



BOSTES Registration Requirements Update

Important briefing paper for Principals, Bursars, Business Managers and Governors of individual and systemic non-government schools on changes announced January 2016

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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1. DID YOU KNOW?

The release of the updated NSW Registered and Accredited Individual Non-government Schools Manual, and the NSW Registered and Accredited System Non-government Schools Manual (referred in this paper as the Standards) on 21 January 2016 (January 2016 Standards) means that non-government schools should be aware of the changes to the Standards and what they mean for their registration policies and procedures.

Critically, non-government schools now have additional requirements to update their governance frameworks to include:

- ✦ a [Teacher Accreditation Authority \(TAA\) compliance framework](#);
- ✦ a process for [notifying the BOSTES of the identity of Responsible Persons](#);
- ✦ policies and procedures for the [ongoing professional development of Responsible Persons](#) in accordance with the updated learning requirements in the Standards;
- ✦ a process for the provision of [annual child protection training for staff](#); and
- ✦ systemic schools: policies and procedures for the [‘proper governance’ of their school](#).

Non-government schools should also consider using the timing of the January 2016 Updates as an opportunity to review the extent of their compliance with the recommendations made in the NSW Department of Education’s [Not-for-profit Guidelines for Non-Government Schools](#), released in September 2015 (the NFP Guidelines).

2. BACKGROUND

Non-government schools in NSW are required to comply with the Standards.

The Standards are published by the NSW Board of Studies Teaching & Education Standards (BOSTES) and are regularly updated. In fact, they have been amended eight times in the past six years, making it incumbent upon all non-government schools in NSW to ensure that not only are they aware of the changes to the Standards but also that they continually comply with the terms of the current Standards.

The updates made to the Standards in October 2014 introduced substantial amendments which set out specific obligations for Responsible Persons to put in place policies and procedures that ensure the proper governance of their schools. This included the obligation on schools to implement a Risk Management Program and a Compliance Program amongst other requirements (the 2014 Updates).

For those not familiar with the 2014 Updates, it is strongly recommended that you read our publication ***Towards Better Governance: A Guide to the October 2014 NSW Non-government School Registration Updates*** which is available at www.schoolgovernance.net.au (CompliSpace 2014 Guide).

On 21 January 2016, the BOSTES published further amendments to the Standards relating to the obligation of non-government schools, and the Responsible Persons in these schools, to comply with yet more governance requirements. The purpose of this briefing paper is to explain these latest changes and the actions schools should now be taking to ensure compliance with the current Standards.

3. TEACHER ACCREDITATION AUTHORITY (TAA) APPROVAL PROCESS

In October 2015, the BOSTES announced a new regulatory framework for approving Teacher Accreditation Authorities (TAAs), in accordance with changes made in 2014 to the *Teacher Accreditation Act 2004* (NSW).

A TAA is a corporation, or an approved legal entity, (typically the proprietor of the school) that is responsible for ensuring that teachers under their jurisdiction are accredited at the Proficient Teacher Level.

The TAA appoints an authorised delegate to act on its behalf. The BOSTES advises that in:

- Catholic systemic schools, the role of the TAA will be undertaken by an officer appointed by the Diocese; and
- independent schools, the role of the TAA will be undertaken by the principal.

The January 2016 Standards¹ now require schools to ‘document their arrangements for having a TAA that has been approved under the BOSTES’ [Guidelines for the Regulation of Teacher Accreditation Authorities for Non-government Schools and Early Childhood Education Centres](#) (the Guidelines) as required according to the transition period approved by the BOSTES.’

The transition period will expire at the end of 2020, giving schools time to adjust to these requirements. By then, all schools must have a TAA approved under the Guidelines.

A school’s TAA approval period will align with its registration period. For example, if a school is renewing its registration in 2016, it must have a TAA approved under the TAA Guidelines to commence from 1 January 2017. It should be noted that schools seeking renewal of registration in 2016 are required to submit applications for TAA approval by Thursday 31 March 2016.

