



South Australian Child Safe Environments 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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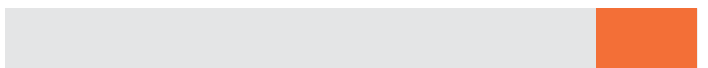


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1. Did you know

- The Children’s Protection Act 1993 (SA) requires child-related organisations, including non-government schools, to provide a ‘child safe environment’ for children using their services?
- There are several national child protection trends that are affecting all schools across Australia?
- The Royal Commission into Institutional Responses to Child Sexual Abuse has delivered its final report on Creating Child Safe Institutions, and is due to deliver its final recommendations at the end of this year?
- The Education and Early Childhood Services Registration and Standards Board of SA (the Board) has proposed new standards for registration, including on Student Safety, Health and Welfare?

2. Executive Summary

South Australian non-government schools 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 obligation under section 8C of the Children’s Protection Act 1993 (SA) (CPA) to establish and maintain child safe environments at the school.

To comply with the obligations under the CPA, schools must have in place policies and procedures for ensuring that:

- appropriate reports of abuse or neglect are made; and
- child safe environments are established and maintained.

The Child Safe Environments Principles of Good Practice (Principles of Good Practice)¹ are seven principles which were developed by Families SA to help schools create a child safe environment. The seven Principles are explained in section 4 of this Paper.

Detailed planning and allocation of appropriate resources within a school is required to ensure compliance with the CPA, the Principles of Good Practice and other legal and regulatory child protection requirements in South Australia.

3. Legal reform in South Australia

The child protection framework created by the CPA and the Principles of Good Practice requires schools to adopt a dynamic process towards child safety and, as noted in the Principles of Good Practice, one that “involves the active participation and responsibility by all sectors of the community – individuals, families, government and non-government organisations and community groups.”

The Principles of Good Practice emphasise the importance of a culture of safety and awareness in organisations to ensure the success of child safe environment initiatives. 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.

¹SA Child Safe Environments Principles of Good Practice 2016 version:
https://www.decd.sa.gov.au/sites/g/files/net691/f/cse_principles_of_good_practice.pdf

The adoption of a code of conduct is one of the suggested actions² and Principle 3 reflects this suggestion by including a requirement to develop codes of conduct for adults and children.

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 of 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, much as has recently been experienced with the move towards the adoption of harmonised workplace safety laws.

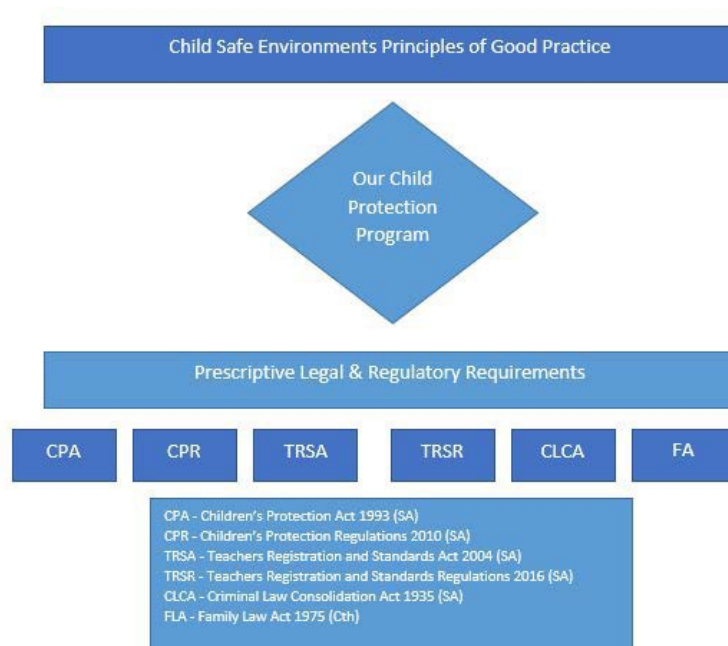
And in August 2016 the Royal Commission into South Australia’s Child Protection Systems published a report which made 260 recommendations to overhaul the State’s child protection system. The South Australian Government has committed to implementing the recommendations, indicating that significant reform is likely.

