

The Challenges Faced by
Non-Government Schools in
Complying with a Complex
Matrix of Ever-Changing Laws,
Regulations and Regulatory
Guidance

By David Griffiths

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About the Author

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Abstract

It can be said that pressure on the non-government school sector is at an all-time high. With the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) dominating news outlets and legislative and regulatory change coming thick and fast, schools are faced with the almost herculean task of complying with all the obligations that apply to them.

This paper examines the strategic and operational issues that schools are likely to face when trying to meet the challenge of compliance. Luckily, there are tools available to help schools understand how to create a compliance management system to ensure they can meet their compliance obligations.

The new International and Australian Standard AS/ISO 19600:2015: "Compliance Management Systems Guidelines" provides schools with a roadmap and highlights the key elements required to implement a compliance management system.

This paper highlights how creating a compliance management system that is based on the principles of AS/ISO 19600:2015 can deliver many benefits such as a reduction in adverse risks occurring as a result of compliance failures and a decrease in organisational complexity. The paper makes recommendations on how schools can integrate compliance with their risk management systems to help them navigate and comply with the complex matrix of ever-changing laws, regulations and regulatory guidance that exists in Australia.

1. Introduction

Non-government schools in Australia have never operated in a more turbulent time. Every week pressure mounts on schools, whether it be from a Royal Commission, funding reviews or legal and regulatory changes that affect them. It is a simple fact that non-government schools operate in a highly regulated environment. In addition, when you consider the increasing societal expectations placed on non-government schools to provide a quality education and ensure the safety of their students (not to mention their staff, contractors and volunteers), you can start to grasp the pressure they face. Nowhere is this pressure greater than in the realm of compliance.

The Australian Oxford Dictionary defines 'compliance' as '*the act or instance of complying; obedience to a risk or command; or the state or fact of according with or meeting rules or standards*'.¹ But what does compliance really look like when non-government schools are overwhelmed by such a complex matrix of ever-changing laws and regulations? Compliance in the education sector manifests itself in an intricate web of obligations for schools that is in a constant state of flux.

Not only do non-government schools need to comply with a detailed set of industry specific registration requirements against which they are assessed periodically, they are also subject to other legal requirements and regulations, not the least of which include student duty of care and child protection obligations, industrial relations, workplace safety and privacy obligations. The compliance environment in Australian schools can almost be described as being in a permanent state of "white water". Every time you deal with one issue the next one hits you in the face.

Today schools must consider what they need to do to address their increasing compliance obligations, but also, at a strategic level, they must predict the likely impact of future changes and consider how to resource their compliance functions to continue to address their obligations in a sustainable manner.

The new International and Australian standard for compliance, AS/ISO 19600:2015, offers an effective roadmap for non-government schools to follow. However, this is really just the starting point for schools, as a significant amount of commitment from school leaders is required to implement such a program.

Unfortunately, there is no magic panacea for the increasing demands being placed on schools, but the age-old practical solution of throwing a person at each problem and fixing it in isolation results in certain failure as each individual strand of the governance, risk and compliance web is ultimately connected.

All of the mounting pressure, demands and obligations can only be successfully addressed by schools by having an effective mix of governance, risk and compliance policies and program content, technology based systems that can combine policies and procedures together, and, most importantly, a well-led change management process built on a robust values-based culture. And ultimately, the key to any successful compliance system is leadership from the top.

¹ *The Australian Oxford Dictionary* (Oxford University Press, 2nd edition, 2004).

Please note that AS/ISO 19600:2015 was published by Standards Australia in June 2015, and in replacing the former Australian Standard for Compliance AS 3806:2006, AS/ISO 19600:2015 is considered to be the Australian and international benchmark for compliance programs. It is important to note that AS/ISO 19600:2015 does not replicate the structure or content of AS 3806.

With reference to AS/ISO 19600:2015 and the Matrix of Legal and Regulatory Obligations (Appendix 1) this paper examines the complex legislative and regulatory framework being faced by schools and offers guidance to non-government schools as to how to effectively to address the compliance challenge.

2. Mounting Pressure on Schools

It is easy to point blame at the changing expectations of 'society' when trying to pinpoint why schools have become more and more regulated. However the simple fact is that we are living in a time of rapid change and many schools have been slow to react to this change.

Prior to February 2004, the perils of social media were unknown to regulators and were not on a school's list of priorities. The thought that a concept such as social media might have such a significant impact on the operations of a school and the welfare of its students scarcely crossed the minds of school administrators 10 years ago.

Fast forward to today and the impact and risks of social media in schools cannot be overstated. Allegations of inappropriate social media communications between teachers and students, defamation proceedings, cyber bullying cases going to court, and dismissals following unprofessional tweets or posts about schools are reported on a near daily basis in mainstream news publications around the country.²

Today, it is expected that every school in Australia has policies to address the far reaching impacts and potentially negative consequences of social media on its reputation, and the reputation and welfare of its students and staff. Unfortunately many do not have these policies, or if they do, they have often been poorly communicated to staff and key stakeholders such as students and parents.

² See, for example, Michaela Whitbourn, 'The tweet that cost \$105,000', The Sydney Morning Herald – Technology (4 March 2014) <http://www.smh.com.au/technology/technology-news/the-tweet-that-cost-105000-20140304-341kl.html> .

Unfortunately, the blame for mounting compliance pressure on schools cannot be squarely placed on the Mark Zuckerbergs of the world – it’s just not that clean cut. As tough as it may seem to constantly have to keep up with changing technology and related laws and regulations, and to ensure that staff comply with them, compliance is central to the functionality of schools.

The sources of pressure on non-government schools in particular are many and varied but undoubtedly include:

- ✔ increasing pressure from society to deliver services at high standards;
- ✔ an increasing number of ‘first time users’ of non-government schools, being parents who expect to see immediate justification in the standard of services provided in exchange for their fees; and
- ✔ the spotlight cast by the Royal Commission on student duty of care and child protection issues which exist in schools.