Despite the existence of the transition period, a school should not leave the work required to meet the TAA requirements until registration renewal time. This is because a school must meet substantial policy and procedural requirements, set out in sections 4.1 to 4.6 of the Guidelines, to comply with the approval requirements for its TAA.

The requirements relate to:

- the structure and governance of the TAA;
- policies and procedures that are consistent with the BOSTES teacher accreditation policies for accrediting teachers at Proficient Teacher level, making decisions regarding maintenance of teacher accreditation at Proficient Teacher level and suspending or revoking teacher accreditation at Proficient Teacher level;
- policies and procedures for notifying the BOSTES in specified circumstances; and
- provisions for sharing information with employers and other approved TAAs.

Schools should be aware that if the legal entity that it appoints as its TAA is different to the legal entity that is its proprietor, consideration needs to be given in relation to additional legal issues that arise in relation to meeting the governance requirements in the Guidelines.

¹ Section 3.2.1 Individual Schools Manual and section 5.2.1 System Schools Manual

4. NOTIFICATION OF RESPONSIBLE PERSONS

4.1. THE BOSTES MUST NOW BE NOTIFIED OF THE IDENTITY OF ALL RESPONSIBLE PERSONS

When the 2014 Standards introduced new obligations for Responsible Persons to undergo four hours of annual professional development training, for many schools this meant that they were required to clearly identify their Responsible Persons for the first time. As the following section highlights, for many schools the process of identifying their Responsible Persons has been quite challenging.

The January 2016 Standards take things one step further and from 1 July 2016, now require all non-government schools to notify the BOSTES of the identity of each of their Responsible Persons including their:

- name;
- role; and
- date of commencement and ceasing as a Responsible Person.

The new Standards also now require that the BOSTES must be notified of a change of Responsible Person within twenty-eight (28) days of the change being made.

4.2. IDENTIFYING A 'RESPONSIBLE PERSON'?

As the new notification requirements now place further emphasis on the requirement for all non-government schools to clearly identify their Responsible Persons, it is worth considering the challenge schools have experienced managing this process to date.

The term 'Responsible Person' is defined in Section 3 of the *Education Act 1990* (NSW)(the Act) as:

- (a) *the proprietor of the school and, if the proprietor is a corporation, each director **or person concerned in the management of the school**, or*
- (b) *a member of the governing body of the school, or*
- (c) *the principal of the school* (emphasis added).

The challenge experienced by schools to date is because of the ambiguous nature of the phrase '**person concerned in the management of the school**' in the Act.

The ambiguity of this wording is not helped by the definition of a 'Responsible Person' provided by the BOSTES in the Standards.

The relevant sections of the Standards (section 3.9.3 in the Individual Schools Manual and section 5.9.3 for System Schools Manual) state that:

*'A school's proprietor and, if the proprietor is a corporation, each director **or person concerned in the management of the school**, members of the school's governing body, the school's principal **and any other person or body exercising a function in relation to the management of the school** are considered under the Education Act to be 'responsible persons' for the school'* (emphasis added).

So how should a school interpret the concept of '**management of the school**' and what, if anything, differentiates a person '**concerned in the management of the school**' and a person '**exercising a function in relation to the management of the school**'?

Whilst the BOSTES didn't clarify the ambiguity in the January 2016 Standards, it does now require that when schools complete their on-line notification with respect to the identity of their Responsible Persons (from 1 July 2016) they specify the 'role' of the Responsible Person.

This means that before a school, or a school system, can meet its new notification requirements they must form a view as to which roles at the school involve 'management of the school'. This requires a reasoned and cautious process given the implications under the Standards of a person being a Responsible Person.

For schools that may be struggling with the identification process, we recommend that schools have:

- clear written explanations as to why they have classified each respective role as a Responsible Person; and
- a range of formal documents in place including:
 - a board/advisory board charter that articulates which roles are considered Responsible Persons;
 - a delegated authority policy that sets out who among the school's executives are considered Responsible Persons; and
 - minutes of executive/board meetings that set out the school's reasoned decision as to which roles are considered Responsible Persons.

