



VIC Registration Requirements Update

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

The information in this briefing paper is current as at August 2017.

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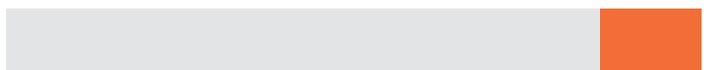


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1. Executive Summary

- ✓ On 25 June 2017, the Education and Training Reform Regulations 2017 (Vic) commenced (2017 Regulations). The 2017 Regulations replace the existing Education and Training Reform Regulations 2007 (Vic) (2007 Regulations).
- ✓ Schedule 4 of the 2017 Regulations sets out the new Minimum Standards for the registration of schools (Minimum Standards).
- ✓ On 31 July 2017, the Victorian Registration and Qualifications Authority (VRQA) released updated [Guidelines to the minimum standards and other requirements for registration of schools including those offering senior secondary courses](#) (the Guidelines).
- ✓ The 2017 Regulations and the Guidelines support the Education and Training Reform Act 2006 (Vic) and together with Ministerial Orders 706: Anaphylaxis Management in Victorian Schools (MO 706), Ministerial Order 870 (MO 870) for managing the risk of child abuse and the Guidelines for Registered Schools for Bushfire Preparedness, they comprise the registration regulatory framework for Victorian non-government schools.
- ✓ The key changes introduced by the 2017 Regulations include changes to the Minimum Standards such as the introduction of the concept of responsible persons in Standard 15: School governance and an updated definition of what not-for-profit means in Standard 17: School must be not-for-profit.
- ✓ Schools must comply with the 2017 Regulations and the Guidelines from 1 July 2018. From this date, all registered schools will be reviewed against the new Minimum Standards and the Guidelines.
- ✓ Due to the substantial changes introduced by the 2017 Regulations, schools must now start to consider the requirements of the Guidelines, determine the impact of the changes on their governance structures and introduce new policies and procedures to ensure compliance by 1 July 2018.
- ✓ Schools must also ensure that their policies and procedures meet the latest guidance released by the VRQA for bushfire and anaphylaxis management.
- ✓ The Minimum Standards will require all school governors, principals and executives to undertake a detailed examination of their requirements and what they mean for their registration policies and procedures.

Refer to our previous School Governance article for more information: [New registration requirements for Victorian schools: Changes reflect NSW governance requirements](#).

2. Background

All non-government schools

Non-government schools in Victoria are required to comply with the Guidelines. The Guidelines are published by the Victorian Registration & Qualifications Authority (VRQA). The release of the latest version of the Guidelines has been timed to coincide with the 2017 Regulations taking effect. The VRQA typically updates the Guidelines in response to legislative reform, as explained in our briefing paper [VRQA Registration Guidelines Update 2016](#). As discussed in that paper, the Guidelines were revised in:

- ✓ 2014 following the introduction of the original MO 706 and Bushfire Management changes; and
- ✓ 2016 following the introduction of MO 870.

Despite the pattern of VRQA updates to the Guidelines, there is understandably always confusion amongst schools in relation to when updated Guidelines take effect and what version of the Regulations and Guidelines they will be assessed against for registration review purposes.

The VRQA [website](#) contains a helpful table outlining for schools which Regulations (2007 or 2017) and which Guidelines (2016 or 2017) they will be assessed against:

Date of review	Regulation	Guidelines
Before 1 July 2018	Education and Training Reform Regulations 2007	Guidelines to the minimum standards 2016
From 1 July 2018	Education and Training Reform Regulations 2017	Guidelines to the minimum standards 2017

The information in the table reflects the transitional arrangements prescribed in the 2017 Regulations.

The CECV and Catholic schools

The situation is slightly different for Catholic schools subject to review by the Catholic Education Commission of Victoria Ltd (CECV). The VRQA has delegated responsibility to the CECV for the ongoing review of the performance of Catholic schools and for ensuring their compliance with the Minimum Standards. The CECV publishes Guidelines to the Minimum Standards for School Registration and Other State and Federal Requirements for Victorian Catholic Schools (CECV Guidelines) to assist Victorian Catholic schools to understand the requirements of the Minimum Standards and the Australian Education Act 2013 (Cth). However, the CECV Guidelines are not published concurrently with the VRQA Guidelines. This means that while Catholic schools are legally affected by any changes to the 2017 Regulations at the same time as non-Catholic schools, they are not assessed against the 2017 Regulations until updated CECV Guidelines have been published.