Importantly, one cannot forget the ever-changing matrix of legal and regulatory requirements, which continually requires new levels of compliance for schools on issues varying from asbestos management, to attendance, to anaphylactic shock action plans. And they are just some of the topics starting with ‘A’...think about all the relevant topics covered by the other 25 letters of the alphabet!

So with legislation, government inquiries and increasingly active parents (who are becoming more litigious each year) schools cannot help but feel like they are being pulled in all directions. While one approach is to essentially ignore all interests other than a school’s primary function, being to teach and care for students, this approach is likely to end in tears.

Like it or not, addressing compliance is simply part of being in the “business” of education. Failure to ‘comply’ is likely to end in ‘tears’ or more specifically reputational damage and civil claims. As many non-government schools are now painfully aware, as a result of the Royal Commission, failure to ensure the highest standards of governance today, has the potential to significantly impact a school’s reputation in the future.³

3. Legal and Regulatory Framework

Schools operate within the bounds of a multi-faceted legal and regulatory framework as depicted in the diagram below:



³ See, for example ‘Royal Commission: Geelong Grammar wanted to avoid a “scandal” after reports of abuse’, The Geelong Advertiser (2 September 2015) <http://www.geelongadvertiser.com.au/news/crime-court/royal-commission-geelong-grammar-wanted-to-avoid-a-scandal-after-reports-of-abuse/story-fnjuhoxe-1227509044971> .

	(primary source)	(secondary source)		(Judicial interpretation)
General Law	Corporations Act Fair Work Act WHS/OHS/OSH Privacy Tax	Regulator Policies	Regulator Guidelines	Judicial Interpretation of the law includes consideration of Hard, Hybrid and Soft Law.
Industry Specific Law	e.g. Child Protection Laws Education Laws (state based)	e.g. State education regulator non-government school registration requirements	e.g. Regulator guidelines Codes of Ethics Standards: Risk Management - AS/ISO 31000 Compliance – AS/ISO 19600 Complaint Handling – AS 4269 Governance (8000s) Regulator Guidelines	<i>“The role of the court is to articulate and apply a standard of care that reflects contemporary community expectations”</i> Austin J ASIC V Rich (2003) 44 ACSR 341

This structure is then made more complex by the increasing number of industry and school specific laws with which a school must comply.

The primary sources of legal obligations which apply to schools are determined largely by reference to the nature of services provided, the nature and age of their students, their facilities and the activities that a school undertakes. That said, a school does not need to be a large ‘multi-services’ school with overly complex facilities to find itself subject to laws and regulations that concern:

- ✔ early childhood and the National Quality Framework;
- ✔ international students and visas;
- ✔ vocational training and education;
- ✔ food safety;
- ✔ service of alcohol;
- ✔ fundraising and disclosure obligations;
- ✔ boarding and accommodation standards;
- ✔ events management; and/or
- ✔ environmental planning and permits.

And remember, these laws and regulations are in addition to the general law obligations that each and every non-government school has in the areas of:

- ✔ workplace safety;
- ✔ employment relations;
- ✔ privacy;
- ✔ child protection;
- ✔ student duty of care;
- ✔ curriculum; and
- ✔ financial compliance.

Putting aside a school's general law obligations, and services related obligations, let us not forget that non-government schools, in all states bar South Australia⁴, are saddled with an additional layer of compliance in ensuring that they meet, often detailed, non-government schools registration standards. And to make matters more difficult, although re-registration inspections often occur only once every 5 years, the standards in many jurisdictions are changing annually, and compliance is expected to be "continuous".

As mentioned before, non-government schools have a very simple objective: to teach and care for their students. However, it is evident that operating in a very highly regulated environment can make that task daunting and complex. As a case in point let us focus for a moment on the compliance pressure faced by boarding schools.

Boarding schools have been a focus of the recent Royal Commission, and teacher or other employee misconduct or deficient policies have put some schools in the difficult position of having to explain why they lack (or lacked in historical cases) the necessary risk management and compliance frameworks to ensure the safety of their students.

In August 2015, Standards Australia, after much consultation, released the country's first National Boarding Standard AS 5725:2015 (Boarding Standard or AS 5725:2015). The publication of AS 5725:2015 has been viewed by some as a direct result of the pressure exerted on the sector by the Royal Commission. AS 5725:2015 sets out a series of obligations relating to the protection and safety of boarders, their health and wellbeing, and their care and supervision.

While the Boarding Standard does not impose further legal obligations on schools with boarding facilities, it will certainly be in their interest to design and implement policies and procedures which meet that Standard's guidance as an example of 'best practice' and evidence of a solid risk management and compliance framework.

⁴ Non-government schools in South Australia must be registered under the *Education and Early Childhood Services (Registration and Standards) Act 2011* (SA) however, the South Australian Education and Early Childhood Services Registration and Standards Board has not provided guidance, standards or other information regarding how the requirements under that Act should be met.

Although it is unlikely that an external authority will attend a school unannounced and demand to see its compliance documents in relation to AS 5725:2015 any time soon, administrators can be sure that they will be asked to produce those documents if there is ever a major incident, accident or complaint at the school which results in civil litigation. This is where having a strong culture of compliance that is supported by a fully functioning compliance program is so important to protect a school, its students, and staff.

4. A Changing Framework

Just when schools think that they might have all their bases covered when it comes to risk management and compliance, the law changes. This further layer of complexity means that schools must contend with a constant stream of changes, many of which are becoming increasingly prescriptive and which require amendments to existing policies, procedures, training and other compliance tools.

The table set out in **Appendix 1** illustrates this point by providing a snapshot of just some of the legal and regulatory changes that have applied to schools in the last two years only. There is a lot of content and there is also a lot of variation between new laws that apply in each jurisdiction. It is easy for schools to learn that one state or territory is implementing legal changes suggested in a Royal Commission report, but the big question then becomes – how will a change affect them?