By having these documents in place a school will be able to clearly justify its decision making process to the BOSTES should this be required at some point in the future.

5. RESPONSIBLE PERSONS PROFESSIONAL LEARNING OBLIGATIONS

The January 2016 Standards also include changes with respect to the professional learning obligations of Responsible Persons.

A Responsible Person's professional learning with regard to governance issues must now constitute 12 hours, which is to be completed over each three-year period from the time of commencing as a Responsible Person.

Previously, the requirement was to complete four hours of training each year (in addition to an induction process for new Responsible Persons). The professional learning must be delivered by a BOSTES-approved training provider – such as CompliSpace.

A new paragraph inserted in the Standards also clarifies that the professional learning must now be specifically tailored to a 'school context', rather than just addressing corporate governance issues generally:

*The specific professional learning to be completed by any one 'responsible person' for a school will depend on the person's pre-existing qualifications and professional experiences, the school's policies and procedures for professional learning and the particular role and responsibilities of the person. **Governance professional learning should include a school context regardless of a 'responsible person's' professional experience and qualifications.***² (Emphasis added)

In practice, this means that a Responsible Person cannot claim professional learning hours unless they include a school context and are provided by a BOSTES-approved training provider.

In addition, details of all professional learning must be added to the Responsible Persons' Register of Professional Learning, including evidence of completion. Schools must retain evidence of each entry into the Register for a minimum period of seven years.³

² Section 3.9.3.3 Individual Schools Manual and section 5.9.3.4 System Schools Manual

³ Section 3.9.3.3 Individual Schools Manual and section 5.9.3.4 System Schools Manual

6. ANNUAL CHILD PROTECTION TRAINING

The January 2016 Standards have introduced a new obligation for schools to complete child protection training annually. Previously, schools were required to inform:

- staff who have direct contact with students of their legal responsibilities relating to child protection, mandatory reporting and other relevant school expectations; and
- staff mandatory reporters of their obligations and the process the school has in relation to mandatory reporting.

Changes made to the Safe and Supportive Environment sections of the Standards⁴ now also require this information to be communicated **annually**.

The addition of this word introduces a temporal aspect to the existing requirements and suggests that a school's policies and procedures in relation to creating a safe and supportive environment should include annual staff training on child protection obligations.

Similar changes have been made to the sections of the Standards relating to boarding facilities. All staff involved in the supervision of boarders must now be trained **annually** on their child protection obligations.⁵

These changes are a reflection of the increasing trend in States and Territories to strengthen non-government school registration requirements to ensure that all members of the school community are aware of the legal obligations they have towards protecting children from abuse.

⁴ Section 3.6.1 Individual Schools Manual and section 5.6.1 System Schools Manual

⁵ Section 3.11.4 Individual Schools Manual and section 5.11.4 System Schools Manual

7. SYSTEMIC SCHOOLS MUST NOW MEET THE SAME GOVERNANCE REQUIREMENTS AS INDIVIDUAL SCHOOLS

Whilst the 2014 Updates expressly applied to individual non-government schools under sections 3.9.3.2 - 3.9.3.6 of the Individual Schools Manual, systemic non-government schools were only required to have policies and procedures in place for the proper governance of the school that were '*similar to those required for individual non-government schools*' (emphasis added).

This meant that for the period between the 2014 Updates and the January 2016 Standards, systemic non-government schools did not have to adopt an identical (high) level of governance as required of individual non-government schools; they only had to adopt a level that was 'similar'.

This discrepancy has now been rectified with the additions of sections 5.9.3.2 - 5.9.3.6 of the System Schools Manual which replicate the governance requirements set out in sections 3.9.3.2 - 3.9.3.3 of the Individual Schools Manual.

The only difference between these sections in the Standards is the additional wording in section 5.9.3 of the System Schools Manual which appears to increase the types of entities in systemic non-government schools that the governance policies and procedures may apply to.

Unlike section 3.9.3.1 of the Individual Schools Manual which states that the Responsible Persons for an individual non-government school are responsible for having in place and implementing governance policies and procedures, section 5.9.3 states that the 'proprietor' of a systemic non-government school is responsible for meeting those requirements.