While the information in this paper is relevant to all non-government schools in Victoria, Catholic schools should be mindful that the paper has been written in response to the combined effect of the 2017 Regulations and Guidelines, not any CECV Guidance on compliance with the 2017 Regulations.

3. An Outline of the Structure and Revision of the Standards and the Guide

In the 2007 Regulations, the Minimum Standards for Registration were located in Schedule 2. Under the 2017 Regulations, they are in Schedule 4. Previously, there were 21 Standards, now there are 22. The new Standard 22 is: *School must be conducted in accordance with the scope of its registration.*

The Guidelines have updated terminology and sections to reflect the 2017 Regulations and updated Minimum Standards. Despite the extensive changes in the 2017 Regulations, it is surprising that the extent of the VRQA's changes to its evidence requirements is minimal. For this reason, schools should also refer to the wording of the 2017 Regulations, including the definitions, to ensure that they have a complete picture of what is needed to achieve compliance.

Although many changes have been made across all the Standards, this paper will discuss the most extensive changes being:

- ✓ Standard 15: School governance;
- ✓ Standard 16: School's philosophy;
- ✓ Standard 17: School must be not-for-profit;
- ✓ Standard 21: Schools must have policies, procedures and suitable arrangements in place; and
- ✓ Standard 22: School must be conducted in accordance with the scope of its registration.

Each of these Standards is discussed below. Please note that the 2017 Regulations identify each Standard in Schedule 4 as a clause, not a Standard, so while our headings identify the Standard, the wording of each section references the clause of Schedule 4.

This paper will also briefly address changes between the 2016 and 2017 Guidelines which relate to child protection.

Standard 15: School Governance

Like its predecessor in Schedule 2 clause 15 of the 2007 Regulations, clause 15 in Schedule 4 of the 2017 Regulations requires that the proprietor must structure the governance of the school to enable:

- ✓ The effective development of the strategic direction of the school; and
- ✓ The effective management of the finances of the school; and
- ✓ The school to fulfil its legal obligations.

(Schedule 4 clause 15(1)).

Aside from this sub-section of the clause, the rest of clause 15 is substantially different from clause 15 of the 2007 Regulations. In particular, the new clause 15(2) which requires in a non-government school, that any responsible person must be a fit and proper person, needs careful consideration by schools:

- (2) In a non-government school, any responsible person must be a fit and proper person who:
- a) is able to carry out the person's responsibilities in relation to the operation of the school in compliance with the laws of the Commonwealth, a State or a Territory relating to the provision of school education; and
 - b) has not been found guilty of an offence which is, or which would if committed in Victoria be, an indictable offence; and
 - c) has not been –
 - i. in the case of an individual, declared bankrupt or taken the benefit of any law for the relief of bankrupt debtors, or compounded with that individual's creditors or assigned property for that individual's benefit; or
 - ii. in the case of a body corporate, an externally-administered body corporate; and
 - d) is not a represented person; and
 - e) is not in breach of any requirements of the Working with Children Act 2005 if required to obtain an assessment notice to carry out any responsibilities in relation to the school; and
 - f) has not been the subject of or associated with an adverse finding or other action taken by a court, tribunal, commission of inquiry, professional discipline body or regulatory authority (in Victoria or elsewhere) where the adverse finding or other action involves dishonest, misleading or deceptive conduct, non-compliance with an obligation relating to the provision of education, or a breach of duty (including disclosure).

The fit and proper person requirement has replaced the good character obligation in the 2007 Regulations. The criteria which must be met under the fit and proper person test are broader than the elements of the good character test. Consequently, those members of a school's governance structure who were previously required to complete a Declaration of Good Character (the proprietor, members of the governing body and principal) will now need to complete the Fit and Proper Person Statutory Declaration (see below).

Who is a responsible person?

Before a school can require its responsible persons to show evidence that they are fit and proper, it must first understand and identify who its responsible persons are.

Under the Regulations a responsible person is defined to mean:

- ✓ if the **proprietor** is an individual, that person; or
- ✓ if the proprietor is a body, each person involved in directing the body; or

- ✓ each person who is conferred responsibility in the school governance structure for managing the school or its finances, including each member of the **governing body** of the school; or
- ✓ the principal of the school; or
- ✓ any other person who by the person's conduct assumes a position of authority over the governance or management of the school.