To illustrate this challenge, let's use child protection laws as an example. The table in **Appendix 1** shows that Victoria has amended its *Education and Training Reform Act 2006*⁵ (Victorian Education Act). The amendment introduces Australia's first laws requiring schools to implement a 'child safe' environment and to implement a system of responding to allegations of child abuse. Also, the Victorian Government has amended Victoria's *Crimes Act 1958*.⁶ The amendment not only modifies the definition of 'sexual offence' to include grooming offences, but also introduces two new offences that schools need to be aware of in terms of compliance. In Victoria it is now an offence for a person in authority to fail to protect a child from a sexual offence. A person also commits an offence if they are in a position of authority and they have failed to remove or reduce a substantial risk of a child abuse offence. These are serious crimes that are punishable by up to six years' imprisonment.

These legal updates all occurred in the last 12 months and schools are not only required to understand their new obligations, they need to incorporate them into their child protection policies. Those policies must then be updated and teachers and other staff trained on what to do. However, just because the amendments focus on child protection and student duty of care, doesn't mean that they do not affect other policy areas. The Child Safe Schools amendment⁷ to the Victorian *Education Act*, although

⁵ *Education and Training Reform Act 2006* 9 (Vic).

⁶ *Crimes Act 1958* (Vic).

⁷ *Education and Training Reform Amendment (Child Safe Schools) Bill 2015* (Vic).

focused on child protection, also affects the registration standards of non-government schools in Victoria. The change requires schools to meet minimum standards of child protection in order to become registered or successfully re-registered.

Schools are great at teaching and caring for students, in fact, they specialise in it. But as the table in **Appendix 1** shows, they must also understand their legal and regulatory obligations to enable them to deliver their expertise at the highest possible, and legally compliant, standard. The implementation of a compliance management program can help schools to manage those obligations.

5. The Compliance Challenge

The traditional model for addressing compliance is for a school to allocate responsibility to a manager, often the bursar or business manager. In times gone by this practice may have been sufficient.

However, looking at the table in **Appendix 1** and the plethora of laws and regulations that schools have to contend with today, it is clear that this model is broken and that it will not function in today's compliance-laden world.

So how does a school address the compliance challenge today?

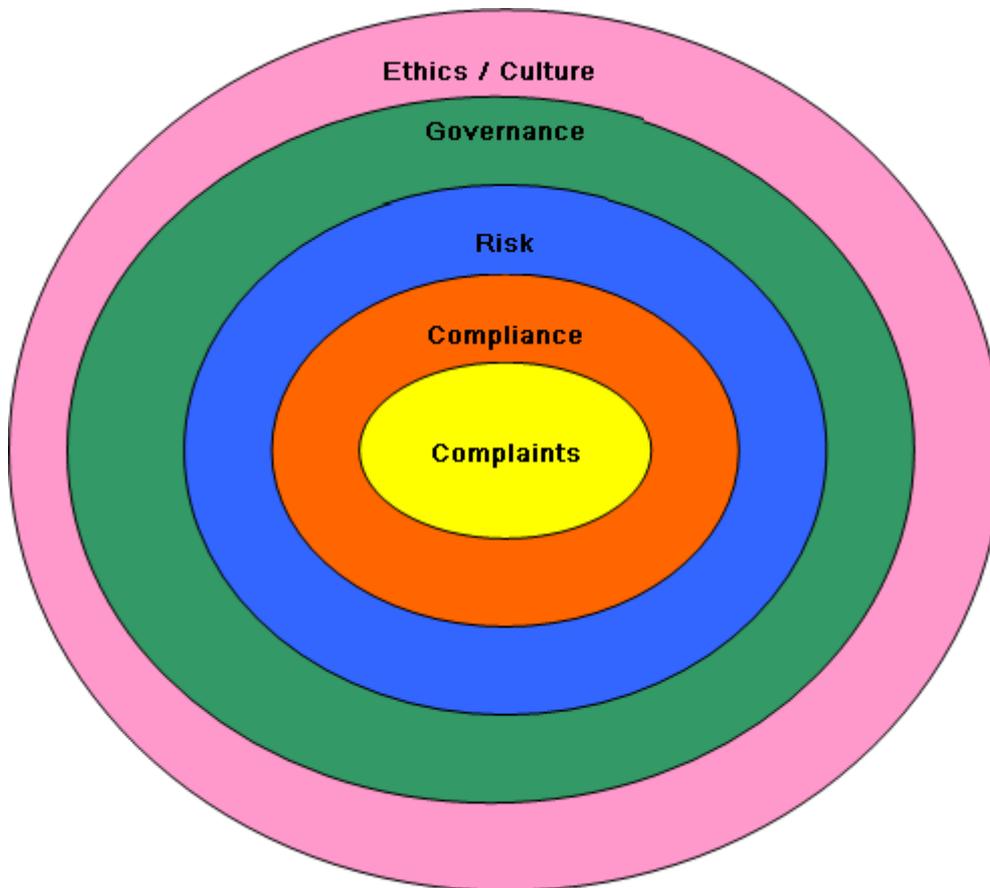
Firstly, there is the 'list every obligation' technique where a school attempts to create an exhaustive list of legal and regulatory requirements and it then gets stuck deciding what to do. This is not a viable option for schools as the list would inevitably include irrelevant laws that may only ever apply in extraordinary circumstances. Further to this, some may not apply to the school at all, or be in a state of flux, making the list ineffective in managing the school's compliance in a meaningful way. In fact, worse still is the fact that in the event of litigation, the only thing such a list is likely to achieve is to prove for a Plaintiff lawyer that the school knew about the obligation, however did nothing to address it.