Similarly, additional reform is likely following the release of a Consultation Paper by the Education Standards Board (ESB) proposing more regular and formal registration reviews by the ESB. Increasing reviews will require schools to be able to continuously evidence their compliance with child protection legislation and regulation, including the Principles of Good Practice.

4. South Australia’s Child Protection Framework

The legal and regulatory framework for child protection in South Australia 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 Principles of Good Practice.



²See for example, Royal Commission Consultation Paper: Best practice principles in responding to complaints of child sexual abuse in institutional contexts (March 2016), section 4.1

Child Safe Environments Principles of Good Practice

At the top of the diagram are the Child Safe Environments Principles of Good Practice (Principles of Good Practice). These seven (7) Principles are part of an integrated package of measures developed by the South Australian Government aimed at establishing and maintaining child safe environments and ensuring that the safety and wellbeing of children remains of paramount consideration for all organisations that provide services for children, including schools.

Section 8C of the CPA requires all government, non-government and local government organisations that provide services for children to have appropriate policies and procedures to establish and maintain child safe environments. The Principles set out the minimum requirements for organisations who are required to establish and maintain child safe environments under the CPA.

The seven Principles are as follows:

Principle 1: Identify and analyse risk of harm;

Principle 2: Develop a clear and accessible child safe policy;

Principle 3: Develop codes of conduct for adults and children;

Principle 4: Choose suitable employees and volunteers;

Principle 5: Support, train, supervise and enhance performance;

Principle 6: Empower and promote the participation of children in decision-making and service development; and

Principle 7: Report and respond appropriately to suspected abuse and neglect.

The South Australian Department for Education and Child Development (DECD) has published a guidance document to assist organisations in implementing the Principles when establishing and maintaining a child safe environment. The document, titled "[Child Safe Environments Principles for Good Practice](#)", includes a number of example indicators of compliance for each Principle.

Prescriptive Legal & Regulatory Requirements

At the bottom of the diagram there are six separate pieces of legislation that work together to make up the legal and regulatory framework for child protection in South Australia. They are in summary:

Children's Protection Act 1993 (SA)

The CPA is the main piece of child protection legislation in South Australia. The primary object of the Act is to keep children safe from harm. It has many functions including:

- providing the statutory definition of abuse and neglect;
- establishing obligations and procedures for reporting abuse or neglect including mandatory reporting;
- requiring all persons engaged in child-related work to undergo relevant history assessments and background checks; and
- requiring all organisations who provide services to children to have policies and procedures for establishing and maintaining a child safe environment.

The CPA requires schools to comply with the Principles of Good Practice and gives the Chief Executive of the DECD the authority to develop these Principles and provide further guidance as necessary.

Children's Protection Regulations 2010 (SA)

The Children's Protection Regulations 2010 (SA) (Regulations) complement the CPA by providing further information for organisations required to comply with the Act. The Regulations set out:

- detailed requirements for the pre-engagement screening of those to be engaged in child-related work;
- a list of those exempt from complying with certain provisions of the Act, for example individuals who are exempt from requiring pre-engagement screening and organisations that are exempt from complying with the Principles of Good Practice; and
- various offences for non-compliance with the Act.

Teachers Registration and Standards Act 2004 (SA)

The Teachers Registration and Standards Act 2004 (SA) (TRS Act) establishes the Teachers Registration Board of South Australia (TRB). The object of the TRS Act is to establish and maintain a teacher registration system and professional standards for teachers to ensure that educators are fit and proper persons to have the care of children.

The TRS Act includes requirements for teacher registration, disciplinary procedures to follow unprofessional conduct of teachers, and reporting obligations for both teachers and schools.

Section 37 of the TRS Act requires a school to make a written report within 7 days to the TRB when a school dismisses a teacher in response to allegations of unprofessional conduct, or a teacher resigns following allegations of unprofessional conduct. Penalties for non-reporting apply.

