

- (1) If there is an occurrence of an infectious disease at an education and care service, the

approved provider of the service must ensure that reasonable steps are taken to prevent the spread of the infectious disease at the service.

- (2) If there is an occurrence of an infectious disease at a centre-based service, the approved provider of the service must ensure that a parent or an authorised emergency contact of each child being educated and cared for by the service is notified of the occurrence as soon as practicable.
- (3) If there is an occurrence of an infectious disease at a family day care residence or approved family day care venue, the approved provider of the family day care service must ensure that a parent or an authorised emergency contact of each child being educated and cared for at the residence or venue as part of the service is notified of the occurrence as soon as practicable.

Regulation 89 - First aid kits

- (1) The approved provider of an education and care service must ensure that first aid kits are kept in accordance with this subregulation, wherever the service is providing education and care to children—
 - (a) an appropriate number of first aid kits must be kept having regard to the number of children being educated and cared for by the service; and
 - (b) the first aid kits must be suitably equipped; and

301(3)

- (h) requirements and standards for the staffing of education and care services including the recruitment (and conduct of criminal history or other security checks) and the appointment of staff, performance improvement, professional standards, professional development, numbers and qualifications of educators (including minimum age and requirements concerning groups of children of different ages and composition) and staffing rosters and arrangements;
- (i) requirements and standards about educators' relationships with children, interactions and behaviour guidance and inclusion policies and practice for education and care services;
- (j) requirements and standards for partnerships between education and care services and the community in which they are located and the families of children being educated and cared for by education and care services, including requirements for services to link to other support services for children and families;

- (c) the first aid kits must be easily recognisable and readily accessible to adults, having regard to the design of the education and care service premises.

Regulation 118 - Educational leader

The approved provider of an education and care service must designate, in writing, a suitably qualified and experienced educator, co-ordinator or other individual as educational leader at the service to lead the development and implementation of educational programs in the service.

In addition see the requirements for section 169 on page 79

Part 7.2 Australian Capital Territory—specific provisions

Regulations

Division 2 Children over preschool age—minimum number of educators and qualifications required

Regulation 260 Educator to child ratio—children over preschool age—centre-based services

- (a) This regulation applies in place of regulation 123(1)(d).

(k) requirements and standards as to the leadership and management of education and care services including governance and fitness and propriety of all staff members and volunteers, management of grievances and complaints and the provision of information to families

(b) The educator to child ratio for children over preschool age at a centre-based service is 1 educator to 11 children.

Regulation 261 General qualifications for educators—children over preschool age—centre-based services

1. For the purposes of regulation 126(2), the qualification requirement for educators at a centre-based service educating and caring for children over preschool age is at least 1 qualified educator for every 33 children.
2. If a qualified educator is absent from a centre-based service for not more than 2 weeks, the service may meet the requirement under subregulation (1) by providing that—the qualified educator to child ratio is met by an educator other than a qualified educator; and
 - (b) at least 1 qualified educator is on duty at all times that children are in attendance at the service premises.
3. If a qualified educator resigns, the service may meet the requirement under subregulation (1) for up to 4 weeks after the resignation by providing that—the qualified educator to child ratio is met by an educator other than a qualified educator; and

- (b) at least 1 qualified educator is on duty at all times that children are in attendance at the service premises.
- 4. During school holidays and on pupil free days a centre-based service may meet the requirement under subregulation (1) by providing the relevant number of full-time equivalent qualified educator positions if—
 - (a) at least 1 qualified educator is on duty at all times that children are in attendance at the service premises outside the hours of the full-time equivalent positions; and
 - (b) the educator to child ratio is met by the educator referred to in paragraph (a) and educators other than qualified educators outside the hours of the full-time equivalent positions.
- 5. In this regulation qualified educator means an educator who is qualified in accordance with regulation 262.

Regulation 262 - Required qualifications to be a qualified educator for children over preschool age

- (1) The first educator required to meet the qualified educator to child ratio for children over preschool age must—
 - (a) hold a qualification that is published under regulation 137(2) in the list of

approved qualifications for the first qualified educator working with children over preschool age for the Australian Capital Territory; or

- (b) comply with the following—
 - (i) be enrolled in a course for a qualification that is included in the list referred to in paragraph (a); and
 - (ii) be able to demonstrate that he or she is continuing to study for that qualification; and
 - (iii) be approved by the Regulatory Authority to work as a qualified educator for children over preschool age.

(2) All other educators required to meet the qualified educator to child ratio must—

- (a) hold any qualification that is included in the list referred to in subregulation (1)(a); or
- (b) hold a qualification that is published under regulation 137(2) in the list of approved qualifications for the second and subsequent qualified educators working with children over preschool age for the Australian Capital Territory.

- (3) The Regulatory Authority may, on application, grant an approval for the purposes of subregulation (1).

Division 3 Transitional provisions—staffing arrangements

Subdivision 1 Centre-based services

Regulation 264 - General qualifications for educators—centre-based services

- (1) Regulation 126(1) applies as modified by this regulation until 31 December 2023.
- (2) If a qualified educator is not working directly with children or is absent from a centre-based service, the service may meet the requirements under regulation 126(1) by providing the relevant number of full-time equivalent qualified educator positions if—
- (a) the educator to child ratios are met at all times the service is educating and caring for children; and
 - (b) the number of qualified educators specified in subregulation (3) or (4) (as the case requires) educates and cares for children at all times the service is educating and caring for children.
- (3) For the purposes of subregulation (2)(b), the number of qualified educators for a centre-based service (other than a preschool) is—
- (a) for a centre-based service providing education and care to less than 25

children, at least one qualified educator;

- (b) for a centre-based service providing education and care to 25 to 59 children, at least 2 qualified educators;
- (c) for a centre-based service providing education and care to 60 to 80 children, at least 3 qualified educators;
- (d) for a centre-based service providing education and care to more than 80 children, at least 4 qualified educators.

(4) N/A

(5) On request by the Regulatory Authority, an approved provider of a centre-based service must demonstrate that the approved provider has taken into account the best interests of children (including provision of adequate supervision) in relation to replacement of qualified educators.

(6) This regulation does not apply if the qualified educator is absent from the centre-based service—

- (a) in case of an unexpected absence, for more than 5 consecutive days; or
- (b) in case of pre-arranged leave for recreation, illness or other personal leave, for any period.

Regulation 265 -Required qualifications to be a qualified educator—unexpected absence of qualified educator

301(3)(g)

requirements and standards about the premises to be used to provide an education and care service including siting, design, layout, space, security and entitlement to occupy

For the purposes of regulation 264(3) and (4), an educator is qualified if he or she—

- (a) holds or is actively working towards an approved diploma level education and care qualification; or
- (b) holds an approved early childhood teaching qualification; or
- (c) is taken to be an early childhood teacher under regulation 135 or 242; or
- (d) holds a primary teaching qualification; or
- (e) in the case of regulation 264(3)(c) or (d)—is a suitably qualified person.

Regulation 103 - Premises, furniture and equipment to be safe, clean and in good repair

1. The approved provider of an education and care service must ensure that the education and care service premises and all equipment and furniture used in providing the education and care service are safe, clean and in good repair.

Regulation 107 - Space requirements—indoor space

- (1) The approved provider of an education and care service must ensure that, for each child being educated and cared for by the service, the

education and care service premises has at least 3.25 square metres of unencumbered indoor space.

(2) N/A

(3) In calculating the area of unencumbered indoor space:

- (e) the following areas are to be excluded—
 - (i) any passageway or thoroughfare (including door swings);
 - (ii) any toilet and hygiene facilities;
 - (iii) any nappy changing area or area for preparing bottles;
 - (iv) any area permanently set aside for the use or storage of cots;
 - (v) any area permanently set aside for storage;
 - (vi) any area or room for staff or administration;
 - (vii) any other space that is not suitable for children;
- (f) the area of a kitchen is to be excluded, unless the kitchen is primarily to be used by children as part of an

educational program provided by the service.

- (4) The area of a verandah may be included in calculating the area of indoor space only with the written approval of the Regulatory Authority.

302 Publication of national regulations

The national regulations are published on the NSW Legislation website.

Education Regulation 2005 (ACT)

Reg Boarding Facilities

4A

A school that provides boarding facilities must have policies for the provision of the facilities that comply with AS 5725:2015 (Boarding Standard for Australian schools and residences) as in force from time to time.

Schools that have boarding facilities, or intend to, need to be familiar with the Standard.

Principal

Board

Head of Boarding

A link to the Briefing Paper prepared by CompliSpace is contained below:

[Briefing Paper: Boarding Standard for Australian Schools](#)

A link to access the Standard which needs to be purchased from Standards Australia is below:

[AS 5725:2015 Boarding Standard](#)

A summary of the Standard now follows.

