



Revised 2015

ACT Non-Government Schools Registration Manual

Important briefing paper for Principals, Bursars and Business Managers

The information in this briefing paper is current as at February 2016. The legal and regulatory obligations in this area are in a constant state of change. Please visit www.complispace.com.au to ensure that you have the most up-to-date version of this briefing paper.

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Executive Summary

In July 2015 the revised 2015 ACT Registration of Non-Government Schools Manual (the 2015 Manual) was released by the ACT Government Education and Training Directorate (ETD).

The 2015 Manual replaced the December 2014 ACT Registration of Non-Government Schools Manual (the 2014 Manual).

A radical new approach to compliance

The most important change in the Manual is the ETD's significantly different approach to managing compliance within ACT non-government schools.

The 'Other Requirements' section, which previously followed the Conditions of Registration in the 2014 Manual, has been removed from the 2015 Manual. These 'Other Requirements' were a list of obligations that came directly from legislation relevant to ACT non-government schools.

In place of the 'Other Requirements' section, Part 5 of the 2015 Manual introduces an annual 'Statement of Assurance' to be signed by each non-government school principal attesting to their school's compliance with all its relevant legislative obligations including but not limited to, obligations which were referred to in the 2014 Manual. For example, the:

- ✔ Work Health and Safety Act 2011 (ACT);
- ✔ Australian Education Act 2013 (Cth);
- ✔ Disability Discrimination Act 1992 (Cth);
- ✔ ACT Teacher Quality Institute Act 2010 (ACT);
- ✔ Working with Vulnerable People (Background Checking) Act 2011 (ACT);
- ✔ Education and Care Services National Law Act 2000 (Cth);
- ✔ Privacy Act 1988 (Cth); and
- ✔ Information Privacy Act 2014 (ACT).

This new requirement represents a radical shift in how ACT non-government schools are required to evidence their compliance with legislative and regulatory obligations. It places a personal obligation on the leaders of a school to be aware of and implement systems and procedures to ensure its compliance with, 'all relevant ACT and Commonwealth legislation and regulations'.

Critically this new Statement of Assurance must be completed annually, sending a very clear message to schools that the requirement to be compliant is continuous – not a once every five year obligation coinciding with registration. The Statement of Assurance will need to be submitted each year to the ACT Association of Independent Schools (AIS ACT) or the ACT Catholic Education Office (CEO), in accordance with the Manual and a Memorandum of Understanding between the ACT ETD and the AIS ACT (MOU).

Optional guidance

It is interesting to note that the latest version of the Manual disclaims reliance on some of the information it included which provides guidance to non-government schools on what documentary evidence is required to meet the registration requirements set out in the *Education Act 2004*.

The ETD has amended the section entitled ‘Conditions of registration’, which sets out what documentation schools should submit to the ETD to address each criteria in the Education Act when seeking registration, or renewal of registration, to include a new disclaimer which effectively makes the ETD’s guidance in that section of the 2015 Manual optional.

The disclaimer states that “The example policies and documentation listed below are neither exhaustive nor mandated unless explicitly required under legislation”. Despite this disclaimer, given that the majority of the policies are not expressly required in legislation, as a matter of best practice we recommend that, at a minimum, non-government schools should be able to demonstrate that they have the recommended policies and procedures in place that will enable them to meet the requirements of the 2015 Manual.

This briefing paper is designed to provide school governors and executives with:

- ✓ The rationale for changes to the 2014 Manual;
- ✓ An outline of the structure and revision of the 2015 Manual;
- ✓ A summary of key changes contained within the 2015 Manual; and
- ✓ Recommendations to ensure compliance with the 2015 Manual.

Rationale for Changes to the Standards

The 2015 Manual states that it was updated following the 2013 *Review of Non-government School Registration Processes* conducted by the ACT Minister for Education and Training, in consultation with the AIS ACT and the Catholic Education Archdiocese of Canberra and Goulburn (the 2013 Review). The 2013 Review was prompted by significant community interest in the approval and registration process of non-government schools following the in-principle approval of three new or expanding non-government schools in the ACT in 2012.

Interestingly, the 2014 Manual also included references to the 2013 Review in relation to the inclusion of certain content. On this basis, the ETD appears to be revising the Manual in light of changes that were recommended by the 2013 Review as part of an ongoing process, even though the 2013 Review is now two years old.

The 2015 Manual does not expressly reference the 2013 Review in relation to changes to the Manual however it is clear that the new Statement of Assurance requirement in Part 5 reflects the Minister for Education and Training’s support for Consideration 5.3 of the 2013 Review, which is that:

“The Minister, parents and the wider community may be given greater assurance that each non-government school is fully complying with all regulatory and legislative requirements, if the Education Act and the ETD manual were amended to require the principal and chair of the governing body of each non-government school to certify on an annual basis that this is the case, (eg using a standard pro forma). In doing so, the ongoing viability (including enrolment of the school) would also be affirmed.”