Proprietor is defined by the 2017 Regulations to mean a person, body or institution who establishes, owns or controls one or more registered schools, and includes the legal entity specified in the school's registration as the proprietor of the school.

Governing body is defined by the 2017 Regulations to mean in relation to a non-government school, the person or body responsible for the governance, conduct or management of the school.

Considering the breadth of some of the criteria in the definition of a responsible person, schools may wish to seek legal advice to determine who, at the school:

- ✓ is conferred responsibility in the school governance structure for managing the school or its finances, including each member of the governing body of the school; or
- ✓ by the person's conduct assumes a position of authority over the governance or management of the school.

The other criteria are clearer.

What evidence is required?

The Guidelines state that a school's compliance with clause 15(2) requires evidence in the form of a completed Fit and Proper Statutory Declaration for each responsible person. The VRQA has published a template Fit and Proper Person Declaration for non-government schools to use to meet the requirements in clause 15(2) available [here](#) on the VRQA website (note that the Guidelines refer to it as the Fit and Proper Statutory Declaration but the VRQA website calls it Fit and Proper Person Declaration). Once a school has identified who its responsible persons are, they must then arrange for them to complete the Fit and Proper Statutory Declaration by **1 July 2018**.

Refer to this School Governance article for more information about the significance of signing a declaration: [Principal attestations & declarations: What are you actually signing?](#) The personal liability associated with signing a statutory declaration may provide greater motivation to schools to ensure that they have a clear understanding of who their responsible persons are and what they must be able to attest to being, in order to govern the school. The penalties for a false declaration include possible jail time for perjury.

Other changes to clause 15

New clauses 15(3) and 15(4) require the principal (15(3)) and the proprietor (15(4)) of a school to notify the VRQA in writing within 30 days of any changes to particulars or information including:

- ✓ the name or contact details of the proprietor, principal or presiding member of the governing body of the school; and
- ✓ the occurrence of a **notifiable disclosure event**.

The Regulations define a **notifiable disclosure event** to mean an event that occurs if a responsible person is made the subject of:

- ✓ an adverse finding or other action by a court, tribunal, professional discipline or regulatory body (in Victoria or elsewhere) regarding the responsible person's dishonesty, misleading or deceptive conduct, non-compliance with a legal obligation relating to the provision of education, or breach of duty; or

- ✓ the commencement of legal or disciplinary proceedings regarding whether the responsible person has engaged in conduct that means the responsible person is not a fit and proper person within the meaning of clause 15(2).

Schools will need to review their reporting procedures to ensure they address all required items in clauses 15(3) and 15(4).

What should schools be doing now?

Although registered schools have until 1 July 2018 to comply with the requirements of clause 15(2), they should not underestimate the work that will be required to:

- ✓ identify who is a responsible person;
- ✓ confirm that the identified responsible persons are fit and proper; and
- ✓ ensure that those responsible persons complete the Fit and Proper Person Declaration.

Understanding who is a responsible person will also assist schools to ensure that their reporting procedures are up to date to meet the requirements of clauses 15(3) and (4), especially the requirement to report the occurrence of a notifiable disclosure event.

Schools may even be presented with a situation where a person who may have met the good character test under the 2007 Regulations may not meet the fit and proper criteria under the 2017 Regulations, meaning governance restructures may be required.

Standard 16: School's philosophy

Although the change to Schedule 4 clause 16 appears minor, its actual implication is unclear. Previously, Schedule 2, clause 16 only required that: a registered school must publish a clear statement of its philosophy. Under Schedule 4, clause 16 the school must now also "be able to demonstrate how the school's philosophy is enacted."

The evidence required by the Guidelines to demonstrate that the school has met clause 16 is unchanged from the previous Guidelines except that now there must be evidence of an outline of where the school has published "this policy" (this wording is confusing, we assume that the VRQA means the philosophy, not a policy).

In practice, it is straightforward for a school to show where it has published its philosophy. It is more ambiguous to demonstrate how it has **enacted** the philosophy. In the absence of any clear guidance from the VRQA on this point, one view of how to demonstrate the enactment of a school's philosophy is to integrate the communication of the philosophy as part of a school's culture. For example, by acknowledging the philosophy in committee meetings, in annual reports, on the school's public website, including the information in enrolment packs, and noting the detail during information evenings.

