



TAS Registration Requirements Update

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

The information in this briefing paper is current as at March 2018.

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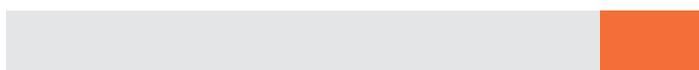


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1. Executive Summary

- ✓ The Education Act 2016 (Tas) (the Act) commenced on 10 July 2017, replacing the previous Education Act 1994 (Tas) and completely restructuring Tasmanian education law, particularly in relation to the registration of non-government schools.
- ✓ The commencement of the Education Regulations 2017 (the Regulations), also on 10 July 2017, established a new system of registration for schools, including for the first time, the ability to register as either an individual non-government school or as a member of a non-government school system.
- ✓ The Schools Registration Board was renamed as the Non-Government Schools Registration Board (the Board).
- ✓ Revised registration standards (the Standards) are set out in Schedules 2-4 of the Regulations with additional requirements for an approved authority of a non-government school system (as defined in the Act).
- ✓ Non-government Schools Registration Board Guidelines for re-registration of **individual** non-government schools were released in January 2018 (2018 Board Guidelines).
- ✓ Guidelines for system schools are yet to be released.
- ✓ There are now 13 Standards, up from 12 Standards in the previous 2017 Board Guidelines.
- ✓ The changes to the Standards and the evidence requirements in the 2018 Board Guidelines require Principals and executives of individual non-government schools to undertake a detailed examination of their internal policies and procedures to determine what steps are needed to ensure compliance with the new registration requirements for Tasmanian non-government schools. System schools can comply with the Standards now, but don't yet have Board Guidelines to assist them with compliance.

Refer to our previous School Governance Articles: [New Tasmanian Education Act and Registration System: The \(Tassie\) Devil is in the detail](#) and [2017: The year of registration change: Is it time for national reform?](#) for more information.

2. Background

Significant changes in Tasmanian education law have contributed to an increasing compliance burden on Tasmanian non-government schools with updates to the registration Standards and the 2018 Board Guidelines, as well as changes to the types of registration for which a non-government school may apply.

The Act commenced on 10 July 2017, and replaced three separate Tasmanian education Acts - the Education Act 1994, the Youth Participation in Education and Training (Guaranteeing Futures) Act 2005 and the Education and Training (Tasmanian Academy) Act 2008. The Act significantly restructured Tasmanian education law, not only consolidating three pieces of legislation into one but also revising the ways in which non-government schools could be registered and increasing the number of Standards required for registration.

The new Standards for non-government school registration are outlined in Schedules 2-4 of the Regulations and commenced on 1 January 2018.

Concurrently with these legislative developments, the Schools Registration Board was renamed as the Non-Government Schools Registration Board (the Board). The Act also established the Office of the Education Registrar (the Registrar), which is now responsible for administering the non-government school's registration process and for the operational aspects of the regulatory process. The Registrar then reports to, and advises, the Board.

The purpose of this briefing paper is to explain these changes and the actions schools should be taking for compliance now as they move towards their registration in 2018.

3. Updates to the Standards and Board Guidelines

Types of Registration: Individual Non-Government School or Non-Government System School

There are now three separate sets of Registration Standards outlined by the Act and the Regulations, covering the following areas:

- ✓ registration of non-government school systems
- ✓ registration of new individual non-government schools, and
- ✓ renewal of registration of individual non-government schools.

Individual schools (both new schools and schools renewing registration) will find that the Standards cover very similar topics to those under the previous Registration Standards, including:

- ✓ the curriculum
- ✓ student learning, assessment and reporting
- ✓ facilities
- ✓ financial resources (previously financial viability)
- ✓ enrolment and attendance
- ✓ governance, and
- ✓ staff.

Numbering Within the Standards

Non-government schools will notice a discrepancy between the numbering of the Standards in the Regulations and the numbering of Standards in the 2018 Board Guidelines. The discrepancy is due to Standard 1 in the Regulations being an Interpretation (of key terms) section. This information has been omitted from the 2018 Board Guidelines, meaning that there are 14 Standards in the Regulations and 13 Standards in the 2018 Board Guidelines. In this paper, CompliSpace has used the numbering of the Standards as referenced in the 2018 Board Guidelines.