The Australian Boarding Standard consists of six sections:

1. Scope and General
2. Governance and Management
3. Boards
4. Staff
5. Parent, Family and Community Engagement
6. Facilities.

A boarding school's framework and processes must be established, documented, disseminated, implemented, maintained and reviewed

Section 2.1 Mandatory requirements in relation to the governance and management processes used to oversee the strategic planning and operation of a boarding service.

- (a) risk management processes;
- (b) procedures and actions that will deliver continuous improvement;
- (c) development and implementation of a records management policy, system and procedures which identify the record-keeping, back-up, storage,

security, retention, disposal and confidentiality requirements; and

- (d) financial management requirements including independent financial auditing requirements

Section 3.1 Boarders are the focus for all boarding services.

Section 3.2 Child Protection of Boarders;

Section 3.3 Safety of Boarders

Section 3.4 Health and Well-being of Boarders

Section 3.5 Holistic Development of Boarders

Section 3.6 Care and Supervision of Boarders Section

Section 3.7 Providing for Boarders with Particular Needs.

Section 4.1 importance of staff in the delivery of a quality boarding service;

Section 4.2 Health and Well-being of Staff: school to consider:

- (a) their current work health and safety procedures and risk management system, within the context of the boarding school and its staff

Section 4.3 Competence and Professional Learning of Staff:

- (a) provision of annual professional learning for all boarding staff, as defined in the Standard, relevant to their role and context

Section 4.4 Management of Staff:

- (a) boarding staff recruitment policies and procedures
a code of conduct,
- (b) job descriptions and
- (c) a boarding staff handbook.

Section 5.1 importance of community partnerships contributing to boarder support and well-being.

Section 5.2 Parent and Family Engagement:

- (a) boarding school's interactions with a boarder's parents and family, and
- (b) the need to seek and promote their engagement in policy development and decision-making

Section 5.3 Community Engagement:

- (a) requirement to develop and implement communication protocols for building relationships with partner schools and community services and organisations.

Section 6

- (a) requirements for boarding schools regarding required facilities,
- (b) accommodation and amenities,
- (c) security arrangements for boarders and live-in staff,
- (d) maintenance and cleaning, and
- (e) the improvement of boarding facilities.

Schedule 2 – Non-government schools registration standards

Part 2.1 – Governance

2.1 Incorporation

The proprietor of a registered school must be a corporation

A review of the legal structure of a school may be required and further discussions with the Directorate where schools are run by trusts or unincorporated entities.

2.2 Not-for-profit

The proprietor of a registered school must be registered under the Australian Charities and Non-for-profits Commission Act 2013 (Cth)

2.3 176

The proprietor of a registered school must ensure the governance structure of the school enables the school to—

- (a) fulfill its legal obligations; and

Some Boards are advisory and some schools operate on an executive made up of senior staff . Board

The issue here is that day-to day control of the school is usually in the hands of the Principal and a small number of staff , while the regulations want to separate out the governing body from that role

(b) be financially viable; and

(c) operate safely.

The proprietor must ensure that the governance responsibilities of the governing body of the school are separate from the day-to-day control and management responsibilities of the principal of the school.

2.4

Financial viability

The proprietor of a registered school must ensure that the school has access to adequate financial resources for its viable operation.

The proprietor must ensure that the school's funding model enables delivery of the school's educational programs to the number of students at the school, at the levels of education for which the school is registered.

The proprietor must ensure that the school's—

(a) finances are managed in accordance with the requirements of the Corporations Act; and

(b) financial records are audited annually; and

(c) financial records and audit reports are made available to the registrar on request.

Education Services for Overseas Students Act 2000 (Cth)

6C

ESOS Agency

Item	To the extent that a provider or registered provider is	the <i>ESOS</i> agency for the provider or registered provider is:
1	a registered higher education provider	TEQSA
2	a registered VET provider	the National VET Regulator
3	an approved school provider	the Secretary
4	a person or entity that provides an ELICOS or a Foundation Program	the entity determined under subsection (2)
5	a provider or registered provider that is not covered by another item of this table	the entity determined under subsection (2)

The Australian Skills Quality Authority (ASQA), the Tertiary Education Quality and Standards Agency (TEQSA) and the Secretary of the Department of Education, Skills and Employment (DESE) are referred to as Education Services for Overseas Students ('ESOS) agencies'.

6C(2)

Minister may determine the ESOS Agency for Items 4 or 5

8(1)

A person commits an offence if:

- (a) the person:
 - (i) provides a course at a location to an overseas student; or

Application for registration must be made by the school to the Secretary of the department of Education, Skills and Employment and must be registered on the Commonwealth Register of

Principal Board

Institutions and Courses for Overseas Students (CRICOS).

- (ii) makes an offer to an overseas student or an intending overseas student to provide a course at a location to that student; or
- (iii) invites an overseas student or intending overseas student to undertake, or to apply to undertake, a course at a location; or
- (iv) holds himself, herself or itself out as able or willing to provide a course at a location to overseas students, **unless;**

- (b) the person is not registered to provide that particular course at that particular location; or

8(2)

Subsection (1) does not apply if the person does so in accordance with an arrangement that the person has with a registered provider for that particular course for that particular location.

General obligations of Schools (Registered Providers)

15

A registered provider must not engage in misleading or deceptive conduct

17

A registered provider must notify their ESOS agency (defined in section 6C as the Secretary of the Department) of offences by associates and high managerial agents

Both criminal offences and breaches of conduct

17A A registered provider must notify their ESOS agency of the occurrence of an event that would significantly affect the provider's ability to comply with the Act.

19 A registered provider must give certain information within a certain number of days after specified events occur.

These include:

- (a) the name and any other prescribed details of each person who becomes an accepted student of that provider;
- (b) for each person who becomes an accepted student—the name, starting day and expected duration of the course for which the student is accepted;
- (c) the prescribed information about an accepted student who does not begin his or her course when expected;
- (d) any termination of an accepted student's studies (whether as a result of action by the student or the provider or otherwise) before the student's course is completed;
- (e) any change in the identity or duration of an accepted student's course;
- (f) any other prescribed matter (set out in the regulations) relating to accepted students.

19(2) A registered provider must give particulars of any breach by an accepted student of a prescribed condition of a student visa as soon as practicable after the breach occurs.

19(3)	A registered provider must give the information required by this section by entering the information in the computer system established by the Secretary under section 109	The notice must be in a form approved by the Secretary of the Immigration Minister's Department (section 109 – computer system)	Principal
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Food Act 2001 (ACT)

89	<p>Offence to operate an unregistered food business</p> <p>Schools must register their tuckshops under this act in order to avoid committing an offence. They can find the Act here</p>
92	<p>Registration of Food Businesses</p> <p>The Minister takes into account the suitability of proposed premises and any matter in relation to the handling of food.</p>
93	<p>Renewal of registration</p> <p>Schools must renew the registration every 3 years.</p>

Indigenous Education (Targeted Assistance) Act 2000 (Cth)

10	<p>Agreements with education providers</p> <p>The Minister may, on behalf of the Commonwealth, make an agreement with a school that authorises the making of payments to the school:</p> <ul style="list-style-type: none"> (a) for its recurrent expenditure for the purpose of advancing the objects of the Act; (b) for one or more specified ABSTUDY approved courses that are run by the school; (c) or to another person or body, for one or more specified projects whose purpose is to advance the objects of this Act. 	School needs to apply for funding	Principal Board
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The amount of payment for each of the above three authorisations must be either specified in the agreement or worked out in accordance with the agreement.

‘**ABSTUDY approved course**’ means a course that is:

- (a) provided through a mixture of distance education and either or both residential education and face-to-face education;
- (b) provided at a higher education institution or a vocational education and training institution; and
- (c) approved as a mixed mode away-from-base course under the ABSTUDY Scheme.

‘Education Provider’ includes “(c) a person or body conducting, or associated with, an educational system or educational institution.”

11 E, F

Specific provisions about educational accountability

All parties in an agreement must have conditions about reporting on performance against the performance indicators and performance targets.

If the Minister thinks a party is not achieving the performance targets, they may direct them to take specific action.

11 G

Participation in evaluation and data validation exercises

There must be a condition that each other party does each of the following:

- (a) participate in evaluating how effectively projects, and initiatives, covered by the agreement advance the objects of this Act;

Performance Indicators and Performance Targets

mean any that are specified in the agreement outlined in section 10.

These need to be clearly set out in any agreement you make in accordance with this Act.

The Act doesn’t say what comprises a data validation exercise.

(b) participate in data validation exercises;
in the manner, and by the times, specified in the agreement.

12 Recovering payments

If one or more conditions are breached the recipient may be required to repay to the commonwealth that amount.

