



Australian Capital Territory Child Protection Requirements for Non-Government Schools

Briefing paper for Principals, Bursars, Business Managers and
Governors of individual and systemic non-government schools.

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1. Executive Summary

Non-government schools in the ACT face an almost overwhelming myriad of legal and regulatory obligations and reporting requirements.

Arguably, one of the key areas of compliance for schools is child protection, and in particular, the requirement included in section 91(b) of the *Education Act 2004* (ACT) that a school must have appropriate policies, facilities and equipment for the curriculum offered by the school and the safety and welfare of its students. Meeting this obligation is a condition of registration for schools under the Registration of Non-government Schools in the ACT Manual 2015 (the ACT Registration Manual).

The ACT Registration Manual requires that policies, programs, procedures and guidelines developed in relation to the safety and welfare of students should have regard to the National Safe Schools Framework (NSSF) or its equivalent or alternative framework, or set of policies agreed to by the Registrar of Non-government Schools.

The NSSF identifies nine elements which were developed by the Department of Education and Training to help schools create teaching and learning communities free from harassment, aggression, violence and bullying.

In 2016 the *Reportable Conduct and Information Sharing Legislation Amendment Act 2016* (ACT) (the Reportable Conduct Act) was introduced and it has significantly changed the child protection system in the ACT by creating a reportable conduct scheme, similar to the scheme in force in NSW. In addition to complying with other child protection legislation, schools must also prepare for the reportable conduct obligations which are due to take effect in mid-2017.

Detailed planning and allocation of appropriate resources within a school is required to ensure compliance with the ACT Registration Manual, the elements of the NSSF, the Reportable Conduct Act and other legal and regulatory child protection requirements in the ACT.

2. Legal Reform in the ACT

The child protection framework created by the ACT Registration Manual, NSSF and child protection legislation requires schools to adopt a dynamic process towards child safety and, as noted in the NSSF, “encourage the active participation of all school community members in developing and maintaining a safe school community where diversity is valued”.

Element 2 of the NSSF is A Supportive and Connected School Culture and evidence of compliance with this element includes having appropriate monitoring of and response to child protection issues. The value of establishing a strong ‘culture based’ child protection program to help schools balance regulatory demands with educational values is discussed in the paper [‘Compliance with Current and Future Child Protection Laws – Embedding a Child Protection Culture’](#) which was presented by Mr James Field, CompliSpace’s Managing Director at the Australia & New Zealand Education Law Association (ANZELA) Conference held in Auckland in September 2016.

The Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) has released various reports since its commencement in 2013 and many of those reports include actions that institutions, such as schools, can take to support a culture that encourages the prevention, response to and reporting of child abuse. The adoption of a code of conduct is one of the suggested actions and Element 3, Policies and Procedures, reflects this suggestion by including a requirement to have established and well-understood protocols about appropriate and inappropriate adult to student contact and interactions within the school context.

Other Australian States and Territories have also moved to adopt new ‘cultural’ and ‘risk’ based approaches to child protection. Perhaps the most significant of these changes has been in Victoria which introduced a new set of “Child Safe Standards” in January 2016.

It is also worth noting that it is highly likely that the work of the Royal Commission will continue to shape child protection laws in Australia over the next 5-10 years as the Royal Commission has already flagged that its final recommendations will include a move towards harmonisation of child protection laws across Australia, as comparable the adoption of harmonised workplace safety laws.