Outline of the Structure and Revision of the Standards

The 2018 Board Guidelines are structured under 13 Standards.

The 13 Standards, as referred to in the 2018 Board Guidelines, are:

- ✓ Standard 1: Governance
- ✓ Standard 2: Student Learning
- ✓ Standard 3: Curriculum
- ✓ Standard 4: Assessment and Reporting
- ✓ Standard 5: Student Welfare
- ✓ Standard 6: Financial Resources
- ✓ Standard 7: Staff
- ✓ Standard 8: Facilities and Environment
- ✓ Standard 9: Enrolment and Attendance
- ✓ Standard 10: Number of Students
- ✓ Standard 11: Complaints Management
- ✓ Standard 12: Behaviour Management
- ✓ Standard 13: Compliance with the Law.

The 2017 Board Guidelines were structured using lettered registration obligations from Section 53 of the Education Act 1994 (TAS) whereas the 2018 Board Guidelines are significantly restructured and renumbered. A comparison between the 2017 Board Guidelines and 2018 Board Guidelines has been provided in Chapter 4 of this Briefing Paper.

Key changes to the Standards are outlined in more detail in Chapter 5 of this Briefing Paper, however, they include a substantial addition to the Registration Standards through Standard 5: Student Welfare. To be compliant, a school must have policies covering student welfare, including critical incidents, harassment, bullying, child protection, discrimination, student privacy, student pastoral care and (if applicable) school boarding houses. There is a new definition of a “critical incident” in Standard 5. **Critical incident** now means an incident that poses a present or imminent risk to the life, health, safety or wellbeing of a person or may cause a person to suffer extreme stress or fear.

The requirement for an employee code of conduct has also been expanded by requiring both student and employee behaviour management policies. There are also new expanded Standards for Complaints Management (Standard 11) and a new Standard for Behaviour Management (Standard 12).

There are also changes to Standard 7: Staff, including new requirements for **all** professional staff at the school to have professional development plans consistent with guidelines issued by the Australian Institute for Teaching and School Leadership, rather than just teachers within the school.

System Registration

Under the Act, any group of eight or more registered non-government schools can apply to form a system of non-government schools. The registration of a system of non-government schools is covered by an additional five Standards, in Schedule 2 of the Regulations.

The additional Standards are focused on the obligations of the “approved authority” of a system of schools. In summary, the approved authority must:

- ✓ **Approved authority:** be a fit and proper person and must provide member schools with the processes necessary to allow them to achieve improvement in student learning.
- ✓ **Financial resources:** have a funding model which enables members to meet their own requirements for financial resources.
- ✓ **Record keeping:** have sufficient record keeping processes to know which member schools are compliant with their registration requirements.

4. Standard Comparison

A reference to a 2018 Standard below is a reference to a Standard as numbered in the 2018 Board Guidelines.

2018 Standard Reference	2017 Standard Reference	New requirements	What schools should do
Standard 1: Governance Schedule 4, Clause 2 of the Regulations	Standard 4.8: Governance and Administration and Standard 4.12: Review and Development	<p>Additional evidence is required for Board member selection criteria, school strategic plans, school development plans, improvement plans and annual reports.</p> <p>Financial resources extended to a five year financial plan.</p> <p>Additional possible evidence requirements include a Principal's position description, conflict of interest policies and School Board members as "fit and proper persons".</p>	<p>Schools must be able to demonstrate the capabilities and function of the governing body of a registered individual school including:</p> <ul style="list-style-type: none"> ✓ Board Constitution ✓ Documents showing separation of day to day management and governance ✓ Strategic plan endorsed by the governing body ✓ Development plan ✓ Five year financial plan ✓ Improvement plan ✓ Latest Annual report. <p>Additional possible evidence requirements which the school may be asked to demonstrate include:</p> <ul style="list-style-type: none"> ✓ Principal's position description ✓ Board's performance management protocols in respect of the Principal ✓ Any delegation instruments of the school ✓ Documentation evidencing that Board members are "fit and proper persons" ✓ Policies and procedures applicable to conflicts of interest in decision making.
Standard 2: Student Learning Schedule 4, Clause 3 of the Regulations	Standard 4.5: Kind of Students to Attend a School	<p>Additional evidence requirements to demonstrate the school's education philosophy.</p>	<p>Schools must be able to demonstrate that the education provided by the school is satisfactory for the kinds of students attending the school, has a differentiated learning program and has processes which allow for improvement in student learning.</p> <p>Supporting evidence is very similar but now requires demonstration of the school's education philosophy which guides its teaching and learning.</p>
Standard 3: Curriculum Schedule 4, Clause 4 of the Regulations	Standard 4.1: Curriculum	<p>No new requirements.</p>	<p>Schools must be able to demonstrate they use a learning framework that describes practices and principles to support and enhance learning. Relevant developmentally appropriate learning frameworks for Kindergarten and an</p>