While the Individual Schools Manual lists Responsible Persons as being subject to the regime of governance policies and procedures, section 5.9.3 of the System Schools Manual acknowledges that:

*'depending on the structure and delegated authority of the proprietor of a systemic non-government school, the policies and procedures for proper governance as identified in 5.9.3.1 to 5.9.3.6 of the Manual may apply to and be exercised by the proprietor, the **approved authority for the system**, the principal (or equivalent) and/or another identified role or body'* (emphasis added).

The effect of the highlighted text is to broaden the potential application of the governance policies and procedures, and the compliance obligations relating to their implementation, to entities that may not be considered Responsible Persons under the statutory definition of that term (refer to Section 3 of this briefing paper).

The addition of section 5.9.3 in the System Schools Manual means that:

- systemic non-government schools can no longer rely on the rather ambiguous registration requirement to have 'similar' governance policies and procedures in place. They must now meet the higher governance threshold applicable to individual non-government schools; and
- the application of a systemic non-government school's governance policies and procedures may include entities that are not recognised by the equivalent sections of the Individual Schools Manual.

8. NOT-FOR-PROFIT GUIDELINES FOR NON-GOVERNMENT SCHOOLS

On 29 January 2015, new funding eligibility requirements commenced for all non-government schools that receive NSW government funding in accordance with provisions under the Act.

The NSW Department of Education released the NFP Guidelines to assist non-government schools to comply with their obligations under section 83C of the Act. Section 83C of the Act requires all non-government schools to operate on a not-for-profit basis, in order to be eligible for NSW Government funding.

In summary, the NFP Guidelines recommend policies and procedures that aim to ensure that:

- appropriate financial controls and systems are in place; and
- financial transactions are transparent and at market value.

The NFP Guidelines do not directly relate to a school's registration requirements under the Standards. However, the requirements in the Standards in relation to the external independent audit of annual financial statements⁶ state that as part of the audit and certification of a school's annual financial statements, certain evidence of compliance is needed. One example of such evidence is that the school's proprietor:

'is to certify or is to provide other evidence that the audit and accompanying certificate comply with any other requirements imposed by the Commonwealth or NSW Government agencies providing funding to the school.'

A school's compliance with the NFP Guidelines will assist it to meet this evidentiary requirement in the Standards and also comply with its obligations under the Act.

On this basis, a school that operates on a non-for-profit basis may consider developing policies and procedures in line with the recommendations in the NFP Guidelines as part of any changes it makes to comply with its obligations under the January 2016 Standards.

9. RECOMMENDATIONS TO ENSURE COMPLIANCE WITH THE 2016 STANDARDS

Central to a school's ability to comply with its obligations under the Standards is its ability to demonstrate that:

- it has documented policies and procedures in place to meet specific obligations under the standards;
- these policies and procedures have been effectively implemented; and
- the school has developed a process of improvement through which the quality of its internal procedures are monitored and reviewed on a continuous basis.

⁶ Section 3.9.3.6 Individual Schools Manual and section 5.9.3.6 System Schools Manual

10. WHAT CAN COMPLISPACE DO TO HELP?

CompliSpace 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.

A team of lawyers and industry experts actively monitor changes to relevant laws and registration Standards to 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, training programs and software platforms are specifically tailored for non-government schools by jurisdiction. They include:

- ISO 31000 Risk Management Program;
- AS/ISO 19600 Compliance Program;
- Comprehensive School Registration Programs;
- 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 Child Protection Program;
- A Human Resources Program (tailored to relevant State and Territory laws, and enterprise agreements);
- A Privacy Program;
- A Board Governance Program; and
- Assurance software to manage risks, tasks and incidents.

CompliSpace is also a BOSTES approved provider of courses relating to proper governance of non-government schools. Further information on the courses we provide can be found [here](#).

If you would like to know more about how CompliSpace can assist you with your governance, risk and compliance, including registration, contact us on:

Telephone: 1300 132 090

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