The obligations in the MOU in relation to the Statement of Assurance reinforce the importance that the ETD is placing on receiving assurance from non-government schools that they are meeting their regulatory and legislative requirements.

The MOU also includes obligations in relation to critical incident reporting by non-government schools which are not referred to in the 2015 Manual.

An outline of the structure and revision of the 2015 Manual

The overall structure of the Conditions of Registration in the 2015 Manual remain consistent with that in the 2014 Manual and is assessed through information gathered on the seven criteria set out in the Education Act. These criteria are set out as Items within the Manual as follows:

- Item A:** Incorporation (No material change);
- Item B:** Policies, facilities and equipment (Revised, not substantial);
- Item C:** Curriculum framework (Revised, not substantial);
- Item D:** Nature and content of the education (No material change);
- Item E:** Teaching staff qualifications (Revised, not substantial);
- Item F:** Monitoring educational outcomes (Revised, not substantial); and
- Item E:** Financial viability (No material change).

Each criteria reflects the provisions of section 91 (Conditions of provisional registration or registration) and section 97 (Renewal of registration) of the Education Act.

Structurally, the key changes to the Manual are:

- ✓ the removal of the section entitled 'Other Requirements' from the 2014 Manual as per our comments above;
- ✓ the inclusion of the new Part 5: Statement of Assurance as per our comments above.
- ✓ the removal of key legislative references included as footnotes in the 2014 Manual: that information has been included in the main body of the Manual where relevant; and
- ✓ the re-organisation of some content: for example, the 'Community Comments and Notifications' section of the 2014 Manual has been moved to a later section in the 2015 Manual as a new 'Part 3'.

A Summary of Key Changes: Deletion of 'Other requirements'

The 2014 Manual included a section on 'Other requirements' which listed 14 requirements in the Education Act and other ACT legislation (for example, the *ACT Teacher Quality Institute Act 2010*) which apply to the operation and governance of a non-government school in the ACT, but which are not conditions of registration.

Those 'Other requirements', as listed in the 2014 Manual, are:

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| Item 1: Approved authorities; | Item 9: Overseas students; |
| Item 2: Responsibilities of the Proprietor; | Item 10: Preschools, centre-based services, out of school hours care; |
| Item 3: Responsibilities of the Principal; | Item 11: Annual reporting; |
| Item 4: Employment of teaching staff; | Item 12: Student reports; |
| Item 5: Background checking of staff &volunteers; | Item 13: Storage and use of personal information; and |
| Item 6: Mandatory reporting; | Item 14: Licences/certification. |
| Item 7: Discrimination; | |
| Item 8: Staff Development; | |

Despite the omission of these requirements from the 2015 Manual, non-government schools are still required to comply with the provisions of the Education Act and other ACT legislation which relate to the 14 Items listed above, to the extent that those requirements remain current.

For this reason, we recommend that non-government schools retain any policies or procedures that address the 14 Items, if they are already in place, or introduce new policies and procedures if not, to facilitate their compliance with their legislative obligations.

Compliance with those legislative requirements will also help to ensure that the new annual Statement of Assurance can be validly and honestly completed.

A Summary of Key Changes: Addition of Part 5: Statement of Assurance

Under the MOU, the principal of each ACT non-government school is required to make an annual statement of assurance regarding the school's compliance with legislative and regulatory matters.

The CEO and the AIS ACT will annually provide a written report to the Minister for Education and Training confirming that each school principal has made the Statement.

The Statement of Assurance is as follows:

"I, [name of principal] am of the opinion, that [name of school] maintains evidence that the school is compliant with all relevant ACT and Commonwealth legislation, including but not limited to the ACT Education Act 2004, the Australian Education Act 2013 and ACT and Commonwealth legislation, regulations and standards relating to discrimination, privacy, health and safety, working with vulnerable people, and mandatory reporting."

Schools should not underestimate the significance of making such a statement because in order to legitimately give that assurance schools are required to have a system of risk assessment and compliance in place. Furthermore, a principal must be aware of his or her own legal obligations and their compliance with them because by signing the statement on behalf of their school, they are also representing that they have met those obligations that year.

For example, under WHS laws, all school governors, directors and officers have a positive obligation to ensure that their schools are compliant. By signing the statement, a principal (an 'officer') is attesting that they have met that requirement. The same can be said for other complex legal requirements such as Privacy and Child Protection.

Whilst the full implications of a principal signing a false declaration are unclear, one cannot help but think that such an action may substantially increase a principal's exposure to the possibility of civil (and even possible criminal) action in the event of an incident occurring which subsequently exposes a serious compliance breach. The fact that the Statement of Assurance specifically states that a school "maintains evidence" of compliance means that the ability to later prove an attestation was false would be relatively easy in the event such evidence was not able to be produced.