Information Privacy Act 2014 (ACT)

Public Sector Agency legislation

Although the principal of each ACT Non-government School is required to make an annual statement of assurance regarding the school's compliance with legislative matters that relate to schooling in the ACT and one of the pieces of legislation referred to is *the Information Privacy Act 2014*, this legislation primarily governs the way in which Public Sector Agencies deal with private information.

There is no duty imposed on a Principal or Board of a School by this legislation

Privacy Act 1988

14 Australian Privacy Principles

These are set out in Schedule 1 of the Act

Part 1 sets out principles that require schools as APP entities to consider the privacy of personal information, including ensuring that the school manages personal information in an open and transparent way.

School must publish privacy principles and how it deals with information it collects on its website using the Australian Privacy Principles as its guide

Principal
Board

Part 2 sets out principles that deal with the collection of personal information including unsolicited personal information.

Part 3 sets out principles about how the school deals with personal information and government related identifiers, including the use and disclosure of personal information and those identifiers.

Part 4 sets out principles about the integrity of personal information, including the quality and security of personal information.

Part 5 sets out principles that deal with requests for access to, and the correction of, personal information.

15 A school must not do an act, or engage in a practice, that breaches an Australian Privacy Principle.

26WE(2) An eligible data breach happens if:

- (a) there is unauthorised access to, unauthorised disclosure of, or loss of, personal information held by an entity; and
- (b) the access, disclosure or loss is likely to result in serious harm to any of the individuals to whom the information relates.

26WK(1)& (1) If an entity is aware that there are reasonable grounds to believe that there has been an eligible data breach of the entity.

(2) (2) The entity must:

- (a) both:

- (i) prepare a statement that complies with subsection (3); and
- (ii) give a copy of the statement to the Commissioner; and
- (b) do so as soon as practicable after the entity becomes so aware.

26WK(3) The statement referred to in subparagraph (2)(a)(i) must set out:

- (a) the identity and contact details of the entity; and
- (b) a description of the eligible data breach that the entity has reasonable grounds to believe has happened; and
- (c) the particular kind or kinds of information concerned; and
- (d) recommendations about the steps that individuals should take in response to the eligible data breach that the entity has reasonable grounds to believe has happened.

26WL An entity must give a notification of eligible data breach if:

- (a) it has reasonable grounds to believe that an eligible data breach has happened; and

- 26WL(2)** (b) it has prepared a statement that complies with section 26WK(3)

The entity must:

- (a) if it is practicable for the entity to notify the contents of the statement to each of the individuals to whom the relevant information relates--take such steps as are reasonable in the circumstances to notify the contents of the statement to each of the individuals to whom the relevant information relates; or
- (b) if it is practicable for the entity to notify the contents of the statement to each of the individuals who are at risk from the eligible data breach--take such steps as are reasonable in the circumstances to notify the contents of the statement to each of the individuals who are at risk from the eligible data breach; or
- (c) if neither (a) or (b) applies:
 - (i) publish a copy of the statement on the entity's website (if any); and
 - (ii) take reasonable steps to publicise the contents of the statement.

99A(3) Conduct of directors, employees and agents

Board

The governing body of a school, if a body corporate can be prosecuted for breaches of the Act if it can be

In dealing with offences under the Act, the state of mind of a body corporate (the board of the school) can be determined by showing that:

- (a) the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, employee or agent had the state of mind.

shown that the body corporate through its officers conducted itself in breach of the Acct.

Racial Discrimination Act 1975 (Cth)

6A

The Act ratifies an international charter and is designed to allow the state and territory based laws to operate with respect to complaints and resolutions of those complaints.

It makes unlawful activities based on race, by reason of race, colour or national or ethnic origin of a person or of any relative or associate of that person as summarised below

Commonwealth Criminal Code applies

Principal
Board

11

Access to places and facilities.

12

Land, housing and other accommodation

Disposing of an interest in land to a person

13

Provision of goods and services

Refuse to supply goods or services to another person

14

Right to join trade unions

Cannot prevent or hinder a person from joining a trade union

15

Employment

Refusal to employ a person

Failure to offer that person equal employment terms

Reportable Conduct Scheme (Ombudsman Act 1989)

Overview

The ACT Reportable Conduct Scheme was introduced to improve organisation-related child protection, by providing Ombudsman oversight of how certain organisations prevent and respond to allegations of child abuse and child-related misconduct by employees.

The scheme is established in the Ombudsman Act 1989 (*the Act*).

'Reportable Conduct' is broadly defined as allegations or convictions of child abuse or child-related misconduct.

A 'child' is defined as a person under 18 years old at the time of the alleged conduct.

An 'allegation' is a claim that someone's conduct is reportable. Proof is not required.

Reportable Conduct includes:

- (a) Ill-treatment of a child (including emotional abuse; hostile use of force)
- (b) Neglect
- (c) Psychological harm
- (d) Misconduct of a sexual nature
- (e) Sexual or physical offences and convictions where a child is a victim or is present
- (f) Inappropriate discipline or offences relating to protecting children from harm in accordance

with the provisions of the *Education and Care Service National Law (ACT) Act 2011*

NOTE: if the school suspects criminal conduct has occurred, it should report to police in the first instance.

Allegations, convictions and findings of guilt must be reported in the reportable conduct scheme. The threshold for notifying an allegation to the Ombudsman is lower than the threshold for making a finding that reportable conduct occurred.

If an allegation about a current employee is made after 1 July 2017 about reportable conduct before 1 July 2017 then organisations should report to the Ombudsman.

Early contact is encouraged – contact the Ombudsman prior to lodging an s 17G Notification using:

02 6276 3770

act@ombudsman.gov.au

The scope of ‘employee’ includes all employees under contract of employment with the school. This includes employees that do not work directly with children. Volunteers, contractors or employees of an organisation providing services on behalf of the school are also considered to be employees, but only if they are engaged to provide services to children.

NOTE: the scheme covers all conduct of the employee, whether or not that conduct arose in the course of employment with the organisation.

The school:

1. needs to notify the Ombudsman about any reportable conduct allegations or convictions involving an employee by submitting a s 17G Notification as soon as possible, but no later than 30 days after the school becomes aware of the conduct
2. is expected to investigate any allegations of reportable conduct and must provide a final report to the Ombudsman at the end of any investigation, including the results of the investigation and actions taken
3. should report to other entities as required, including ACT Policing, CYPS, Access Canberra, Teacher

Quality Institute, Children's Education and Care Assurance, Human Rights Commission etc.)

may need to adjust or introduce policies and procedures to reflect their responsibilities under the scheme and provide education to employees about these policies.

An organisation covered by the ACT reportable conduct scheme must have policies and practices in place to prevent reportable conduct and deal with reportable allegations and reportable convictions relating to their employees.

Prevention

Strategies for preventing reportable conduct by employees, including:

- (a) guidance about appropriate and inappropriate behaviour, including developing codes of conduct that outline clear professional boundaries between employees of the school and children/young people
- (b) clearly defined roles for people within the organisation
- (c) pre-employment screening procedures
- (d) periodic review of existing WWVP Checks
- (e) reviews or reportable conduct allegations and investigations to identify contributing factors and action to address these
- (f) training and awareness raising

Notifying

The school must identify:

- (a) what is reportable conduct?

- (b) who is covered by the reportable conduct scheme?
- (c) how to report allegations of reportable conduct or reportable convictions?
- (d) who is the point of contact for reportable conduct matters?

Responding

How the school responds, including:

- (a) planning the organisation's response, including developing an investigation plan
- (b) assessing and managing risks
- (c) ensuring appropriate supports are identified and put in place for people affected
- (d) notifying the ACT Ombudsman within 30 days
- (e) notifying other oversight agencies, where appropriate
- (f) providing persons subject to allegations with information about the process and any review or appeal mechanisms
- (g) storing and accessing records
- (h) identifying and managing conflicts of interest
- (i) requesting and sharing information with other organisations under the *Children and Young People Act 2008*

- (j) providing information to the Ombudsman, including the final report on the investigation

Identifying who is responsible for the school's processes, including:

- (a) who can undertake an investigation?
- (b) who can make a finding about whether or not reportable conduct occurred?
- (c) who can authorise appropriate action?
- (d) who is responsible for notifying/involving other agencies and what are the school's obligations in relation to notifying any child safety/protection agencies?

Assess risks to:

- (a) the alleged victim
- (b) other children
- (c) the employee subject to the allegation
- (d) other employees of the organisation
- (e) the investigation
- (f) other investigations (e.g. ACT Policing)
- (g) the organisation

Assess how risks will be monitored and reviewed by the school and who will conduct the initial and ongoing risk

Legislation

17G

The **head** of a **designated entity** must provide a written report to the ombudsman about—

- (a) any **reportable allegation** (an express assertion that **reportable conduct** has happened) or any reportable conviction involving an employee of the entity; and
- (b) whether or not the entity proposes to take any action against the employee based on the allegation or conviction, and the entity's reasons for taking or not taking action; and

assessment, and decide what action, if any, is to be taken.