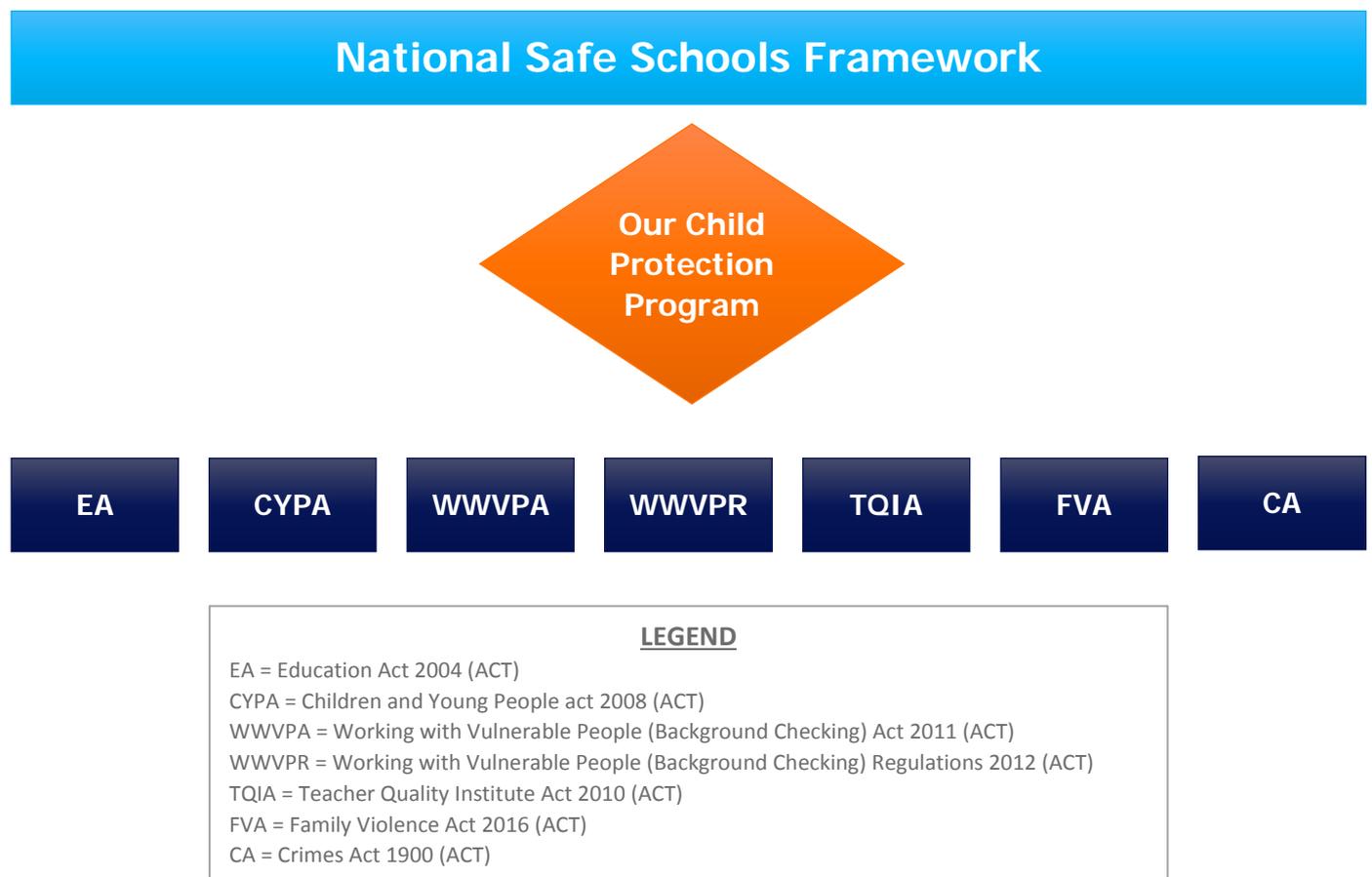
In response to the work of the Royal Commission, the ACT recently introduced the Reportable Conduct and Information

Sharing Legislation Amendment Act 2016, which significantly for schools, will introduce a number of ‘reportable conduct’ obligations from 1 July 2017. Amendments to the *Children and Young People Act 2008* (ACT) and the *Working with Vulnerable People (Background Checking) Act 2011* (ACT) which introduce information sharing powers for different entities have already been enacted. For more information about the ACT reportable conduct scheme refer to the School Governance article [‘ACT updates child protection reporting mechanisms: new reportable conduct scheme for schools’](#).

3. ACT’s Child Protection Framework

The legal and regulatory framework for child protection in the ACT is made up of a complex web of laws, regulations and guidance notes.

This diagram and the commentary below provides an overview of the framework. From a practical perspective this framework will require each school to establish a Child Protection Program which sets out in detail the internal policies, procedures and workplace systems it has adopted not only to ensure compliance with its legal and regulatory obligations, but also to drive cultural change as required by the NSSF.



National Safe Schools Framework

At the top of the diagram is the National Safe Schools Framework (NSSF) – a Federal Framework which provides Australian schools with a vision and a set of guiding principles to assist in developing positive and practical student safety and wellbeing policies.

The NSSF is aligned with the Australian Curriculum and defines the nine (9) key elements of a safe and supportive learning community (the Elements). In the ACT, it is a requirement of registration that a school's policies, programs, procedures and guidelines that relate to the safety and welfare of students should have regard to the NSSF.