A Summary of Key Changes: Registration Requirements

Unfortunately the ETD has not provided a “marked up” copy of the 2015 Manual which would have allowed for easy comparison of the changes from the 2014 Manual. This summary has been developed through a manual cross referencing of the published documents. There are many minor changes to text throughout the 2015 Manual. We have only included changes we believe to be material.

Incorporation

Criteria	Summary of key changes
1. The proprietor of the school must remain a corporation	Unchanged.

Policies, facilities and equipment

Criteria	Summary of key changes
2. The school must have appropriate policies, facilities and equipment for the curriculum offered by the school and the safety and welfare of its students.	<p>The evidence required to show that the school is compliant with the <i>Curriculum related policies</i> requirement no longer includes policies relating to the school’s curriculum as it specifically applies to:</p> <ul style="list-style-type: none"> • students from non-English speaking backgrounds; • students with English dialects; or • gifted and talented students. <p>The evidence required to show that the school is compliant with the <i>Safety and welfare related policies</i> requirement no longer includes policies relating to the following matters:</p> <ul style="list-style-type: none"> • class sizes; • waiting lists; • ensuring census data is submitted as required by the ACT and Commonwealth governments; • Safety and welfare as it specifically applies to: <ul style="list-style-type: none"> ○ students from non-English speaking backgrounds; ○ students with English dialects; and ○ gifted and talented students .

Curriculum framework

Criteria	Summary of key changes
3. The school’s curriculum (including the framework of the curriculum and the principles on which the curriculum is based) must meet the curriculum requirements for students attending government schools.	The evidence required to show that the school is compliant with the curriculum framework requirement no longer includes policies relating to: “the school’s scoping and sequencing of learning devised by the school for all subject areas the priority” (sic).

Nature and content of the education

Criteria	Summary of key changes
4. The nature and content of the education offered at the school is to be appropriate for the educational levels for which the school is registered	No material change.

Teaching staff qualifications

Criteria	Summary of key changes
5. Teaching staff are to be qualified to teach at the educational levels at which they are employed to teach.	<p>The evidence required to show that the school is compliant with the teaching staff qualifications requirement no longer includes:</p> <p><i>“a description of how the school ensures that teaching staff are qualified to teach at the educational levels at which they are employed to teach”.</i></p>

Monitoring educational outcomes

Criteria	Summary of key changes
6. The school must have satisfactory processes to monitor quality educational outcomes.	<p>The evidence required to show that the school is compliant with the teaching staff qualifications requirement no longer includes:</p> <ul style="list-style-type: none"> • “a description of how the school monitors quality educational outcomes including but not limited to the school’s processes for the systemic collection and use of student related data; processes for ensuring summative and formative assessment processes advance educational outcomes and align with the Australian Curriculum Content and Achievement Standards”; and • Other planning document/s such as those relating to: <ul style="list-style-type: none"> ○ Growth or maintenance of student numbers; and ○ Implementation of National Safe School Framework.

Financial viability

Criteria	Summary of key changes
7. The school must be financially viable.	No material change.

Recommendations

Central to a school’s ability to comply with its obligations under the 2015 Manual is its ability to demonstrate:

- ✔ that it has a compliance framework in place that will allow its principal to provide the Statement of Assurance each year;
- ✔ that it is able to produce “evidence of compliance”;
- ✔ that it has documented policies and procedures in place to meet specific obligations under the criteria;
- ✔ that these policies and procedures have been effectively implemented; and
- ✔ that the school has developed a process of improvement through which the quality of its internal procedures is monitored and reviewed on a continuous basis.

In order to provide “evidence of compliance” a school will need to maintain comprehensive records, including up-to-date registers of incidents (including injuries and complaints), as well as reports provided to the Principal verifying the overall effectiveness of its compliance processes.

What can CompliSpace do to help?

At CompliSpace we combine governance, risk, compliance and policy management expertise with technology solutions to deliver sustainable governance solutions to non-government schools in every State and Territory in Australia.

Our team of lawyers and industry experts actively monitor changes to relevant laws and registration Standards and deliver a full suite of online policies, procedures and governance programs that enable Schools to continuously comply with their legal and regulatory obligations.

CompliSpace's suite of content modules and training programs are specifically tailored for non- government schools by jurisdiction. They include:

- ✔ ISO 31000 Risk Management Program;
- ✔ AS/ISO 19600 Compliance Program;
- ✔ ISO 10002 Complaints Handling Program;
- ✔ AS 5050 Business Continuity Program;
- ✔ AS 8004 Fraud and Corruption Control Program;
- ✔ AS 8001 Whistleblower Program;
- ✔ AS 4804 and AS 4801 Workplace Safety Program;
- ✔ A Student Child Protection Program;
- ✔ A Human Resources Program (tailored to relevant State and Territory laws, and enterprise agreements)
- ✔ A Privacy Program; and
- ✔ A Board room Program.

The content delivered within each module is kept up to date with key legal and regulatory changes and key obligations. Risks, tasks and incidents are managed through CompliSpace's Assurance software.