Support

1. Prepare information regarding how the school will support:
 1. employees who have had allegations made against them
 2. children involved in an investigation
 3. parents who have complained about an employee or whose child is involved in the investigation
 4. staff who have been involved in the investigative process.

The school may seek an extension on the filing of its report to the ombudsman.

Principal

- (c) any written submissions made by the employee to the head of the entity about the allegation or conviction that the employee asked the entity to take into account when deciding any action against the employee.

A report must be given to the ombudsman within 30 days after the day the head of the entity becomes aware of the allegation or conviction, or another period allowed by the ombudsman

The ombudsman may declare that any of the following is an *exempt matter*.

- (a) a reportable allegation or reportable conviction of a particular kind;
- (b) a particular entity;
- (c) a particular employee

The head of an entity is not required to provide a written report to the ombudsman if the report would deal only with an exempt matter

17E

reportable conduct means conduct—

- (a) engaged in by an employee of a designated entity, whether or not in the course of employment with the entity; and

- (b) that results in any of the following, regardless of a child's consent:
 - (i) ill treatment or neglect of the child;
 - (ii) exposing or subjecting the child to—
 - (A) behaviour, or a circumstance, that psychologically harms the child; or
 - (B) misconduct of a sexual nature that does not form part of an offence mentioned in subparagraph (iii);
 - (iii) an offence against any of the following provisions of the *Crimes Act 1900* for which the child is either present or a victim at the time of the conduct:
 - (A) part 2 (Offences against the person);
 - (B) part 3 (Sexual offences);
 - (C) part 4 (Female genital

mutilation);

(D) part 5 (Sexual servitude);

(iv) an offence against either of the following provisions of the *Education and Care Service National Law (ACT)* as passed in Victoria:

(A) section 166 (Offence to use inappropriate discipline);

(B) section 167 (Offence relating to protection of children from harm and hazards).

17EA an entity is a *designated entity* if it is an education and care service;

17EAA The head of a designated entity, means the individual primarily in charge of the management of the entity

Principal

17EAB a *reportable allegation* is an express assertion that reportable conduct has happened.

17EAC *employee*, of a designated entity—

(a) means a person who is engaged—

(i) under a contract of employment with the designated entity; or

(ii) by the designated entity to provide services to children (other than under a contract of employment); or

- (iii) by another entity (whether or not under a contract of employment) to provide services to children on behalf of the designated entity;

17EB

The head of a designated entity must ensure that the entity has in place practices and procedures (*procedures* includes policies.)—

- (a) for preventing reportable conduct by an employee of the entity—
 - (i) in the course of the employee's employment with the entity; or
 - (ii) other than in the course of the employee's employment with the entity if the employment would facilitate the employee's reportable conduct; and
- (b) to enable any person, including an employee of the entity, to notify the head of the entity of a reportable allegation or reportable conviction involving an employee of the entity; and
- (c) for dealing with a reportable allegation or reportable conviction involving an employee of the entity; and
- (d) for the receipt, handling and disclosure of information relating to reportable allegations, reportable convictions and investigation information.

- 17F(2)** The ombudsman may, by written notice, require the head of a designated entity to provide information about the entity's practices and procedures for the purpose of assisting the ombudsman to carry out a function under this section
- 17H** The head, or an employee, of a designated entity may disclose any information to the ombudsman that the head or employee believes on reasonable grounds reveals—
- (a) reportable conduct involving an employee of the entity; or
 - (b) a reportable conviction against an employee of the entity.
- 17I(1)** The ombudsman may monitor an investigation carried out by a designated entity into a reportable allegation or reportable conviction involving an employee of the entity if satisfied on reasonable grounds that monitoring the investigation is in the public interest.
- 17J** The head of a designated entity must, as soon as practicable after the end of an investigation by the entity into a reportable allegation or reportable conviction, provide the ombudsman with—
- (a) a written report about—
 - (i) the results of the investigation; and
 - (ii) any action taken, or proposed to be taken, in relation to the reportable allegation or reportable conviction; and
 - (b) copies of all—

(i) statements taken in the course of the investigation; and

(ii) documents mentioned in the report; and

(c) any other information that the head of the entity considers relevant to the report.

17K

The ombudsman may, on the ombudsman's own initiative or in response to a complaint, conduct an investigation into—

(a) any reportable allegation or reportable conviction involving an employee of a designated entity; or

(b) the response of the designated entity to the reportable allegation or reportable conviction.

17L

The ombudsman or **the head of a designated entity** may disclose investigation information to any of the following:

(a) a child who is the subject of conduct that forms the basis of a reportable allegation or a reportable conviction into which an investigation was conducted by the ombudsman or the designated entity;

(b) a parent of the child;

(c) if the child has been placed with an out-of-home carer—the child's out-of-home carer.

17O(2)

A person disclosing information under this division is not civilly liable for anything done or omitted to be done honestly and without recklessness—

- (a) in complying with this division; or
- (b) in the reasonable belief that the disclosure complied with this division.

Practice Guides under the Ombudsman Act 1989

Practice Guide No. 1 – Ombudsman Response

The school must notify the Ombudsman about reportable allegations and convictions against employees, regardless of whether the allegation or conviction arose during the employee’s professional or private capacity, and regardless of whether the child consents to the conduct, as long as the person was an employee at the time the employer became aware of the allegation.

The Ombudsman can monitor the progress of a response or investigation conducted by, or for, an employer in response to a reportable allegation or conviction (see s 17I of the Act).

The Ombudsman may share information with ACT Policing and other key organisations for health, safety and wellbeing of children (see s 34A of the Act).

The Ombudsman may choose to conduct an investigation into any reportable conduct allegation or conviction, or the response of the school to the reportable conduct allegation or conviction (see s 17K of the Act). This can occur regardless of whether the school has notified the Ombudsman or not.

Upon becoming aware of the reportable offence, contact the Ombudsman, as soon as possible, by telephone or email. Then, within 30 days of becoming aware of the reportable allegation, file the s 17G Notification. The Ombudsman will provide written confirmation of receipt.

Documentation to include with the s 17G:

- (a) whether or not the school proposes to take any action relating to the employee and the reasons for these decisions
- (b) any risk analysis completed prior to the filing of the Notification
- (c) any written submissions made to the school by relevant employees who are aware of the allegations

Response by the Ombudsman

Following filing of the s 17G Notification:

1. schools should continue their response/investigations under the oversight of the Ombudsman, who will seek updates, and

**Practice
Guide No.
2 –
Identifying
Reportable
Conduct**

The school is required to identify and report reportable conduct. If an allegation, on face value, suggests that reportable conduct has occurred or may have occurred, the school is required to notify the Ombudsman.

‘Allegation’ is defined as ‘express assertions that reportable conduct has happened or may have happened (including a statement or declaration with or without proof)’.

confer with those conducting the investigation regarding the nature, conduct, and progress

2. schools should suspend their investigations, if so directed by the Ombudsman, so the Ombudsman’s investigations may proceed.

Once the school has completed their investigation they must, as soon as possible, provide the Ombudsman with a final report, including:

1. any report prepared by or for them relating to the investigation, as well as copies of all the statements and other documents that form the basis of that report;
2. any comments they may want to make about the report; and
3. advice as to what action has been taken, or is proposed to be taken, in relation to the reportable allegation or conviction under investigation.

The threshold for notifying the Ombudsman of alleged reportable conduct is lower than the threshold for making a finding that reportable conduct occurred. Therefore, the school should report all potential reportable conduct that reasonably may have occurred.

Conduct that is determined as not reportable must still be considered by the school when an allegation is made, and records must be made regarding why the conduct was not reportable. These records must be

maintained and produced during any audit request by the Ombudsman.

Reportable conduct includes:

- (a) sexual offences and convictions where a child is a victim or is present (also contact ACT Policing)
- (b) offences against the person, including physical offences and convictions (i.e. an offence against any of the provisions of the *Crimes Act 1900*), where a child is a victim or present (also contact ACT Policing)
- (c) conviction, or finding of guilt, under a territory law or a state or Commonwealth law, involving reportable conduct
- (d) offences against the *Education and Care Service National Law* (inappropriate discipline or offences relating to protecting children from harm) (specifically, s166 and s167)
- (e) intentional or unintentional ill-treatment of a child/treatment of a child in an unreasonable and seriously inappropriate, inhumane, or cruel manner (including emotional abuse, hostile use of force/physical contact, neglect and inappropriate restrictive intervention)
- (f) psychological harm
- (a) misconduct of a sexual nature (including grooming behaviour, inappropriate touching,

sharing pornographic images, crossing professional boundaries).