			Australian Curriculum, Assessment and Reporting Authority (ACARA) approved curriculum for all other years.
Standard 4: Assessment and Reporting Schedule 4, Clause 5 of the Regulations	Standard 4.1: Curriculum	No new requirements.	Schools should be able to demonstrate that they have a student assessment policy and a reporting policy that are consistent with the relevant requirements of the Australian Government.
Standard 5: Student Welfare Schedule 4, Clause 6 of the Regulations	New Standard – No equivalent but incorporates Standard 4.11: Code of Conduct (employee)	New Standard requiring student welfare policies including critical incident management, harassment, bullying, child protection, discrimination, student privacy, student pastoral care and (if applicable) school boarding houses.	Schools should be able to demonstrate policies and procedures relating to: <ul style="list-style-type: none"> ✓ Critical incident management and notification ✓ Mandatory reporting ✓ Child safety and child protection ✓ Boarding house guardianship (if applicable) ✓ Student privacy ✓ Bullying, harassment and discrimination ✓ Codes of conduct for staff and students ✓ Pastoral care ✓ First aid ✓ Risk assessment for excursions, camps and trips.
Standard 6: Financial Resources Schedule 4, Clause 7 of the Regulations	Standard 4.7: Financial Viability	New terminology change from Financial Viability to Financial Resources. Evidence requirements remain the same.	Schools must be able to demonstrate their ability to have sufficient financial resources to provide the specified education and learning programs. Schools should ensure their documentation matches the changes in terminology where appropriate.
Standard 7: Staff Schedule 4, Clause 8 of the Regulations	Standard 4.2: Teacher Qualifications	New requirement for all professional staff at the school to have professional development plans consistent with guidelines issued by the Australian Institute for Teaching and School Leadership. New Definition of “professional staff”.	As well as the continuing requirements for staff to comply with relevant Working With Vulnerable People checks, schools should be able to now demonstrate policies and procedures for: <ul style="list-style-type: none"> ✓ Staff induction and re-induction ✓ Performance management ✓ Professional development plans ✓ Professional learning policies.
Standard 8: Facilities and Environment	Standard 4.3: School Facilities	No new requirements.	Schools should be able to demonstrate that buildings, facilities and grounds of the school comply with all relevant laws and the school will provide a physical environment and facilities that are safe and age appropriate, enabling the delivery of the curriculum to students and the delivery of a diverse range of experiences which

			promote learning and development.
Standard 9: Enrolment and Attendance	Standard 4.6: Enrolment and Attendance Procedures	No new requirements.	Schools should be able to demonstrate that their enrolment and attendance procedures comply with all relevant laws, are in written documents in a clear and concise manner and will comply with all Ministerial Instructions relating to the identity of students and their parents.
Standard 10: Number of Students Schedule 4, Clause 11 of the Regulations	Standard 4.4: Minimum Number of Students to Attend the School	New qualification on class sizes that are appropriate to meet the education, social and supervision needs of the students; and that not more than half the students are the children of principal and staff of the school.	Schools should take account of the minor changes required to meet the education, social and supervision needs of students, and be able to provide documentation if requested by the Board to evidence this.
Standard 11: Complaints Management Schedule 4, Clause 12 of the Regulations	Standard 4.10: Grievance Process	New requirements that complaints by staff and parents/guardians; and complaints against the Principal, are processed separately from student complaints.	Schools should have a robust complaints management policy and procedures which take account of internal grievance procedures for staff; external complaints procedures for stakeholders; child friendly complaint processes for students and the processing of complaints against the Principal by another nominated staff member with authority.
Standard 12: Behaviour Management Schedule 4, Clause 13 of the Regulations	New Standard – No equivalent	New Standard which outlines the requirement for a student behaviour management policy which expressly forbids any form of child abuse, corporal punishment or punishment which threatens or humiliates a child.	Schools are required to demonstrate policies and procedures including discipline and consequences of the school's behaviour management, and all documented evidence of consistent, proportionate and fair application of the policies and procedures should be made available to the Board.
Standard 13: Compliance with the Law Schedule 4, Clause 14 of the Regulations	New Standard – No equivalent, however implicit in previous Standards	No new requirements.	Schools are required to demonstrate compliance with all relevant laws.
Standard 14: Likely Impact on Existing Schools (NEW SCHOOLS ONLY) Schedule 3, Clause 15 of the Regulations	Standard 4.9	No new requirements.	Schools are required to demonstrate to the Board that they have sought advice from the relevant administrative authorities responsible for existing schools on the likely impact of the registration of a new school.