A better option for schools is to create a list of primary and ancillary legal obligations. A school's primary obligations are those that affect the day-to-day management and operations of the school, whereas its ancillary legal obligations consist of those that arise as a result of a particular event or incident that may occur within the school. A good example of such a list can be found in the Western Australian Registration Guidelines 2014 in Section 12 entitled 'Legal Compliance'.⁸

Secondly, schools need to understand that compliance doesn't work in a vacuum. It crosses all functions and disciplines within a school. The practical functionality of compliance comes from its role as a key component of the 'Governance, Risk and Compliance' trilogy.

⁸ Department of Education Services, Non-government schools, Registration Standards and Requirements 2014 (January 2014), 46 < http://www.des.wa.gov.au/schooleducation/nongovernmentalschools/info-ngs/School_registration/renewal-registration/Documents/2014%20Registration%20Standards%20and%20Requirements.PDF>

To fully understand where the function of compliance sits for schools within its various governance related functions, the diagram below provides a visual representation of the interrelationship between complaints handling, compliance, risk management, governance and ethics/culture.



All of the concepts above are constantly interacting and affecting the nature and role of each other, coming together as a complete governance, risk management and compliance framework. Starting from the centre of the diagram, this paper will now explain how each concept works.

Complaints

A clear and effective complaints handling process is more than just knowing who to file a complaint with. Schools should be encouraging complaints and handling them in a constructive way as they can be excellent 'lead' and 'lag' indicators of risk and compliance issues. This is not to mention that having a complaints management system is a legal and regulatory obligation for most schools and thus part and parcel of compliance, as demonstrated in the diagram.

Compliance

The compliance function provides controls and treatments to mitigate risks. Where a breach does occur it can present new risks that may not have been identified before and need to be integrated up into the risk management program.

Risk

Risk management is a forward looking concept. It is a process that manages the effect of uncertainty on objectives and is therefore inextricably linked to a school's strategy of compliance. Risks cannot be effectively managed without a compliance program and the key to managing compliance obligations effectively is to understand the potential risks of non-compliance in every instance.

Governance

A governance framework encapsulates all of the disciplines mentioned above, and includes practices policies, procedures, principles and values that guide a school every day at all levels. A school's governance function brings together complaints handling policies, compliance and risk management programs as part of a whole governance, risk, compliance and policy (GRC&P) framework. Each part of the GRC&P framework relies on the other parts to ensure a sustainable outcome for schools.

Ethics/Culture

Overarching all of these concepts, including governance as a whole, is the concept of culture. The culture of any organisation is measured not by 'what people do around here', but by 'what they do when nobody is watching'. Without a values-based ethical culture that has a focus on risk management and compliance, good governance is impossible. The lesson for schools is that corporate Australia is littered with examples of companies that have 'crashed and burned' in spectacular fashion because they have failed to develop appropriate cultures to effectively manage risk and ensure compliance.

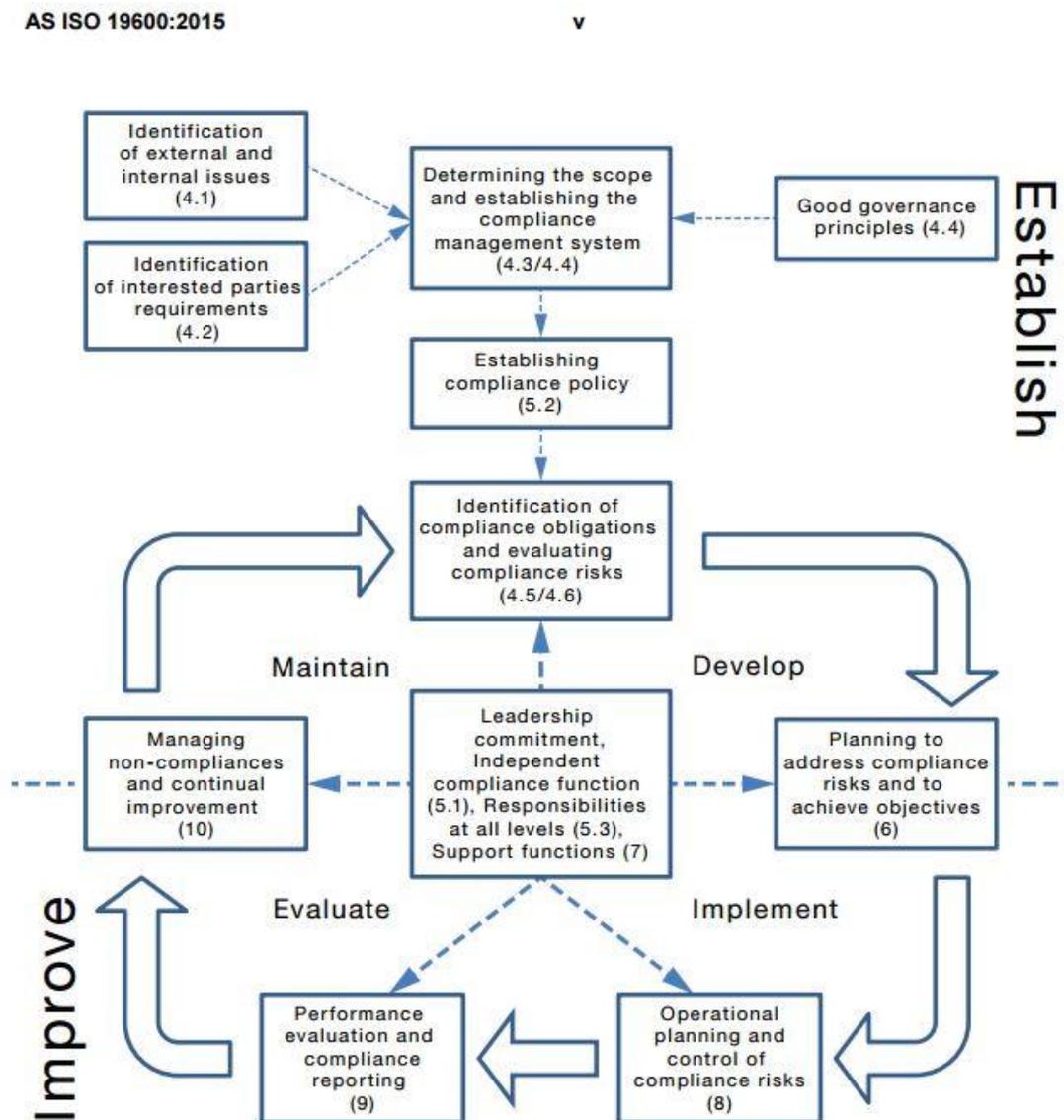
Unfortunately, there is no one-size-fits-all approach that will apply equally to all schools. Each risk and compliance framework must be customised for a school in order to reflect the internal issues that affect it and also the external environment in which it operates. The common denominator for success, however, is that there must be a strong culture of compliance. Creating and maintaining a compliance culture does not happen by accident. Instead it occurs by design and it starts with leadership and commitment from a school's board and executive management team.