Standard 17: School must be not-for-profit

Schedule 4, clause 17 requires that a registered school must be a not-for-profit school **and the proprietor of a registered school must have sufficient controls in place to ensure that school property and assets are not distributed or used for the profit or gain of another person or entity**. The second limb of clause 17 is new and there is also a new definition of a not-for-profit school and related definitions such as prohibited agreement or arrangement.

The exception that non-government schools registered before 1 July 2007 may continue to operate for profit remains, meaning that the requirements in Schedule 4, clause 17 don't apply to those schools.

What is the definition of not-for-profit?

Regulation 7(1) states that a not-for-profit school is a school that satisfies all of the following criteria:

- a) the school is not established for the purpose of profit or gain;
- b) the proprietor of the school does not **conduct** the school for the purposes of the proprietor's or any other person's profit or gain;
- c) no part of the profit or gain made in the conduct of the school is or may be distributed to any person or entity;
- d) all money and property received by the school or the proprietor of the school for the conduct of the school are applied solely toward the conduct of the school in accordance with the school's not-for-profit purpose;
- e) the school is not a party to a **prohibited agreement or arrangement**;
- f) the proprietor of the school is not a party to a prohibited agreement or arrangement;
- g) in the case of a non-government school, on the closure of the school, any surplus assets of the school remaining after payment of the school's liabilities are required by the constitution or rules governing the school to be:
 - i. used by the proprietor of the school for requiring education services to children of a compulsory school age or for other not-for-profit purposes; or
 - ii. given to a not-for-profit entity operating within Australia that provides education services to school children or that has similar not-for-profit purposes to the proprietor.

The 2017 Regulations state that a school won't be considered as "being conducted for the purposes of profit or gain" if the school or the proprietor of the school makes a financial surplus in the course of the proper administration of the school.

Conduct is defined by the 2017 Regulations to include: fund-raising activities conducted solely for the school; and the provision of goods and services and other matters or things to students attending the school; and the provision of other educational services that are within the scope of a school's registration.

Prohibited agreement or arrangement is defined by the 2017 Regulations to mean an agreement or arrangement:

- a) made between two or more of the following parties:
 - i. the school;
 - ii. the proprietor of the school;
 - iii. another person or entity; and
- b) where the purpose of the agreement or arrangement:
 - i. is to pay or divert any profit or gain made in the conduct of the school to the proprietor or any other person or entity (other than a payment made in good faith for the provision of goods or services to the school); or
 - ii. involves a **prohibited payment** by the school or the proprietor of the school (as the case requires) to another person or entity and the payment:
 - A. is excessive compared to the reasonable market value of the charges, fees, rates or costs currently prevailing in the community for payment for that purpose (other than a payment made in good faith for that purpose);¹ or
 - B. involves a gift, loan or similar payment for a purpose unconnected to the conduct of the school (other than payments made to a bank in connection with the conduct of the school);² or

¹ **Prohibited payments** under (b)(ii)(A) may include excessive fees or remuneration or other expenses paid to members of the school's governing body, or excessive rents, fees or other charges paid to another person or body.

² **Prohibited payments** under (b)(ii)(B) may include loans, guarantees or indemnities payable for the recipient's own use or benefit. For example, a payment to benefit an enterprise conducted by the payment recipient where that enterprise is unconnected to the conduct of the school.

- C. is otherwise not a payment made in good faith for the benefit of the school, or reasonably required for the conduct of the school.³

Appendix 1 is devoted to the not-for-profit regime under the Regulations however it is not helpful as it essentially repeats the wording in the 2017 Regulations and does not provide any additional guidance.

Declaration of a school's not-for-profit status

Schools must execute a Statutory Declaration of their not-for-profit status (if relevant) as part of the evidence requirements under the Guidelines. The VRQA provides a template Declaration of a School's Not-for-profit Status, available [here](#) on its website. Refer to this School Governance article for more information about the significance of signing a declaration: [Principal attestations & declarations: What are you actually signing?](#)

What are sufficient controls?

Disappointingly, the Guidelines ignore this question in the evidence requirements. Therefore, schools may need to consider other examples of governance guidance to assist their interpretation of what types of "sufficient controls" they could introduce to ensure that school property and assets are not distributed or used for the profit or gain of another person or entity.

For example:

- ✓ the [Not-for-profit Guidelines for Non-Government Schools](#) produced by the NSW Department of Education in September 2016 to assist registered non-government schools to demonstrate compliance with the not-for-profit funding requirements under the Education Act 1990 (NSW); and
- ✓ guidance produced by the Australian Charities and Not-for-profits Commission (ACNC) such as [Managing charity money – a guide for board members on managing finances and meeting ACNC duties](#).
- ✓ appointing truly independent directors as an identified 'best practice' governance measure.