Reportable conduct does not include behaviour that is:

- (a) reasonable discipline, management or care of a child considering the characteristics of the child and any relevant code of conduct or professional standard that at the time applied to the discipline, management or care of the child, or
- (b) held to be trivial or negligible conduct after being investigated and recorded as part of workplace procedures, or
- (c) prescribed by regulation.

For example:

- (a) touching a child to attract the child's attention, to guide a child, or to comfort a distressed child, or
- (b) when a teacher raises his or her voice to attract attention or restore order in a classroom, or
- (c) when there is accidental contact with a child, or
- (d) where the context in which the physical contact occurs does not amount to assault, such as reasonable force used to disarm a child seeking to harm themselves or others.

**Practice
Guide No.
3 – Risk
Management**

The Principal is required to identify the potential for an incident or harm to occur and take steps to reduce the likelihood or severity of its occurrence.

A risk assessment should be provided to the Ombudsman with the *s 17G Notification* form.

Assess the risks to children/young people in the school environment and the individual vulnerabilities children and employees may have, through development of a child protection policy.

Principal

The **child protection policy** should include:

- (a) information about how a risk assessment is conducted, acknowledging that the risk assessment may be updated as further information regarding the allegation becomes available
- (b) steps that might be taken to reduce risk immediately following an allegation, during the response to, or investigation of an allegation and at the conclusion of the response or investigation
- (c) clarification that any decision to take action on the basis of a risk assessment should not influence the findings of a response or investigation
- (d) guidance that until the response to, or investigation of, an allegation is completed and a finding made, any action, such as moving an employee to alternate duties, is not considered as an indication that the alleged conduct did occur
- (e) instruction that records should be kept by the employer as to why any action was or was not taken in response to a risk assessment.

A **risk assessment** is one of the first steps the principal should take after an allegation of reportable conduct is made. The risk assessment should be provided to the Ombudsman when a *s 17G Notification* form is lodged.

A risk assessment should consider:

- (a) Risk to children
- (b) Does the child require protective intervention?
- (c) Would the allegation, if true, constitute a criminal offence?
- (d) Does action need to be taken to prevent further reportable conduct?
- (e) Are there other risks to the child, including self-harm?
- (f) How can the school provide/facilitate support to other children involved?
- (g) Risk to an employee and to the workplace
- (h) Is there appropriate support available to the employee subject of the allegation?
- (i) Should the employee remain in the current position pending response or an investigation or be moved to another area or stood down? (note, it is advisable for the employer to discuss potential action taken by the employer, with CYPS and/or ACT Policing if they are involved in the matter)

**Practice
Guide No.
4 –
Planning
and
Conducting
an**

Under s17K of the Act, the school must, as soon as practicable after the end of an investigation by the school into a reportable allegation or reportable conviction, provide the ombudsman with a written report about:

- (a) the results of the investigation; and

- (j) What duties will the subject employee undertake, should they remain in the workplace, and who will monitor and assess the risks associated with this employee?
- (k) Maintaining confidentiality
- (l) Advise all parties of the need for confidentiality during the response to, or investigation of, an allegation
- (m) Have systems in place to deal with breaches of confidentiality, including a media breach plan.

At the conclusion of the investigation, a finding should be made in relation to the allegation and an employer should decide what action, if any, is required in relation to the employee, child/ren involved and any other parties.

A review of the response, processes and risk assessment should also be conducted, with a view to facilitating changes and measures to improve environmental factors and work practices.

Initial response to an allegation

- (a) clarify the allegation and consider exactly what has been alleged
- (b) record the who/what/when and where (ensuring that, where possible, the person

Investigation

(b) any action taken, or proposed to be taken, in relation to the reportable allegation or reportable conviction.

making the allegation prepares a signed outline of the details of the allegation), including:

1. identity of the person making the allegation
2. the child/ren involved and their details
3. the employee subject of the allegation
4. witness details
5. when and where the alleged incident occurred
6. a description of the acts that form the basis of the allegation

- (a) consider whether the allegation constitutes a criminal offence and report to the relevant authority, if required, before proceeding with any further action or investigation
- (b) assess reasonable belief or suspicion that a child is at risk of abuse or neglect and report as appropriate
- (c) assess possible risks posed by the employee and take necessary action
- (d) assess whether the allegation constitutes reportable conduct and, if so, report to the Ombudsman as soon as possible
- (e) consider who needs to be informed of the allegation and response to individuals who are

not involved but are aware of the allegations (for example, parents)

- (f) address support needs of the child/ren and employee who is the subject of the allegation.

Planning and Coordinating the Investigation

- (a) Prior to starting the investigation, the school should:

1. ensure the school has clearance to proceed from ACT Policing and/or CYPS, if involved
2. plan and document action to be taken and decisions made
3. clearly define/identify:
 - a) the allegations
 - b) the appropriate sources of information (e.g. Witnesses, electronic recordings etc) and ensure that any information collected is kept on a file separate to the subject employee's personnel file
 - c) the tasks involved in the investigation and assign to

relevant persons acting on behalf of the school (e.g. who will interview the witness/es)

- d) a timeframe for completion
 - e) why each step in the investigation is being taken.
4. prepare a record of the investigation plan, including reasons why decisions were made and why action was/was not taken (may be a formal, typed document or notes on the file)
 5. consider any actual or perceived conflicts of interest and identify steps to manage these
 6. identify and address any cultural issues or special needs of any involved party
 7. identify people/groups/agencies that the school may call upon for advice about the investigation process (e.g. the ombudsman, Access Canberra, Teacher's Quality Institute)
 8. consider, where appropriate, advising the parents or carers of any child involved and/or seek permission to interview the child
 9. ensure interview records will include:

- i. details of the questions and responses
 - ii. the location of the interview
 - iii. who was present
 - iv. if a support person was offered and if they attended
 - v. the start and finish time of the interview
10. plan to provide a record of the interview to the interviewees for review
 11. review the initial risk assessment and update the document/take further action as required, noting clear reasons why such decisions were made.

Employee's response to the allegation

- i. The school should:
 1. consult CYPS or ACT Policing, if involved, prior to interviewing the subject employee
 2. formally put the allegation to the subject employee, once the school has gathered all relevant information
 3. allow the subject employee to respond to the allegation

4. allow the subject employee to have an appropriate support person present during any interview
5. adequately record any interviews with the subject person
6. re-interview the subject employee should new information come to light
7. clearly explain the purpose and process of the investigation, the subject employee's rights, the role of the ACT Ombudsman and the role of any regulators, as necessary, to the subject employee.

Decision

- (a) Apply the 'balance of probabilities' as the standard of proof – consider, is it more likely than not that the reportable conduct has occurred?
- (b) Identify the findings best supported by the available evidence and propose recommendations arising from the investigation and provide to the decision maker
- (c) The person making the decisions about the recommendations should not be the investigator and should be in a more senior position to the investigator
- (d) Potential findings in the matter could be:

1. Sustained (the conduct occurred)
2. Not sustained – insufficient evidence (some weight, however insufficient evidence to reasonably establish the alleged conduct occurred)
3. Not sustained – lack of weight (evidence lacks weight/is of such poor value that a finding that, on the balance of probabilities, the conduct did not occur, is warranted)
4. False (inquiries show that the conduct was not reportable, including allegations made in a vexatious manner)
5. Not reportable conduct (inquiries into the matter show that the conduct does not constitute reportable conduct, including allegations mistakenly made) (Note: even if the conduct is determined to be non-reportable, the employer must still respond to the allegation and perhaps even investigate the matter)

Taking action and finalising the report

- i. Once a finding is made, the school should:
 1. consider what, if any, action should be taken, including:

**Practice
Guide No.
5 –
Employer
Responsibilities**

The Scheme requires schools to respond to and investigate allegations of reportable and nonreportable conduct. The school must notify the ombudsman of any allegations of reportable conduct.

- (a) disciplinary action
 - (b) amendment to policy and procedure
 - (c) strategies to minimise future risk
2. submit a final report to the ACT Ombudsman
 3. consider whether it is appropriate to notify any other agencies
 4. securely store information relating to the investigation in a file that is separate to but linked (by reference) to the employee's personnel file
 5. note, on the subject employee's personnel file, any changes to the subject employee's duties or employment status.

Relevant people, such as the subject employee, the alleged victim, and, where appropriate, the parents or carers of the alleged victim, should be appropriately advised of the outcome of the investigation.