6. Addressing the Compliance Challenge

AS/ISO 19600:2015 provides a framework, or 'roadmap', which can assist schools in the implementation of a compliance management system. It is important to remember that standards, while being incredibly useful when building a school's compliance program, are not hard law. That is to say, schools are not legally obligated to adopt them. They do, however, provide excellent guidance in either creating or improving a school's management processes of its compliance obligations.

Use of the AS/ISO 19600:2015 as a basis of a school's compliance framework can act as evidence to any who inquire, including courts, that the school's compliance program is in line with the approved international and Australian benchmark.

AS/ISO 19600:2015 provides this useful flowchart of an effective compliance management system⁹.



The AS/ISO 19600 Standard replaced the former Australian Standard for Compliance AS 3806:2006 which it was based on.

The Standard emphasises compliance as being a concept that should be ‘embedded’ in the culture of an organisation and ‘integrated with an organisation’s governance, financial, risk, environmental and health and safety management processes and its operational requirements and procedures’. In short, compliance affects every part of a school and it is not a responsibility that should become a mere ‘checklist’ function of the organisation.

AS/ISO 19600:2015 extends the principles promoted in AS 3806:2006. The changes include the introduction of a ‘risk based approach to compliance’ which mandates that compliance risk assessment (i.e. the process of identifying and evaluating compliance risks, and implementing appropriate controls)

⁹ AS ISO 19600:2015 Compliance management systems – Guidelines, Figure 1- Flowchart of a compliance management system, v.

constitutes the basis for the implementation of a compliance management system in an organisation. This requirement creates a structural link between the risk management and compliance functions. Strong principles of transparency and effective management reporting (a key to good school governance), as well as the development of a compliance culture reflected in compliance behaviours, are also flagged as essential for compliance by the Standard.

The Standard, in its terms and definitions, describes a management system as '*a set of interrelated or interacting elements of an organisation to establish policies and objectives and processes to achieve those objectives*'. This is the basis of compliance; it is what a school's compliance management system should be built upon¹⁰.

From here, it is then important for schools to identify their compliance obligations in terms of compliance requirements and compliance commitments. Requirements are what the school is obligated to comply with (e.g. legal and regulatory compliance requirements). Its commitments are the requirements it chooses to comply with as a matter of best practice (e.g. organisational compliance requirements).

As mentioned before, a school needs to understand the external and internal issues unique to its environment as they relate to compliance risks. Schools should consider these issues broadly and include aspects such as regulatory, social and cultural contexts, the economic situation and the internal policies, procedures, processes and resources of the school.

AS/ISO 19600:2015 recommends that, after systematically identifying their compliance obligations schools should also have processes in place to identify all the legal and regulatory changes relevant to those compliance obligations. Changes are going to occur after this register of obligations is developed, therefore schools need to be flexible to keep on top of their compliance requirements in reference to changing laws and regulations.

Another key aspect of the Standard is leadership and commitment. A school's governing body, whether it is a council, board or committee, needs to demonstrate leadership and commitment with respect to the school's compliance management system if it is ever going to operate at its full potential. In other words, they need to lead from the top. The ways in which the school's leadership can achieve this include:

- ✔ establishing and upholding the school's core values as they relate to compliance;
- ✔ ensuring that policies, procedures and processes are developed and implemented to achieve compliance objectives;
- ✔ endorsing the school's values, objectives and strategy for compliance;
- ✔ ensuring that the school and its staff have the required resources for the risk and compliance framework and that they are available, allocated and assigned;

¹⁰ Ibid 2.

- ✔ communicating the importance of an effective compliance framework and conforming to compliance requirements; and
- ✔ establishing and maintaining accountability mechanisms including reporting obligations on compliance matters and reporting of non-compliance.

It is, however, not only the responsibility of a governing body in isolation to implement and perpetuate compliance, as it takes the whole school to make compliance work. All staff members have a role to play with respect to the compliance program and while the role will depend on their position within the school, each is as important as the next.

Compliance training, which covers the identification of compliance risks and ensuring the awareness of staff of their obligations, is crucial to a successful compliance program and it requires participation by all parties in order to function correctly.

Taking all aspects of AS/ISO 19600:2015 into account, a compliance management system will only operate successfully if it is built using a risk based approach to compliance. The 'great big list' approach to compliance obligations will lead to certain failure as a school can only determine its compliance requirements by properly understanding its risk profile.

Let's take a school that provides boarding facilities. At one level a school could say that the new national Boarding Standards are not law so there is no need to comply with them. At another level a school may identify the fact that there are significant inherent risks in providing boarding facilities and determine that the most effective way to mitigate this risk is to ensure compliance with the newly published Boarding Standard. There is no "legal obligation", however for many schools "complying" with the standard may take priority over complying with a legal and regulatory obligation a breach of which has less serious consequences.

Not only does the risk-based approach provide schools with a more streamlined and effective compliance framework tailored to its individual facilities, students, activities and services, it also allows schools to focus on the areas unique to them which are potential compliance risks, without being clouded by unnecessary or irrelevant obligations.