The nine Elements are as follows:

1. Leadership commitment to a safe school;
2. A supportive and connected school culture;
3. Policies and procedures;
4. Professional learning;
5. Positive behaviour management;
6. Engagement, skill development and safe school curriculum;
7. A focus on student wellbeing and student ownership;
8. Early intervention and targeted support; and
9. Partnerships with families and community.

The Elements provide guidance for schools on child protection and student safety and wellbeing. The Elements are based on a combination of good practice, research-based literature and feedback from representatives from all educational systems, sectors and educators. The [NSSF website](#) includes extensive guidance on each Element in addition to 'key characteristics' which should be used by schools as guidance for compliance with the Elements.

Prescriptive Legal & Regulatory Requirements

At the bottom of the diagram there are seven (7) separate pieces of legislation that work together to make up the legal and regulatory framework for child protection in the ACT. They are in summary:

The Education Act 2004 (ACT)

The Education Act 2004 (ACT), as well as having other functions, sets out the criteria for registration of a school, including that a school has appropriate policies, facilities and equipment for the safety and welfare of its students.

Children and Young People Act 2008 (ACT)

The Children and Young People Act 2008 (ACT) (CYP Act) has a number of objectives, including:

- ✓ ensuring that children and young people are provided with a safe and nurturing environment by organisations and people who, directly or indirectly, provide for their wellbeing, care and protection; and
- ✓ imposing standards that must be complied with for the delivery of services to children and young people.

The CYP Act provides the statutory definition of child abuse, neglect, a child and a young person, and establishes obligations with respect to mandatory reporting.

Working with Vulnerable People (Background Checking) Act 2011 (ACT) and Working with Vulnerable People (Background Checking) Regulation 2012 (ACT)

The Working with Vulnerable People (Background Checking) Act 2011 (ACT) and Regulation 2012 (ACT) aim to reduce the risk of harm or neglect to vulnerable people in the ACT by requiring people who wish to engage in

conduct with vulnerable people (including children and young people) in a regulated activity in the ACT to be registered with Access Canberra.

People who are assessed as posing an unacceptable risk to the safety of children will fail the Working with Vulnerable People Check and the Act prohibits these people from working with vulnerable people, including children and young people.

The Act imposes penalties for schools and individuals that do not comply with the Act and Regulations.

Teacher Quality Institute Act 2010 (ACT)

The Teacher Quality Institute Act 2010 (ACT) establishes the ACT Teacher Quality Institute (the Institute). The Institute was established to build the professional standing of ACT teachers and to enhance the community's confidence in the teaching profession through professional regulation and practical initiatives to raise teacher quality.

Under the Act, a school must notify the Institute if the school:

- ✓ has reasonable grounds for believing a teacher has contravened a condition of their registration or permit to teach; or
- ✓ has reasonable grounds for believing a teacher has become mentally or physically incapacitated and the incapacity prevents the person from performing an inherent requirement of their job as teacher; or
- ✓ has taken, or is taking, disciplinary action against the teacher under the terms of the teacher's employment that may have a bearing on whether or not the teacher continues to be registered or hold a permit to teach in the ACT.

Family Violence Act 2016 (ACT)

The Family Violence Act 2016 (ACT) is effective from 1 May 2017.

The objects of the Family Violence Act include:

- ✓ to prevent and reduce family violence;
- ✓ to ensure the safety and protection of people, including children, who fear, experience or witness family violence; and
- ✓ to encourage perpetrators of family violence to be accountable for their conduct.

The Act provides the statutory definition of 'family violence' in the ACT which includes behaviour that causes a child to hear, witness or otherwise be exposed to family violence.

Critically, the CYP Act includes exposure to family violence in its definition of child abuse.

Crimes Act 1900 (ACT)

The Crimes Act 1900 (ACT) sets out a number of child protection related offences. Of key relevance to the ACT child protection framework is the offence under section 66 of 'Using the internet etc. to deprave young people'.

Future Legal Requirements

Ombudsman Act 1989 (ACT)

From 1 July 2017, the ACT will have a reportable conduct scheme, to be administered by the ACT Ombudsman.

From 1 July 2017, section 17G of the Ombudsman Act 1989 (ACT) will require that the head of a 'designated entity' - which includes government and non-government schools – must inform the Ombudsman in writing about any allegations that an 'employee' has:

- ✓ engaged in conduct resulting in the ill-treatment, neglect or psychological harm of child
- ✓ engaged in misconduct of a sexual nature; or
- ✓ committed criminal offences involving a child.