The school must:

- i. notify the ombudsman of:
 1. reportable allegations or convictions
 2. what action the school intends to take and for what reason

as soon as possible but no later than 30 days after the employer becomes aware of the allegation

- ii. ensure systems, policies and procedures are in place for recording, responding to, and investigating allegations or convictions
- iii. provide information, as required by the ombudsman, about the type and operation of the school's systems to provide a safe environment, and systems for handling and responding to reportable allegations and convictions
- iv. establish systems that require employees to notify the school, as soon as possible, of any concern, allegation, or conviction they are/become aware of
- v. ensure ACT Policing and/or CYPS are notified in the first instance, where appropriate
- vi. provide, as required by the ombudsman, documents, updates and other information (including records of interview) related to the investigation
- vii. provide the ombudsman with the complete results of an investigation, including copies of reports, evidence gathered and considered, the findings reached, and action being/proposed to be taken as a result of the investigation.

**Practice
Guide No.
6 – Making
a Finding of
Reportable
Conduct**

The school must, at the conclusion of its investigation, assess the evidence regarding the allegation/s and make a final finding.

**Practice
Guide No.
7 – S17J
Final
Report**

S 17J of the *Ombudsman Act 1989* requires that the employer must provide the Ombudsman with a written report of:

- a) the results of the investigation, including statements and documents referred to;
- b) action taken because of the investigation; and

Weight of evidence

(a) The strength, or weight, of the evidence can be considered in the following ways:

1. reliability of the evidence
2. relevance of the evidence to the alleged conduct
3. consistency of accounts (over time and/or in conjunction with other evidence)
4. existence of other evidence to corroborate or contradict
5. sufficiency of procedural fairness offered to the employee
6. consistency between the conclusions of the investigation and the evidence

Exercise caution when considering evidence and findings in matters involving criminal allegations – does the school have reasonable satisfaction that the facts and evidence logically indicate the incident may have occurred?

The Ombudsman provides a sample s 17J report template. This can be found at the following link:

http://www.ombudsman.act.gov.au/data/assets/pdf_file/0014/81005/No.-7-17J-final-report.pdf

**Practice
Guide No.
8 –
Information
Sharing and
Reportable
Conduct**

any other information thought relevant to the report

Legislative provisions in the ACT allow information sharing. These are relevant to all entities covered by the Reportable Conduct Scheme, as well as a range of oversight, regulatory, and enforcement entities. The purpose of these provisions is for entities that provide services to children and young people to work together to promote and maintain the safety, welfare and wellbeing of children.

The provisions (*Children and Young People Act 2008*) establish that

1. information can be exchanged where it is relevant to the safety, welfare and wellbeing of children
2. an entity can request information from another entity and, in most circumstances, this entity must provide the information it holds
3. an entity can provide information to another without a request
4. consent of the people involved is not required for information to be shared
5. information may be given despite another Territory law that might otherwise prevent this
6. information can only be used for the purpose for which it was shared
7. records and information must be handled appropriately.

- (a) The school may send a request for information to a designated entity or child safety information sharing entity.
- (b) The school may receive a request for information from a designated entity or child safety information sharing entity.
- (c) The request should be clear about the school's purpose for making the request, should be clear about the period of time that information is sought for, the type of information, and include an indication of any timeframe or any urgencies.
- (d) The matter for which the information is being sought must be relevant to the safety, welfare and wellbeing of children. The request will typically be for information or evidence relating to the conduct of an employee of an entity who is the subject of a reportable conduct allegation or investigation. The information request is not limited to previous reportable conduct reports or inquiries. Examples include:
 1. previous reports, records, interview or a summary or records
 2. rosters, emails, electronic devices, or computers

Practice Guide No. 9 – How the Ombudsman Assesses an Employer’s Response/Investigation

Under s 17F of the *Ombudsman Act 1989*, the Ombudsman must monitor the practices and procedures of the school, for the prevention of reportable conduct involving an employee and for dealing with reportable allegations or convictions.

Practice Guide No. 10 – Addressing Child

Under s17F of the *Ombudsman Act 1989*, the Ombudsman may require the school or its delegates to provide information about their policies and practices for preventing reportable conduct by employees and for handling allegations of reportable conduct. Once such policy is the

3. information from people with specialised knowledge in a specialised field, such as a medical practitioner.

Care should be taken to only request information relevant to the process being conducted or to deal with risk within the school’s functions.

- (a) The Ombudsman may assess the practices and procedures of the school as part of the review process around the response to an allegation of reportable conduct and make recommendations accordingly.
 - (b) Specifically, the Ombudsman will consider the following aspects of the school’s response (all of which should be detailed in the school’s *s 17J report*):
 1. initial response
 2. planning
 3. information gathering
 4. employee response
 5. making a finding
 6. taking action
- (a) The school should regularly review and update its code of conduct.
 - (b) The school’s code of conduct in the context of child protection should clarify the conduct that

**Protection
Issues in a
Code of
Conduct**

school's code of conduct to establish a common understanding of the standards of behaviour expected of all employees of the school.

is reasonable and not reasonable for the purposes of the discipline, management and/or care of children. The code should also include information regarding what will happen should an employee breach the code.

- (c) The school must take steps to ensure all employees are aware of and understand the code of conduct, including employees signing the code of conduct in a statement of acceptance and understanding.
- (d) The school may have multiple codes of conduct that are applicable to different employees.
- (e) The school's code of conduct may wish to explore/consider:
 - 1. Allegations (define the term, the employee obligation to report, and explain the process/procedure)
 - 2. Appropriate language
 - 3. Communications devices
 - 4. Drugs
 - 5. Gifts
 - 6. Ill-treatment
 - 7. Medication
 - 8. Neglect
 - 9. Out of hours contact

10. Out of hours work
11. Physical contact with children
12. Psychological harm of children
13. Restraint
14. Sexual offences, misconduct and other personal relations with children

Senior Practitioner Act 2018 (ACT)

6 Objects of the Act

- (a) provide a framework for reducing and eliminating the use of restrictive practices by providers; and
- (b) ensure that restrictive practices are used by providers only in very limited circumstances, as a last resort and in the least restrictive way and for the shortest period possible in the circumstances; and
- (c) state principles to be taken into account by providers in providing services to people with behaviour that causes harm to themselves or others; and
- (d) establish the role of senior practitioner; and
- (e) regulate the use of restrictive practices by a provider in relation to a person in a way that—

In considering the purpose of this Act generally, schools should consider if it is absolutely necessary to exercise any restraint of a student, then further policy should be created that sets out:

- (a) the very limited circumstances in which it may occur;
- (b) what constitutes a “last resort”; and
- (c) what is the “least restrictive way” and the shortest period possible and in what circumstances.

Principal
&
Board

- (i) is consistent with the person's human rights; and
- (ii) safeguards the person and others from harm; and
- (iii) maximises the opportunity for positive outcomes and aims to reduce or eliminate the need for use of restrictive practices; and
- (iv) ensures transparency and accountability in the use of restrictive practices.

7

Meaning of 'restrictive practice'

Restrictive practice

- (a) means a practice that is used to restrict the rights or freedom of movement of a person for the primary purpose of protecting the person or others from harm and
- (b) (see below) includes:
 - (i) chemical restraint
 - (ii) environmental restraint
 - (iii) mechanical restraint
 - (iv) physical restraint
 - (v) seclusion

See below for more detail on the listed types of restraint.

Examples of 'reasonable action taken to monitor and protect a child from harm' include:

- holding a child's hand while crossing a road
- fencing around a primary school

Please note that there is currently no regulation so no specific practices have been prescribed as not being a restrictive practice.

(vi) verbal directions, or gestural conduct, of a coercive nature

(c) Restrictive practice does not include reasonable action taken to monitor and protect a child from harm or any practices prescribed by regulation not to be a restrictive practice.

7(2) **Chemical restraint** means the use of medication or a chemical substance for the primary purpose of influencing a person's behaviour or movement. It does not include the use of a chemical substance that is prescribed by a medical practitioner (or nurse) for the treatment, or to enable to the treatment, of a mental or physical illness or condition in a person when used in accordance with that prescription.

7(2) **Environmental restraint** means any action or system that limits a person's ability to freely access their surroundings or a particular thing or engage in an activity.

7(2) **Mechanical restraint** means the use of a device to prevent, restrict or subdue the movement of all or part of a person's body; but does not include the use of the device

(a) to ensure the person's safety when travelling; or

(b) for therapeutic purposes

7(2) **Physical restraint** means the use or action of physical force to stop, limit or subdue the movement of a person's body or part of the person's body.

But does not include a reflex action of reasonable physical force and duration intended to guide or direct a person in

the interests of the person's safety where there is an imminent risk of harm.

7(2)

Seclusion means the sole confinement of a person, at any time of the day or night, in a room or other space from which free exit is prevented, either implicitly, or explicitly, or not facilitated.