The Boarding Standard was published in June this year, and it is available for purchase. Its existence means that it is impossible for a school that provides such facilities to ignore the good governance opportunity that this new standard presents for those who want to improve their compliance culture and ensure that they are meeting the latest benchmark of good compliance in the industry. While an amount of work may be required to review and restructure your school's compliance program to reflect the compliance management system proposed in the Boarding Standard, doing so will ensure that your school maintains a standard of best practice that serves to protect students, staff and the school's reputation.

7. Practical Tips

Firstly, remain calm. If you are unsure about the current state of your school's compliance program, the best advice is to take steps to find out more, and sooner rather than later. Generally regulators don't expect perfect compliance, however, they do expect that schools are able to evidence the fact that have a basic compliance framework in place and they are continually "working towards" improving this framework.

The key for schools is to adopt a balanced approach to risk and compliance implementation. Although panic is not required, schools should also not be complacent. Schools should also remember that the concepts discussed in this paper are not entirely new. The concept of risk management should not be new to schools given that the requirements of their duty to deliver a high level of student duty of care, and workplace safety compliance during excursion planning all require risk assessments to be undertaken. This is only an example of practical risk management. The only difference now is that schools should be enhancing their current risk management systems to represent a culture more than just a description of everyday actions taken to mitigate everyday risks.

If this paper has you ready to launch straight into a new world of compliance, stop and slow down. Getting compliance right requires a vision, a plan and most importantly leadership from the top levels of a school which creates and continually drives a compliance culture. Like all cultural changes this process generally takes years not months or weeks.

Having said this there are some basic steps that need to be taken with some urgency to establish the platform from which this culture can be created. Those steps are:

- **Good policy management.** Good policy management is the key to good compliance. If you can't find your policies, they are generally inaccessible to staff and/or they are out of date, get all your policies together and publish them in a central location which is accessible to staff;
- **Do a policy audit.** As you are getting a list of policies together identify gaps and policies that are out of date. Use basic risk management concepts to identify gaps in high risk areas and seek to fill them;
- **Have a functioning workplace safety system.** By way of example if you don't have a functioning workplace safety system that will stand up to scrutiny in the event of a visit from a local workplace safety regulatory get a basic program into place and then start to build it up over time;
- **Staff training.** Policies are only as good as a school's ability to evidence the fact that the policies have been made available to staff and they have understood them. This is where training comes in. Make sure that you are training high risk areas and most importantly keeping good records that your staff have been trained; and

- **Embrace technology** if you are serious about establishing a robust GRC&P framework. Technology will enable you to publish and maintain your policies, it will enable you to train your staff “on-line”, maintain records, and manage risks, compliance obligations and all those paper forms that most schools suffer with.

Understand that introducing or improving a compliance and risk framework does take time and there is an abundance of guidance available to all schools in AS/ISO 19600:2015 to help. There are also a number of other key standards which can assist schools such as:

- The Australian Risk Management Standard ISO AS/NZ 31000:2009
- The new AS/ISO 19600:2015 Compliance Standard;
- The OHS Management System Standard AS/NZS 4801:2001; and
- The new Boarding Standard for Australian schools AS 5725:2015.

The great thing about standards is that whilst they are not “law” they can act as evidence to any who inquire, including courts, that a school’s governance, risk and compliance programs are properly designed and that a school is being proactive in meeting its obligations.

8. Conclusion

Schools operate in a highly regulated environment; there is no doubt about it. Non-government schools in particular not only have detailed registration requirements against which they are assessed, but they are also subject to a multitude of other legal obligations. Law changes, increased community expectations, reported compliance breaches, child abuse concerns and failed systems of protection have only served to shine a glaring spotlight on schools, throwing numerous enquiries and demands their way. All of these factors have contributed to the issue of compliance becoming increasingly critical for schools.

Fellow CompliSpace Director, James Field, recently commented that ‘many non-government school business managers must feel that they are compliance Olympians, especially those whose schools are subject to multiple regulatory regimes such as those that apply to early childhood education, registered training organisations and international students.’

With all of the obligations and legal changes faced by schools, it may be that many schools may not be able to see the ‘wood from the trees’ when it comes to meeting their compliance requirements amid increasing regulatory pressure and community expectation. Remember though that there are resources such as the new AS/ISO 19600:2015 Compliance Standard that guide the way.

When you distil all the convoluted language from the various laws, regulations and regulatory guidance, you will find that whilst these benchmark compliance and risk management programs may not be explicitly mandated for all schools, it is clear that schools are required to have some form of framework in place for each. A properly functioning compliance management system will ultimately reduce

complexity and provide substantial benefits for a school, its reputation, and the safety and welfare of its students and staff.

APPENDIX 1:

**MATRIX OF LAWS, REGULATIONS & REGULATORY GUIDANCE INTRODUCED
2013-2015 & THEIR IMPACT ON SCHOOLS**

STATE AND TERRITORY	PRIVACY & DATA HANDLING	CHILD PROTECTION & STUDENT DUTY OF CARE	REGO & GOVERNANCE	CYBER SAFETY & BULLYING
ALL	<p>In 2014 the <i>Privacy Amendment (Enhancing Privacy Protection) Act 2012</i> came into effect.</p> <p>This Act amended the <i>Privacy Act 1988</i> to include 13 new Australian Privacy Principles (APPs). The APPs have replaced the “National Privacy Principles” previously in place before 2014.</p> <p>Under the <i>Privacy Act 1988</i>, all schools must comply with the 13 new APPs and the Office of the Australian Information Commissioner (OAIC) has the power to investigate schools and apply for penalties for significant or repeated breaches of the APPs.</p>	<p>In 2013 an amendment to the <i>Sex Discrimination Act 1984</i> (Cth) was implemented. The amendment introduced protection against the discrimination of students on the basis of gender identity.</p> <p>The amended <i>Sex Discrimination Act</i> made it unlawful to discriminate against a person on the basis of sexual orientation, gender identity and/or intersex status.</p> <p>Unless a school is subject to exemptions in that Act (relating to sex, sexual orientation, gender identity, marital or relationship status or pregnancy in connection), the anti-discrimination laws will apply to staff and students.</p>		<p>In 2015 the Commonwealth <i>Enhancing Online Safety for Children Act 2015</i> came into effect. This Act establishes an Australian e-Safety Commissioner whose office provides Australians with a range of up-to-date information and resources; and a comprehensive complaints system for children experiencing serious cyber-bullying.</p> <p>The Office of the e-Safety Commissioner also established a Federal policy on cyber bullying and complaints handling which schools should be aware of.</p>