The term 'employees' includes volunteers in addition to all other persons engaged to provide services to children, which likely covers teaching and non-teaching staff, members, contractors and third party service providers.

In order to meet these obligations, schools will need to implement policies and procedures as part of their child protection program by 1 July 2017.

4. Why a Child Protection Program is Needed

As noted previously, from a practical perspective, the ACT Child Protection Framework will require each ACT non-government school to establish a Child Protection Program which sets out in detail the internal policies, procedures and workplace systems it has adopted not only to ensure compliance with its legal and regulatory obligations, but also to create a supportive and connected school culture and drive cultural change as required by the NSSF.

This represents a high compliance threshold in the approach to child protection in the ACT, shifting the focus from a series of obligations and tasks mandated by law, for example mandatory reporting and working with vulnerable people checks, to an all-encompassing culturally driven approach designed to ensure the establishment and maintenance of child-safe environments at the school designed to prevent and deter child abuse.

Given the Royal Commission's recently released final report on Creating Child Safe Institutions, CompliSpace saw an opportunity to 'get ahead of the game' and create a new risk and compliance program for child protection in schools. The traditional approach of creating a separate policy or procedure for each legal obligation no longer allows for meaningful compliance with legal and regulatory requirements.

This is because there is a shift, a shift that is occurring all around Australia, from policy-based compliance to the creation, maintenance and growth of a child protection or child safe culture for child-related organisations. This policy-based compliance, or 'check-box compliance' as it is sometimes called, has been replaced by a Child Protection Program which includes a mix of policies, procedures, processes, work systems, and strategies for, and risk-based approaches to, developing a culture of child protection in schools.

Why is there a move towards a culture of child protection? This is because regulators are now communicating to child-related organisations that the prevention of child abuse, and effective response to child abuse incidents, requires a culture within which all staff and volunteers recognise the importance of keeping children safe and where the protection of children from abuse is embedded in everyday thinking and practice.

5. Meeting the National Safe Schools Framework

The actions that non-government schools must take in accordance with the NSSF are as follows:

Element 1: Leadership commitment to a safe school

To comply with this element, a school needs to:

- ✓ accept responsibility for the development and maintenance of a safe, supportive and respectful learning and working environment for all members of the school community;

- ✓ develop and communicate a clear vision for a safe, supportive and respectful school. This includes actions that encourage staff to commit to the vision and to feel confident about their participation in its implementation;
- ✓ plan for sustaining the vision;
- ✓ regularly evaluate and review the school's current capacity to enhance the safety and wellbeing of its staff and student and identify areas that need to be enhanced;
- ✓ facilitate access to resources to support implementation of the school vision for a safe and supportive school;
- ✓ identify and support staff with specific responsibilities for student safety and wellbeing.
- ✓ implement ongoing data collection (including incidence and frequency of harassment, aggression, violence and bullying) to inform decision-making and evaluate effectiveness of policies, programs and procedures;
- ✓ have school leaders develop a comprehensive knowledge of the school community;
- ✓ be aware of mandatory requirements and legal issues in relation to child maltreatment, harassment, aggression and violence and communicate these to staff; and
- ✓ be aware of the rights and responsibilities of school leadership in relation to safety issues occurring outside school hours and off school grounds involving or affecting students and staff.

Element 2: A supportive and connected school culture

To comply with this element, a school needs to:

- ✓ foster student connectedness to the school;
- ✓ have teaching, staff model and promote explicit pro-social values and expectations for behaviour in accordance with these values;
- ✓ clearly demonstrate respect and support for student diversity in the school's inclusive actions and structures;
- ✓ have positive, caring and respectful student-peer relationships, student-teacher relationships and teacher-teacher relationships;
- ✓ foster parent and carer connectedness to the school;
- ✓ focus on staff wellbeing and safety;
- ✓ appropriately monitor and respond to child protection issues; and
- ✓ recognise the distinctive needs of specific groups in the school community (e.g. Aboriginal and Torres Strait Islander communities, refugee and immigrant families).