Teachers Registration and Standards Regulations 2016 (SA)

The Teachers Registration and Standards Regulations 2016 (SA) (TRS Regulations) complement the TRS Act by providing further information for registered teachers, teachers seeking registration and the employers of teachers. Critically, Regulation 13 details the information to be included in a school's written report to the TRB concerning the dismissal or resignation of a teacher at a school because of allegations of unprofessional conduct or incapacity.

Criminal Law Consolidation Act 1935 (SA)

The Criminal Law Consolidation Act 1935 (SA) sets out several child protection related offences including those relating to the production or dissemination of child exploitation material and the persistent sexual exploitation of a child.

Of key relevance to the South Australian child protection framework is the offence of 'Procuring a child to commit indecent act etc' under section 63B of the Act which targets predatory conduct designed to facilitate an indecent act by a child at a later time or conduct that excessively encourages inappropriate sexual activity by a child. This offence can be regarded as a 'grooming' offence. Grooming refers to predatory conduct undertaken to prepare a child for sexual activity at a later time.

Family Law Act 1975 (Cth)

The CPA has a definition of ‘abuse or neglect’ which includes ‘a reasonable likelihood...of a child being killed, injured, abused or neglected by a person with whom the child resides.’ Such misconduct must be reported under the CPA.

The Family Law Act provides an extensive definition of family violence which includes behaviour that causes a child to hear, witness, or be exposed to the effects of such behaviour.

5. Why a Child Protection Program is Needed

As noted previously, from a practical perspective, the South Australian Child Protection Framework will require each South Australian 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 child safe environment and drive cultural change as required by the Principles of Good Practice.

This represents a high compliance threshold in the approach to child protection in South Australia, shifting the focus from a series of obligations and tasks mandated by law, for example mandatory reporting and working with children 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 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.

6. Meeting Child Safe Environment Requirements

The actions that non-government schools must take in accordance with the Principles of Good Practice are as follows:

Principle 1: Identify and analyse risk of harm.

Principle 1 requires the school to develop and implement a risk management strategy that identifies, assesses and takes steps to minimise the risks of harm to children because of the action or inaction of a person involved with the organisation (such as an employee, volunteer, or another child). This includes a review of existing child protection policies and practices to determine how child safe and child friendly the organisation is and the development of strategies to minimise and prevent risk of harm to children

To comply with this Principle, a school needs to:

- establish the goals and objectives (scope and setting), clarify objectives and areas of operation where risks may occur;
- identify risks – including how they may happen;
- analyse risks – determine likelihood and magnitude of consequences;
- evaluate risks (low, medium, high) – which risks are acceptable based on cost-benefit analysis;
- implement strategies to minimise and prevent risks – actions to be taken and who is responsible;
- review and revise risks and preventative measures – detect and manage new risks; and
- communicate and consult – to build commitment and increase compliance.

Principle 2: Develop a clear and accessible child safe policy.

Principle 2 requires the school to have a child safe environments (child protection) policy that outlines its commitment to promoting children’s wellbeing and safeguarding children from harm.

To comply with this Principle, a school needs to develop a child safe policy which:

- indicates the organisation’s commitment to a child safe organisation;
- is written in a clear and easily understandable way;
- is publicised, promoted and distributed widely;
- identifies legislative imperatives;
- approved and endorsed by the school’s managing authority;
- specifies responsibilities;
- has supporting procedures and standards;
- has been communicated to all relevant audiences; and
- is current, been evaluated and reviewed in accordance with its review date.

Principle 3: Develop codes of conduct for adults and children

Principle 3 requires the school to have a code of conduct that specifies standards of conduct and care when dealing and interacting with children, particularly those in the school’s care. The school also has a code of conduct to address appropriate behaviour between children. The code(s) of conduct set out professional boundaries, ethical behaviour and unacceptable behaviour.

To comply with this Principle, a school needs to develop a code(s) of conduct which:

- specifies appropriate standards of behaviour for adults towards students in all school environments;
- includes statements about the responsibility of adults and children to treat one another with dignity, respect, sensitivity and fairness;
- clearly set out acceptable (and unacceptable) behaviour for everyone within the school including existing management, employees, volunteers, independent contractors and children and young people;
- identifies and addresses unacceptable behaviours (i.e. high-risk behaviours), for example bullying or harassment of a child;
- is developed collaboratively including input from children (wherever practicable); and
- is widely available, published and communicated to everyone.