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		<p>The anti-discrimination laws apply to someone: applying for a job; a new employee who hasn't started work; and throughout the course of a person's employment at a school.</p>		
		<p>In July 2015, Standards Australia published the Australian National Boarding Standard (AS 5735). AS 5725 provides guidance for schools with boarding facilities on how to comply with the national standard for boarder duty of care and boarding staff management.</p>		

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NSW		<p>The <i>Child Protection Legislation Amendment Bill 2015</i> was introduced in June this year. The Bill proposes the introduction of a positive obligation upon employers to verify the status of prospective employees on the Working With Children (WWC) register prior to that employee commencing work.</p> <p>Changes in the information kept on the WWC register are also proposed in the Bill which is not yet law.</p>	<p>In 2012 the Director-General mandated the completion of anaphylaxis e-training for all permanent, temporary and casual employees in schools.</p> <p>This requirement is in addition to the existing training requirements for all schools where a student has been diagnosed as being at risk of anaphylaxis.</p> <p>NSW's <i>Education Act 1990</i> was reviewed in 2014 which prompted amendments to the registration manuals and guides for non-government schools.</p>	

STATE AND TERRITORY	PRIVACY & DATA HANDLING	CHILD PROTECTION & STUDENT DUTY OF CARE	REGO & GOVERNANCE	CYBER SAFETY & BULLYING
			<p>Both the Registered and Accredited Individual Non-government Schools Manual and the Registration System and Member Non-government Schools Manual were amended in May 2014 and again in October 2014.</p> <p>In October 2014 the Manuals were updated again to require non-government schools to have policies and procedures in place for the proper governance of the school.</p> <p>In October 2014 the Manuals were updated again to require non-government schools to have policies and procedures in place for the proper governance of the school.</p>	

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VIC		<p>In 2014 Victoria's <i>Education and Training Reform Amendment (Miscellaneous) Act 2014</i> came into effect in response to the <i>Betrayal of Trust Report</i> from the State Parliament's Inquiry into the Handling of Child Abuse by Religious and Other Organisations.</p> <p>The Amendment Act introduced new requirements which impose a greater reporting and accountability standard for schools.</p> <p>As a result of the Amendment Act:</p> <ul style="list-style-type: none"> the Victorian Registration and Qualifications Authority (VRQA) gained greater oversight over school finances; the way schools are assessed for compliance with registration standards was modified; and the VRQA was given the power to use enforceable undertakings as a means of ensuring compliance. 	<p>2014</p> <p>The Guide to Minimum Standards and Other Requirements for School Registration was revised and amended.</p> <p>New mandatory Vocational Education and Training (VET) activity reporting requirements were introduced. Schools who offer these courses must be compliant with those registration requirements.</p> <p>Ministerial Order 706 imposed more anaphylaxis management obligations on schools in order to comply with registration requirements.</p> <p>The Victorian Government released Guidelines for Registered Schools on Bushfire Preparedness and made compliance with the obligations in this guide a requirement for registration.</p> <p>2015</p>	<p>The <i>Crimes Amendment (Sexual Offences and Other Materials) Act 2014</i> came into effect in 2014 and the legislation includes new 'sexting' laws and offences. It is now a criminal offence in Victoria for a student to intentionally distribute/threaten to distribute an intimate image of another student to a person other than themselves.</p>

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		<p>The Amendment Act also introduced Australia's first laws requiring schools to implement a 'child safe' environment, and to implement a system of responding to allegations of child abuse.</p>	<p><i>The Education and Training Reform Amendment (Child Safe Schools) Act 2015</i> came into effect in 2015 and it has set new minimum standards for child protection measures which schools must comply with.</p> <p><i>The Education and Training Reform Amendment (Funding of Non-Government Schools) Act 2015</i> came into effect and amends Victoria's <i>Education and Training Reform Act 2006</i> to establish a transparent mechanism for State funding of non-government schools.</p>	

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QLD		<p>As a result of the Queensland Child Protection Commission of Inquiry, changes to the Queensland child protection system have been introduced in the past 18 months.</p> <p>The Inquiry, often referred to as the Carmody Inquiry, made a number of suggestions to improve the child protection system in Queensland. In response to the Inquiry, the Queensland Government implemented the recommendations in a number of ways.</p> <p>In particular, the passing of a number new Acts, including the <i>Family and Child Commission Act 2014</i> which promotes the safety and wellbeing of children and young people, and the responsibility of the community to protect and care for them.</p> <p>The <i>Child Protection Reform Amendment Act 2014</i> also commenced in January 2015. This Amendment Act was responsible for implementing a number of the Carmody Inquiry recommendations.</p> <p>As of 19 January 2015, the <i>Child Protection Act 1999</i> was amended to make it mandatory for all teachers who develop a reportable suspicion to submit</p>		

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TAS			<p>Tasmania amended its <i>Education Regulations 2005</i> in 2015 to include the requirement of codes of conduct in school's policies as a condition of registration.</p> <p>As a result of this amendment, the School Registration Board of Tasmania released an updated Schools Registration Board Registration Handbook in June 2015.</p>	
ACT		<p>In 2014, the ACT Office for Children, Youth and Family Support released new guidelines <i>Keeping Children and Young People Safe</i> which assists schools to understand and implement their obligations under the Children and Young People Act 2008.</p>	<p>In June 2015 the ACT Department of Education released new Registration Guidelines for non-government schools. There are numerous minor changes in the new guidelines as well as a new obligation requiring school principals to provide a Statement of Assurance each year declaring that the school is compliant with its obligations (to the best of the principal's knowledge).</p>	