Element 3: Policies and procedures

To comply with this element, a school needs to:

- ✓ implement whole school, collaboratively developed policies, plans and structures for supporting safety and wellbeing;
- ✓ have clear procedures that enable staff, parents, carers and students to confidentially report any incidents or situations of child maltreatment, harassment, aggression, violence or bullying;
- ✓ clearly communicate procedures for staff to follow when responding to incidents of student harm from child maltreatment, harassment, aggression, violence, bullying or misuse of technology;
- ✓ have agreements for responsible use of technology by staff and students;
- ✓ conduct regular risk assessments of the physical school environment (including environments related to off-campus and outside of school-related activities), leading to the development of effective risk management plans;
- ✓ have established and well-understood protocols about appropriate and inappropriate adult to student contact and interactions within the school context;

- ✓ have effective strategies for record keeping and communication between appropriate staff about safety and wellbeing issues;
- ✓ have a representative group responsible for overseeing the school's safety and wellbeing initiatives; and
- ✓ have protocols for the induction of casual staff, new staff and new students and families into the school's safety and wellbeing policies and procedures.

Element 4: Professional learning

To comply with this element, a school needs to:

- ✓ evaluate the current level of staff knowledge and skills related to student safety and wellbeing and their capacity to respond effectively and sensitively to possible situations of child maltreatment, harassment, aggression, violence and bullying;
- ✓ have ongoing professional learning about emerging changes in research and technology related to student safety and wellbeing; and
- ✓ include non-teaching and casual, specialist and visiting staff in relevant professional learning opportunities.

Element 5: Positive behaviour management

To comply with this element, a school needs to:

- ✓ carefully select evidence-informed positive behaviour management approaches that align with the school community's needs;
- ✓ promote and recognise positive student behaviour;
- ✓ foster clear understanding and consistent implementation by all staff of the school's selected positive behaviour management approaches within both the school and classroom context;
- ✓ have effective risk prevention plans for the use of technology in the classroom and for playground organisation and supervision; and
- ✓ have effective risk prevention plans for student behaviour management during off-campus and school-related out-of-hours activities.

Element 6: Engagement, skill development and safe school curriculum

To comply with this element, a school needs to:

- ✓ maintain a strong focus on the enhancement of student engagement with learning;
- ✓ have extensive use of cooperative learning and other relational teaching strategies;
- ✓ teach skills and understandings to promote cybersafety and for countering harassment, aggression, violence and bullying;
- ✓ teach skills and understandings related to personal safety and protective behaviours; and
- ✓ teach social and emotional skills (e.g. listening, negotiation, sharing, empathic responding) in all subjects and across all year levels

Element 7: A focus on student wellbeing and student ownership

To comply with this element, a school needs to:

- ✓ have defined structures and strategies for enhancing student wellbeing;
- ✓ provide multiple opportunities for students to develop a sense of meaning and purpose;
- ✓ adopt strengths-based approaches to student learning and participation;

- ✓ provide a range of opportunities for student ownership and decision-making, student voice and peer teaching

Element 8: Early intervention and targeted support

To comply with this element, a school needs to have:

- ✓ effective processes for the early identification of students and families who need, or could benefit from, additional support;
- ✓ appropriate early intervention with students requiring support and skill development. (e.g. students who exhibit anti-social behaviour or experience peer difficulties); and
- ✓ ongoing and follow-up support to individual students and families in times of need.

Element 9: Partnerships with families and community

To comply with this element, a school needs to work collaboratively with:

- ✓ parents and carers by providing opportunities for education on issues related to student safety and wellbeing;
- ✓ community organisations to provide a consistent message about safety and wellbeing;
- ✓ community organisations to extend support to students and families as needed; and
- ✓ the justice system in relation to child maltreatment, aggression, violence and cybersafety issues at both a preventative and legal level.

6. Next Steps for Schools

The obligations introduced through the NSSF are significant and requires most non-government schools to review their current approach to child protection and make the necessary changes.

The next steps for most schools (if they have not already done so) will be to conduct an internal audit of current child protection policies, procedures and work practices and undertake a gap analysis against the obligations set out in the NSSF. The outcome of this gap analysis will then determine the work that will need to be undertaken to ensure compliance.

The ACT Registration Manual also requires schools to provide evidence of their safety and welfare related policies (which comply with the NSSF) and this obligation should ensure that schools develop the best child protection policy framework possible.

7. How CompliSpace Can 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.

In response to the changes outlined in this briefing paper, CompliSpace has developed a detailed Child Protection Program that complies with each of the elements of the NSSF as well as related child protection legislation. The Program is designed to be tailored to the particular circumstances of each school and includes a detailed online child protection training course.

CompliSpace works with schools to tailor compliance and risk management systems such as the Child Protection Program to a school's individual needs and characteristics, ensuring meaningful compliance with their legal and regulatory obligations.

If you are looking to update your existing child protection content, contact us on:

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