Some of the policies and procedures a school has in place to meet the governance requirements under Schedule 2 clause 15 would also be useful, such as a Conflicts of Interest Policy, a Risk Management Program, a Code of Conduct and a delegations policy and register.

Standard 21: Schools must have policies, procedures and suitable arrangements in place

Schedule 4 Clause 21 of the 2017 Regulations differ from the 2007 Regulations because there is now a second limb to the Clause 21. In addition to the requirement that a registered school must have policies and procedures in place to enable it to comply with the prescribed minimum standards for registration, a registered school must also have "suitable arrangements in place" to enable it to comply with **applicable guidelines** issued by the Authority under section 4.3.8A(1) of the Education and Training Reform Act 2006 (Vic).

Those guidelines can be on matters including:

- ✓ any of the matters in section 4.3.1(6): being the key registration requirements for non-government schools; and
- ✓ the monitoring and conducting of assessments of the financial capabilities of non-government schools.

³ **Prohibited payments** under (b)(ii)(C) may include 'sham' arrangements that have the effect of transferring payments from the school to the recipient for their own purpose or benefit, and which deliver no benefit or service to the school.

The VRQA Guidelines (eg student discipline, anaphylaxis) are available on its website. The [Guidelines for Bushfire Preparedness](#) were updated in June 2017 and schools should ensure that their bushfire management policies and procedures comply with the latest guidance.

Standard 22: School must be conducted in accordance with the scope of its registration

Clause 22 of Schedule 4 is the new addition to the Minimum Standards. Clause 22 requires that a registered school must:

- a) offer only the levels of education in respect of which the school is registered; and
- b) be conducted as the type of school in respect of which it is registered; and
- c) be conducted at the campus or place (excluding school camps or excursions or places outside of Victoria) in respect of which it is registered.

The overall message of this new Standard is clear and should be easy to comply with: don't conduct a school in breach of its registration conditions.

Child Protection

The 2016 Guidelines introduced significant changes to the Minimum Standard addressing the care, safety and welfare of students (now Schedule 4, clause 12). Our 2016 briefing paper explained the changes: [VRQA Registration Guidelines Update 2016](#). In the 2017 Regulations changes related to child protection include:

- ✓ all staff employed at a school must be advised of their obligations under any applicable State or Commonwealth care, safety or welfare laws (Schedule 4, clause 12(1)(b));
- ✓ evidence of compliance with Schedule 4, clause 12 includes policies and procedures with respect to the child safe standards (MO 870); and
- ✓ evidence of compliance with Schedule 4, clause 12 requires policies and procedures with respect to the fact that the school owes a duty to take reasonable precautions to prevent the abuse of a child by an individual associated with the organisation while the child is under the care, supervision or authority of the organisation (from 1 July 2017).

Compliance with the first point can be met by the school conducting training for its staff. On a narrow reading of the requirement, only "employed" staff need the training however schools should also consider their obligations under MO 870 in terms of offering training to volunteers and contractors.

The inclusion of the requirement at the second point formalises concepts introduced in the 2016 Guidelines.

The last point refers to the new reportable conduct scheme which took effect in Victoria on 1 July 2017. Refer to our briefing paper: [Victoria: 2017 Child Protection Update](#). CompliSpace has developed policies and procedures to assist schools to meet their reportable conduct obligations.

4. Next Steps for Schools

All reviews of registered schools will be assessed against the Minimum Standards from 1 July 2018 and the requirements for review will become a condition of registration from this date.

Schools should, as a first step, review the Guidelines in their entirety as this paper only summarises some of the changes from the 2016 Guidelines. Schools should also refer to the wording in the 2017 Regulations as the Guidelines omit certain key definitions.

As a second step, schools should conduct an internal audit of current policies, procedures and work practices and undertake a gap analysis against the obligations set out in the Standards. The outcome of this gap analysis will then determine the work that will need to be undertaken to ensure compliance by 1 July 2018.

The revised Minimum Standards will require all schools to review their current approach to the various governance topics addressed by the Standards and make necessary changes in order to meet the Standards.

5. 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 has developed a detailed Registration Compliance Module that systematically addresses each of the Minimum Standards in the 2017 Regulations and the Guidelines.

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

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