Examples listed:

- (a) A person in disability group accommodation is sent by the provider for 'time out' in a quiet space and told they are not allowed to leave the space until the provider tells them.
- (b) A young person living in residential care is told by the provider that they must not leave their bedroom at night after 9pm.

8

Meaning of Provider

As entities that provide education services are considered 'providers' under this section all Schools are under the Act.

9

Principles for Providers

- (1) These are the principles that must be taken into account by Schools when providing services to people with behaviour that causes harm to themselves or others:
- (2) The service must be provided in a way that:
 - (a) promotes the person's—
 - (i) development and physical, mental, social and vocational ability; and

- (ii) opportunities for participation and inclusion in the community; and
- (b) responds to the person's needs and goals; and
- (c) ensures that, in the development of strategies for the person's care and support, the provider works closely with the person and their family, their carers, any guardian or advocate for the person and any other relevant person; and
- (d) recognises that—
 - (i) a person must be assumed to have decision-making capacity unless it is established that they do not; and
 - (ii) a person must not be treated as being unable to make a decision unless all practicable steps to help them do so have been taken; and
 - (iii) a person must not be treated as being unable to make a decision only because they make an unwise decision; and
- (e) involves—
 - (i) positive behaviour support planning informed by evidence-based best practice; and

- (ii) the implementation of strategies, to produce behavioural change, focussed on skills development and environmental design; and
- (f) ensures transparency and accountability in the use of restrictive practices; and
- (g) recognises that restrictive practices should only be used—
 - (i) as a last resort and when necessary to prevent harm to the person or others; and
 - (ii) if the use is the least restrictive way of ensuring the safety of the person or others; and
- (h) recognises that restrictive practices should not be used punitively or in response to behaviour that does not cause harm to the person or others; and
- (i) aims to reduce or eliminate the need to use restrictive practices; and
- (j) ensures that any restrictive practices are only used in a way that is consistent with a positive behaviour support plan for the person.

10

Use of restrictive practice

Should a restrictive practice be administered without a registered positive behaviour support plan then the

A school, or employee of the school, must not use a restrictive practice on a person unless-

- (a) it is used in accordance with a registered positive behaviour support plan for the person; **or**
- (b) each of the following applies:
 - (i) the provider or relevant person believes on reasonable grounds that it is necessary to use the restrictive practice to avoid imminent harm to the person or others;
 - (ii) the restrictive practice is the least restrictive of the person as is possible in the circumstances having regard to—
 - (A) the kinds of restrictive practices that may be used; and
 - (B) how the restrictive practice is applied; and
 - (C) how long the restrictive practice is applied;
 - (iii) if practicable—the use of the restrictive practice is authorised by the person in charge of the provider.

school will need to submit a report under section 10A.

10A

Report

No regulations have yet been made

- (1) This applies where a School has used a restrictive practice on a person without a registered positive behaviour support plan.
- (2) The School must give the senior practitioner a report about the use of the restrictive practice within 5 days after the restrictive practice is used.
- (3) The report must be made in reference to any guidelines and must state:
 - (i) the name of the person on whom the restrictive practice was used;
 - (ii) whether the person was a child when the restrictive practice was used;
 - (iii) the kind of restrictive practice used;
 - (iv) for how long the restrictive practice was used;
 - (v) the reason why the restrictive practice was used;
 - (vi) what prior attempt (if any) was made to avoid the use of the restrictive practice;
 - (vii) the effect of the restrictive practice on the person's behaviour;

- (viii) the name of the person who authorised the use of the restrictive practice (if relevant);
- (ix) the name of the person who used the restrictive practice.

13

Preparation of positive behaviour support plan

A School may prepare a positive behaviour support plan for a person and give the plan to a panel for approval.

If a School thinks that it will be necessary to use a restrictive practice more than once on a student then it should consider implementing a positive behaviour support plan. The details for these plans are extensive and the required information on setting one up can be found in the guideline [here](#).

Make sure to closely follow the steps outlined on pages 8-9 of the abovementioned guideline.

28-37

Complaints and Investigation

These sections outline the ability of anyone to make a complaint to the senior practitioner about the use of a restrictive practice. It also outlines the extensive powers of the senior practitioner to investigate such complaints. The senior practitioner has the ability to enter premises and request documents

46

Using a restrictive practice other than in accordance with Act

1. A person commits an offence if the person—
 - (a) is a provider or a relevant person for a provider; and
 - (b) fails to comply with section 10 (Use of restrictive practice).

Maximum penalty: 50 penalty units

2. A person commits an offence if the person
 - (a) is a provider; and
 - (b) fails to comply with section 10A (Use of restrictive practice other than under a registered positive behaviour support plan—reporting)

Maximum penalty: 50 penalty units.

3. This section does not apply to a relevant person for a provider if the person was acting reasonably under the instruction or direction of the provider or otherwise in accordance with the provider's policy.

Sex Discrimination Act 1984 (Cth)

- 3 The Act ratifies an international charter and is designed to allow the state and territory based laws to operate with respect to complaints and resolutions of those complaints.

It makes unlawful activities based on the person's sex, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy or potential pregnancy, breastfeeding or family responsibilities:

Commonwealth Criminal Code applies

Principal
Board

14 Discrimination in employment

- (c) in the arrangements made for the purpose of determining who should be offered employment;
- (d) in determining who should be offered employment; or
- (e) in the terms or conditions on which employment is offered

21

Discrimination in education

- (a) refusing or failing to accept the person's application for admission as a student; or
- (b) in the terms or conditions on which it is prepared to admit the person as a student; or
- (c) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority;
- (d) by expelling the student; or
- (e) by subjecting the student to any other detriment.

Educational Authority means a body or person administering an educational institution.

Educational Institution means a school, college, university or other institution at which education or training is provided.

Gender Identity means the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person's designated sex at birth.

Principal & Senior Staff
Board

21(3)

Exemption

Single sex school

In respect of a refusal or failure to accept a person's application for admission as a student at an educational institution where the educational institution is conducted solely for students of a different sex from the sex of the applicant.

28F

Sexual Harassment in Educational institutions

It is unlawful for a member of staff of an educational institution to sexually harass a student or a person seeking to become a future student.

It is unlawful for an adult student, meaning over the age of 16, to sexually harass another person who is:

- (a) a student at the institution, or
- (b) a member of staff at the institution.

It is unlawful for a member of staff to sexually harass a student of another educational institution if the harassment occurs in connection with their role as a staff member of another educational institution.

Educational institutions must have in place clear sexual harassment policies for both staff and students, including:

- (a) a clear statement that sexual harassment will not be tolerated; and
- (b) a transparent process for complaints to be made and investigated.

34 (2)

Exemption

Accommodation provided for employees or students

Accommodation being provided solely for persons of one sex who are students at an educational institution is lawful.

Sexuality and Gender Identity Conversion Practices Act 2020 (ACT)

8	Performing a conversion practice on a protected person A person commits an offence if they perform a ‘sexuality or gender identity conversion practice’ on a ‘protected person’.	Section 7 defines ‘sexuality of gender conversion practice’ as ‘a treatment or other practice the purpose, or purported purpose, of which is to change a person’s sexuality or gender identity’. A protected person is defined in the dictionary as a child (which means schools must be especially vigilant) or ‘a person who has impaired decision-making ability in relation to a matter relating to the person’s health or welfare’. This act is notably vague in its scope. As it is untested it is hard to provide clear advice on its consequences however one can be reasonably certain that religious teaching that does not single out specific students, or groups of students, will be unlikely to fall foul.	Principal and Teachers
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Work Health and Safety Act 2011 (ACT)

5(1)	A person <i>conducts a business or undertaking</i> — (a) whether the person conducts the business or undertaking alone or with others; and (b) whether or not the business or undertaking is conducted for profit or gain.		Principal & Board But delegation of duties will be essential
7(1)	A person is a <i>worker</i> if the person carries out work in any capacity for a person conducting a business or undertaking, including work as— (a) an employee; or		

- (b) a contractor or subcontractor; or
- (c) an employee of a contractor or subcontractor; or
- (d) an employee of a labour hire company who has been assigned to work in the person's business or undertaking; or
- (e) an outworker; or
- (f) an apprentice or trainee; or
- (g) a student gaining work experience; or
- (h) a volunteer;

8(1) A *workplace* is a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work.

19(1) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of—

- (a) workers engaged, or caused to be engaged, by the person; and
 - (b) workers whose activities in carrying out work are influenced or directed by the person,
- while the workers are at work in the business or undertaking.