Schools should be aware that these six items are not a definitive list of information to include in a code of conduct. Refer to the titled “[Child Safe Environments Principles for Good Practice](#)” for a complete list of information to include.

Principle 4: Choose suitable employees and volunteers

Principle 4 requires the school to take all reasonable steps to ensure that it engages the most suitable and appropriate people to work with children (in prescribed positions). This is more likely to be achieved using a range of screening measures. Such measures aim to minimise the likelihood of engaging (or retaining) people who are unsuitable to work with children.

To comply with this Principle, a school needs to:

- develop policies and procedures for recruiting employees/volunteers and for assessing their suitability to work with children;
- ensure screening is undertaken by the organisation prior to the appointment of new employees/volunteers;
- clearly articulate screening and risk assessment procedures that are transparent and available to all relevant audiences; and
- document the rationale for excluding people and decision-making is evidence-based.

Schools should be aware that these four items are not a definitive list of steps to take to appropriately screen prospective workers. Refer to the titled "[Child Safe Environments Principles for Good Practice](#)" for a complete list of steps to take.

Principle 5: Support, train, supervise and enhance performance

Principle 5 requires the school to ensure that volunteers and employees who work with children or their records have ongoing supervision, support and training such that their performance is developed and enhanced to promote the establishment and maintenance of a child safe environment.

To comply with this Principle, a school needs to:

- develop a pro-active performance development strategy for individual employees and volunteers which focuses on developing skills, knowledge and capabilities of individuals relating to the safety and wellbeing of children (including child development and recognising and responding to suspected abuse and neglect);
- ensure that employees/volunteers undertaking prescribed functions are involved in regular planning discussions to review previous work and plan for the future;
- promote the safety and wellbeing of children, by identifying relevant areas for performance improvement and targeting them in action plans to ensure employees/volunteers meet expected performance outcomes;
- measure performance against standards of conduct and care; and
- ensure that performance development is an ongoing process.

Principle 6: Empower and promote the participation of children in decision-making and service development.

Principle 6 requires the school to promote the involvement and participation of children and young people in developing and maintaining child safe environments.

To comply with this Principle, a school needs to:

- seek feedback from children (according to their evolving capabilities) on its services provided for children and its child-safe policies and procedures;
- have and clearly communicate reporting mechanisms that allow children to provide comment and feedback;
- indicate, in a clear and timely manner, how it has incorporated or responded to the feedback provided by children; and
- have procedures to inform children and young people of their rights and available complaints procedures.

Principle 7: Report and respond appropriately to suspected abuse and neglect

The school ensures that volunteers and employees are able to identify and respond to children at risk of harm. The school makes all volunteers and employees aware of their responsibilities under the Children's Protection Act 1993 if they have suspicion on reasonable grounds that a child has been or is being abused or neglected

To comply with this Principle, a school needs to:

- ensure that employees and volunteers are made aware of their responsibilities under the Children's Protection Act 1993 (CPA);
- provide volunteers and employees with adequate information and/or training to assist them to identify children at risk of harm and to report to the Child Abuse Report Line (13 1478);
- establish clear and unambiguous procedures in place which provide step by step guidance on what action to take if there are concerns about a child's safety or welfare; and
- have clear procedures that assist employees and volunteers when responding to suspected child abuse or neglect.

7. Next Steps for Schools

The child safe environment obligations introduced through the CPA and the Principles of Good Practice are significant and will require 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 CPA and the Principles of Good Practice. The outcome of this gap analysis will then determine the work that will need to be undertaken to ensure compliance.

The CPA also requires schools to lodge a statement with the DECD which sets out their child safe environment policies and procedures (a 'child safe environment compliance statement') and this obligation should ensure that schools develop the best child protection policy framework possible.

8. 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 these changes, CompliSpace has developed a detailed Child Protection Program that systematically addresses each of the Standards' child protection requirements 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 on-line 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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