5. Major Standard Changes

Governance

Standard 1: Governance is a more detailed version of the previous Standard 4.8 from the 2017 Guidelines. It also combines key elements of Standard 4.12 from the 2017 Guidelines. The general governance requirements relating to having evidence of a constitution etc are still there but Standard 1 introduces the key new “fit and proper person” obligation. There is also a key focus in the 2018 Guidelines on strategic school management for Boards with many of the possible evidence requirements reflecting this change.

The concept of a school development plan is also significantly changed, with the previous requirement of a Development and Improvement Process (a key part of Standard 4.12 in the 2017 Guidelines) now changed to reflect a greater focus on the school’s strategic priorities for development. A school’s annual reporting requirements, once part of Standard 4.12: Review and Development, are now included in Standard 1.

Fit and Proper Person

The 2018 Board Guidelines introduce a new requirement for the governing body or each member of it, and the approved authority of a non-government school system, to all be “fit and proper persons”.

A definition of “fit and proper person” is not available in either the Act or the Regulations, despite being referenced multiple times, however the phrase is a common governance concept and meaning can be found in other state and territory registration guidance.

For example, both SA and WA have guidelines which offer an interpretation of what being a “fit and proper person” means. Generally, being fit and proper means:

- ✓ being of good character
- ✓ having the skills and experience necessary to govern on a school board
- ✓ not have been disqualified by law for a governance role
- ✓ having good prior conduct
- ✓ being able to pass child related employment screening.

NSW and VIC go one step further, and have additional requirements for a “fit and proper person” to include consideration of:

- ✓ debts to any Australian state or territory Government or the Commonwealth Government
- ✓ a record of satisfactory financial management, taking into account bankruptcy, insolvency or association with an organisation placed under external administration
- ✓ convictions or charges including an offence in relation to children, dishonesty or violence
- ✓ deliberate patterns of immoral or unethical behaviour.

In the absence of any guidance from the Board, schools in Tasmania should establish their own understanding as to what it means to be a “fit and proper person” in accordance with the 2018 Standards. Schools may refer to the guidance in other states to do this, but must document their reasoning, policies and processes in order to comply with Standard 1: Governance.

Student Welfare

Previously, employee conduct was a standalone Standard, which has now been combined into a new Standard 5: Student Welfare, with an increased focus on child safety, child protection and student welfare policies and procedures.

While many schools will already have student welfare policies and procedures in place, it is important to note that schools should now be able to demonstrate policies and procedures relating to:

- ✓ Critical incident management and notification
- ✓ Mandatory reporting
- ✓ Child safety and child protection
- ✓ Boarding house guardianship (if applicable)
- ✓ Student privacy
- ✓ Bullying, harassment and discrimination
- ✓ Codes of conduct for staff and students
- ✓ Pastoral care
- ✓ First aid
- ✓ Risk assessment for excursions, camps and trips.

An increased focus on child protection and student safety is also reflected in the 2018 Board Guidelines with compliance with the new requirements to be demonstrated through the comprehensive implementation of a relevant child-safe organisation framework “benchmarked as better practice by a peak body”. The 2018 Board Guidelines don’t provide any details on the identity of the peak body whose framework should be the benchmark for schools.