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			<p>The <i>Education Amendment Bill 2015</i> was also introduced into Parliament to remove any references to:</p> <ul style="list-style-type: none"> • non-government Schools Education Council; and • give a new power to the Minister to establish a School education advisory committee as required. <p>In 2014 Western Australia's Department of Education released a new Registration Standard and Requirements for Non-Government Schools manual for schools which includes anaphylaxis as part of a school's Level of Care criterion.</p>	

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WA			<p>The 2014 Registration Standard and Requirements was superseded by a revised 2015 Registration Standard and Requirements for Non-Government Schools Manual.</p> <p>The WA Government also released support documents for school in 2015 to guide schools in complying with the new registration standard.</p> <p>The WA Government introduced a <i>School Education Amendment Act</i> in 2014 and the accompanying <i>School Education Amendment Regulations</i> in 2015.</p> <p>These regulations commenced in February 2015 and as a result, the <i>School Education Act 1999</i> and the <i>School Education Regulations 2000</i> have been updated.</p> <p>The main amendments made to the Act and Regulations mean that now, non-government schools can renew their registration for</p>	

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			one OR five years and from 2016 onwards, schools renewing their registration will be subject to the new Registration Standards and Requirements.	

What is the context for reform?

There have been several key events over the past two years across Australia which have prompted the legislative and regulatory changes described in the Matrix above. Some of those events are ongoing and they may still result in further change. Those events are summarised below.

National Framework for Protecting Australia's Children 2009-2020

This National Framework was endorsed by the Council of Australian Governments (COAG) and was first implemented in 2009. It is a 10-year plan to make child protection everyone's responsibility. The Framework is described by COAG as an 'ambitious, long-term approach to ensuring the safety and wellbeing of Australia's children and aims to deliver a substantial and sustained reduction in the levels of child abuse and neglect over time.'

The Framework's proactive agenda can be seen as a motivation for a great deal of legislative change in the years since its implementation, specifically in the past 24 months.

Queensland's Child Protection Commission of Inquiry Final Report 2013

Queensland introduced numerous pieces of child protection legislation in response to the findings of the Carmody Inquiry. There are more legislative changes and additions to be introduced as the Queensland Government works toward the full implementation of the Child Protection Reform Roadmap set out in the Inquiry's final report. The Inquiry's final report projected that the child protection landscape in Queensland will be considerably different by 2019 at which stage the focus of the regime will be sustainability.

Queensland is currently in Phase 2 of implementation, with a review due again in 2018/19.

Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations

This Victorian inquiry published the *Betrayal of Trust Report* in 2013 which has been the impetus for many of Victoria's legislative changes to their child protection system.

Royal Commission into Institutional Responses into Child Sexual Abuse

The Royal Commission has published a number of final reports on the issues of inquiry that it has investigated over the past two years, not all of which have resulted in reform (to date). These include:

- *Implementation of recommendations arising from previous inquiries of relevance to the Royal Commission into Institutional Responses to Child Sexual Abuse: Final Report 2015*: a report that reveals the overall implementation rates of Commission recommendations from previous inquiries by all both the Commonwealth and States and Territories on various child protection and welfare issues. There were 288 recommendations and 139 have been implemented – many resulting in the legislative change shown above;

- *Working with Children Checks Final Report 2015*: a report that recommends the implementation of a national working with children checks scheme within the next 12 months; and
- *Redress and Civil Litigation Final Report 2015*: a report that recommends a single national redress scheme for survivors of institutional child sexual abuse, or if that is not achievable, a jurisdiction-based scheme that aims to achieve the maximum consistency possible across all States and Territories.

The Commission has published 9 other papers which detail its investigations into past and present child sexual abuse and the policies/procedures that need development to fight it:

The Published Research Papers include research on:

- Sentencing for Child Sexual Abuse in Institutional Contexts;
- Pre-employment screening practices;
- Out-of-home care;
- Contemporary sexual offence and abuse legislation;
- The history of sexual offence and child sexual abuse legislation;
- Mandatory reporting laws for child sexual abuse;
- Child Exploitation Material and Child Sexual Abuse;
- The history of child protection legislation; and
- Institutions providing out-of-home residential care for children.

Ministerial Order 706 – Anaphylaxis in Victorian Schools (2014)

The Ministerial Order caused the updated Guidelines applicable to all Victorian schools to be released; the updated Guidelines require schools to:

- train staff in anaphylaxis management;
- implement prevention strategies to minimise the risk of an anaphylactic reaction;
- have 'backup' EpiPens in first aid kits for general use in an emergency;

- develop an individual Anaphylaxis Management Plan for every student at risk of anaphylaxis developed in consultation with the student's parents/carers and medical practitioner;
- complete an Annual Anaphylaxis Risk Management Checklist; and
- develop a communication plan to raise school community awareness about severe allergies and the School's Anaphylaxis Management Policy.

Senate Inquiries: Victoria

In Victoria, the following Senate inquiries have no doubt prompted a review of the Program for Students with Disabilities, to investigate how schools can best support students with special needs:

- Senate Inquiry into 'Violence, abuse and neglect against people with disability in institutional and residential settings'; and
- Senate Inquiry into 'Current levels of access and attainment for students with disability in the school system'.

Victorian Equal Opportunity and Human Rights Commission paper: *Held Back: The experiences of students with disabilities in Victorian schools*

The Commission's paper included research that revealed the widespread lack of training of teachers and professionals in schools to help them to educate students with special needs in a respectful and effective manner. There were alarming statistics revealed in the research paper involving staff who admitted to physically restraining disabled students in the absence of appropriate training.