(2) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

19(3) Duty of care

A person conducting a business or undertaking must ensure, so far as is reasonably practicable—

- (a) the provision and maintenance of a work environment without risks to health and safety; and
- (b) the provision and maintenance of safe plant and structures; and
- (c) the provision and maintenance of safe systems of work; and

- (d) the safe use, handling, storage and transport of plant, structures and substances; and
- (e) the provision of adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities; and
- (f) the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking; and
- (g) that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking.

(4) If:

- (a) a worker occupies accommodation that is owned by or under the management or control of the person conducting the business or undertaking; and

- (b) the occupancy is necessary for the purposes of the worker’s engagement because other accommodation is not reasonably available,

the person conducting the business or undertaking must, so far as is reasonably practicable, maintain the premises so that the worker occupying the premises is not exposed to risks to health and safety.

27(1)	Duty of officers (1) If a person conducting a business or undertaking has a duty or obligation under this Act, an officer of the person conducting the business or undertaking must exercise due diligence to ensure that the person conducting the business or undertaking complies with that duty or obligation.	Principal should appoint a Work Health and Safety Officer	Person Appointed by the principal
27(4)	An officer of a person conducting a business or undertaking may be convicted or found guilty of an offence under this Act relating to a duty under this section whether or not the person conducting the business or undertaking has been convicted or found guilty of an offence under this Act relating to the duty or obligation.	Work Health and Safety Officer may be personally liable if they have not exercised due diligence	
27(5)	Due Diligence includes taking reasonable steps— <ul style="list-style-type: none"> (a) to acquire and keep up-to-date knowledge of work health and safety matters; and (b) to gain an understanding of the nature of the operations of the business or undertaking of the person conducting the business or undertaking and generally of the 	Duties of a Work Health and Safety Officer may include <ul style="list-style-type: none"> (a) reporting notifiable incidents; (b) consulting with workers (c) ensuring compliance with notices issued under this Act 	

hazards and risks associated with those operations; and

- (c) to ensure that the person conducting the business or undertaking has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking; and
- (d) to ensure that the person conducting the business or undertaking has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information; and
- (e) to ensure that the person conducting the business or undertaking has, and implements, processes for complying with any duty or obligation of the person conducting the business or undertaking under this Act; and
- (f) to verify the provision and use of the resources and processes referred to in paragraphs (c) to (e).

28

While at work, a worker must—

- (a) take reasonable care for his or her own health and safety; and

- (d) ensuring the provision of training and instruction to workers about work health and safety
- (e) ensuring that health and safety representatives receive their entitlements to training

Workers also have a duty to take measures to stay safe while at work

- (b) take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons; and
- (c) comply, so far as the worker is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the person to comply with this Act; and
- (d) cooperate with any reasonable policy or procedure of the person conducting the business or undertaking relating to health or safety at the workplace that has been notified to workers.

38(1) A person who conducts a business or undertaking must ensure that the Work Health and Safety Commissioner is notified immediately after becoming aware that a notifiable incident arising out of the conduct of the business or undertaking has occurred.

Duty to notify of notifiable incidents (see <https://www.worksafe.act.gov.au/Home>)

39(1) The person with management or control of a workplace at which a notifiable incident has occurred must ensure so far as is reasonably practicable, that the site where the incident occurred is not disturbed until an inspector arrives at the site or any earlier time that an inspector directs.

Duty to preserve incident sites

Working with Vulnerable People (Background Checking) Act 2011

Schedule 1 1.4 Child education services
1.4

Principal and Board

1. An activity or service is a regulated activity if the activity is conducted, or the service is provided, as part of a child education service.
2. In this section:
child education service—
 - (a) means a service for which the main purpose is to provide education and care for children; and
 - (b) includes—
 - (i) a school or other educational institution, whether or not operated by or on behalf of the Territory; and
 - (ii) a school-crossing service.

“school” means a preschool, primary school, high school or secondary college.

Schedule 1 Transport

1.20

1. An activity or service is a regulated activity if any of the usual functions of the activity or service include providing public or private transport that is—
 - (a) specifically for, or mainly used by, children; or
 - (b) specifically for people accessing a regulated activity mentioned in part 1.2.

Example—par (a) - a school bus service

Section 7 vulnerable person means—

- (a) a child; or
- (b) an adult who is—
 - (i) disadvantaged; and
 - (ii) accessing a regulated activity in relation to the disadvantage.

Section 9 A person is engaged in a regulated activity if the person—

- (a) has contact with a vulnerable person as part of engaging in the activity; and
- (b) is engaged in the activity in any capacity and whether—
 - (i) for reward or otherwise; or
 - (ii) under an arrangement with someone else or otherwise.

Capacity in which a person is engaged in an activity

1. employee
2. contractor or subcontractor
3. consultant
4. self-employed person
5. apprentice
6. volunteer
7. agent
8. supervisor
9. person on a work experience placement for an educational or vocational course

10 Contact means:

- (a) would reasonably be expected as a normal part of engaging in the activity; and
- (b) is more than incidental to engaging in the activity; and

- (c) is 1 or more of the following:
 - (i) physical contact, including engaging in the activity at the same place as the vulnerable person;
 - (ii) oral communication, whether face-to-face or by telephone;
 - (iii) written communication, including—
 - (A) electronic communication; or
 - (B) dealing with a record relating to the vulnerable person;
 - (iv) making a decision that affects the vulnerable person

12(1)

A person is required to be registered to engage in a regulated activity

Exceptions

12(2)

A person is not required to be registered to engage in a regulated activity if the person is—

- (a) Under 16 years old
- (b) engaged in the activity for not more than—
 - (i) 3 days in any 4-week period; and
 - (ii) 7 days in any 12-month period; or
- (c) registered under a corresponding law and—

A person is required to be registered to engage in a regulated activity.

Schools need to ensure that all volunteers at school, including parents, hold a current registration.

There are some exceptions (see (12(2) and below).

<ul style="list-style-type: none"> (i) the activity is substantially similar to a regulated activity the person is allowed to engage in under the corresponding law; and (ii) the person is engaged in the activity for not more than 28 days in any 12-month period; or 	<p>Examples where registration is not required</p>
<ul style="list-style-type: none"> (d) a close relative of each vulnerable person taking part in the activity with whom the person has contact; or 	
<ul style="list-style-type: none"> (e) engaged in the activity as a volunteer and: <ul style="list-style-type: none"> (i) is a close relative of a vulnerable person taking part, or who normally takes part, in the activity; and (ii) a close relative of each vulnerable person taking part in the activity is engaged, or expected to be engaged, in the activity; or 	<p>12(2)(e)</p> <ol style="list-style-type: none"> 1. playgroup 2. a club sporting event for children at which a parent of each child is expected to be present 3. a pottery class for children in which a parent of each child also takes part
<ul style="list-style-type: none"> (f) engaged in the activity in the same capacity as a vulnerable person; or 	<p>12(2)(f)</p> <ol style="list-style-type: none"> 1. players in a sporting team 2. work colleagues
<ul style="list-style-type: none"> (g) as a school student on a work experience placement or doing practical training; or 	
<ul style="list-style-type: none"> (h) an employer or supervisor of a vulnerable person, unless the vulnerable person is engaged in a regulated activity 	<p>12(2)(h) (Contrast between the two)</p> <ol style="list-style-type: none"> 1. A person supervising a school student on a work experience placement at a childcare centre is required to be registered.
<ul style="list-style-type: none"> (i) n/a 	

- (j) n/a
- (k) n/a
- (l) n/a
- (m) n/a
- (n) n/a
- (o) a person prescribed by regulation.

- 2. A person supervising a school student on a work experience placement at an accounting firm is not required to be registered.

18

Application for registration

- 1. An application for registration must include—
 - (a) the applicant’s name and any previous name; and
 - (b) the applicant’s current home address, and any previous home address in the 5 years before applying; and
 - (c) evidence of the applicant’s identity; and
 - (d) if the applicant engages, or intends to engage, in a regulated activity for the School
 - (i) the employer (the named employer) for the activity; and
 - (ii) the named employer’s address and contact details; and

Schools should ensure their staff hold registration cards, and include this requirement in terms and conditions of employment.

Note the application process is conducted by Access Canberra.

Principal

(iii) the capacity in which the applicant engages, or intends to engage, in the activity for the named employer;

(e) anything else prescribed by regulation.

2. The application must be accompanied by

(i) check the applicant's criminal history, non-conviction information and any other information about the applicant that may be relevant in deciding the application; and

(ii) seek information or advice from any entity in relation to the applicant's—

(A) application under section 33;
or

(B) registration under section 53;
and

(iii) contact the named employer (if any) in relation to the status of the applicant's application or registration; and

(i) whether the applicant has been convicted or found guilty of a relevant offence outside Australia;
and

- (ii) if the applicant has been convicted or found guilty of a relevant offence outside Australia—details of the offence.