Child abuse prevention measures should also be under continuous review with evidence requirements in the 2018 Board Guidelines stating that this includes recent recommendations from the Royal Commission and any relevant and authoritative research as it is published. Child protection and student safety should by now be an integral part of a school’s policies and procedures.

Compliance with Ministerial Instructions

As part of the 2018 Board Standards, Standard 9: Enrolment and Attendance requires compliance with all relevant Ministerial instructions relating to evidence of the identity of students and their parents.

There are 15 Ministerial Instructions relating to schools in Tasmania:

- ✓ Ministerial Instruction 1: Enrolment of a School Aged Child or Youth
- ✓ Ministerial Instruction 2: Dual Enrolment of Students with a Disability
- ✓ Ministerial Instruction 3: Part-Time Attendance at School
- ✓ Ministerial Instruction 4: Students Excused from Daily Attendance at School
- ✓ Ministerial Instruction 5: Authorising a Person to Act as an Authorised Person for the Purpose of Sections 40(2) and 40(3)
- ✓ Ministerial Instruction 6: School Student Absences
- ✓ Ministerial Instruction 7: Elimination or Amelioration of Risks to Health and Safety of Persons at School
- ✓ Ministerial Instruction 8: Transition Statement
- ✓ Ministerial Instruction 9: Year 12 Completion Certificate
- ✓ Ministerial Instruction 10: Application for Exemption from Participation in an Approved Learning Program
- ✓ Ministerial Instruction 11: Application for Part Time Attendance at an Approved Learning Program
- ✓ Ministerial Instruction 12: School Associations
- ✓ Ministerial Instruction 13: Home Education
- ✓ Ministerial Instruction 14: Grants to Registered Non-Government Schools
- ✓ Ministerial Instruction 15: Early Entry to School.

Schools should be aware that many of these Ministerial Instructions are relevant to daily school policy and procedures, with a specific focus on meeting Ministerial Instruction 6 and the Education Registrar’s Guidelines for referring a matter to a Compulsory Conciliation Conference.

Complaints

Where a single grievance process was required in the former Standards, the new Standard 11: Complaints requires policies and procedures that:

- ✓ ensure that complaints are addressed fairly, objectively and in a timely manner
- ✓ allow complaints by staff and parents to be processed separately
- ✓ allow for complaints against the Principal to be processed separately.

There is a specific focus in Standard 11 on complaints being welcomed by the school and that complaints handling procedures are accessible to all members of the school community, with complaints being acknowledged promptly with a record of all complaints being kept.

Behaviour Management

A new Standard 12: Behaviour Management has been added to the Standards. Schools must have a student behaviour management policy and that policy must include various elements including:

- ✓ that students receive positive guidance and encouragement towards acceptable behaviour and are given opportunities to interact and develop respectful and positive relationships with each other, staff and volunteers; and
- ✓ expressly forbid any form of child abuse, corporal punishment or punishment which threatens or humiliates a child.

A right to procedural fairness and ensuring a proportionate response are also emphasised as important elements of a behaviour management policy. Schools may also decide to include an additional behaviour management policy relating to staff and adult visitors to the school.

6. What Should Schools be Doing?

Schools should review the Standards and the 2018 Board Guidelines in their entirety.

Schools should then conduct an internal audit of current policies, procedures and work practices and undertake a gap analysis against the variations to their obligations set out in the Standards and 2018 Board Guidelines. The outcome of this gap analysis will determine the adjustments needed to ensure compliance.

Schools that are part of a system of schools will need to wait for the Board to release System Guidelines to assist them to understand the matters the Board will take into account when determining if the schools meet the Standards in Schedules 2 and 4. In the meantime, existing system schools should be aware of their obligations under the Act and the Regulations, and the additional obligation that they must meet all individual school Standards and 2018 Board Guidelines as well as the impending System Guidelines.

7. How CompliSpace Can Help

At CompliSpace we combine governance, risk, compliance and policy management expertise with technology solutions to deliver sustainable governance solutions to non-government schools in every state and territory in Australia. Our team of lawyers and industry experts actively monitor changes to relevant laws and registration standards and deliver a full suite of online policies, procedures and governance programs that enable schools to continuously comply with their legal and regulatory obligations.

CompliSpace has developed a detailed Registration Compliance Module that systematically addresses each of the requirements in the Standards and the Board Guidelines.

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

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

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