

Department of EDUCATION

# Discussion Paper

Review of Part 7 of the *Education Act 2015*:  
Regulation of non-Government schools

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# 1. Introduction

This discussion paper is seeking feedback to identify reform opportunities for Part 7 of the *Education Act 2015* (the Act) which relates to the registration and regulation of all non-government schools in the Northern Territory (NT).

The NT's non-government school sector is growing and vibrant; it consists of schools from a range of educational and/or religious philosophies. The variety of non-government schools in the sector reflects the diversity of the community and aims to cater to the preferences of families for a particular choice of education for their children. Currently, there are 39 non-government schools in the NT comprising of 11 independent schools, three Lutheran schools, seven Christian schools and 18 Catholic systemic schools. Registration provides assurance to parents and the community that a non-government school is expected to meet certain standards for education delivery in the NT.

There is a commitment under section 161 of the Act, to review Part 7 within five years of its commencement in 2016. In conducting this review, there is the opportunity to consider recent developments locally and nationally that impact upon areas within Part 7 of The Act for potential reform.

Feedback from stakeholders to inform the development of draft legislation is being sought before drafting changes to the legislation. Discussion and feedback on other matters that may impact the effectiveness of the legislation, such as resourcing, and operational processes or limitations, is also welcome.

This paper has been prepared for consultation purposes only and any views expressed are not to be taken to represent the views of the NT Government, the Minister for Education, the registrar of non-government schools or the Department of Education (the department).

## 2. Providing your response

The discussion paper is hosted online at [www.haveyoursay.nt.gov.au](http://www.haveyoursay.nt.gov.au).

Stakeholders are invited to provide their response to this discussion paper by **30 September 2021**.

Feedback should focus on the legislative provisions that are being reviewed in the Act and Regulations, through the guiding questions within the discussion paper. However, any other areas of potential reform not identified within the discussion paper are also welcome.

Responses can be as short or informal as an email or letter, or can be a more substantial document. Responses do not have to address all aspects of the discussion paper, and may pertain to only certain topics of interest.

Alternatively, responses may also be sent via mail to:

### Legislation Services

#### Department of Education

GPO Box 4821

Darwin NT 0801

Any submission, feedback or comment received will be treated as a public document unless clearly marked as 'confidential'. In the absence of such a clear indication, the submission, feedback or comment will be treated as non-confidential. Non-confidential submissions, feedback or comments may be made publicly available, including being published on the department's website.

Any submission, feedback or comment may be drawn upon, and quoted from or referred to in reports, which may be made publicly available. Any requests made for access to a confidential submission, feedback or comment will be determined in accordance with the *Information Act 2002*.

## 3. Background

The Act was last amended in 2016. Provisions related to non-government schools were only updated minimally, with the main reform included at that time being the introduction of the registrar. Section 161 of the Act contains a commitment to review Part 7, within five years of commencement, to determine if the underlying policy remains appropriate.

This discussion paper gives effect to the commitment to review Part 7 of the Act by considering areas for improvement and opportunities for reform.

## 4. Objectives

The objectives of the review of Part 7 are to:

- contemporise legislative requirements
- ensure there is comparability with other jurisdictions
- ensure regulation is based on evidence and is responsive to the emerging local and national policy agenda
- enable flexibility in dealing with emerging issues affecting non-government schools that will maintain public confidence in the operation of those schools, which in turn will strengthen the viability of the sector, and foster education choices in the NT
- ensure registration requirements for non-government schools:
  - are supportive
  - give parents confidence
  - provide clarity for administrators on what is expected of them
  - ensure standards are maintained once registered.

Responses to the discussion points within this paper will be considered alongside the objectives of the review.

## 5. Proposed reform areas

In addition to the review objectives, there are six areas identified as a focus for potential reform. These are:

- A. Child safety, wellbeing and behaviour management
- B. Viability and financial reporting
- C. Registration
- D. Assessment and review
- E. Decision-making and review
- F. Complaints and special investigation

## 6. Summary of questions

<b>A. Child safety, wellbeing and behaviour management</b>	
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## A. Child safety, wellbeing and behaviour management

All children in the NT have the right to be safe and supported at school throughout their education journey. It is recognised that child wellbeing is of paramount importance to both the NT Government and the non-government schooling sector.

In this reform area, there are opportunities to:

- enact recommendations from the Royal Commission into Institutional Response to Child Sexual Abuse (the Royal Commission) relating to child safety
- put in place explicit provisions for suspension, exclusion and expulsion practices
- improve information sharing between the sectors to mitigate against the risk of disengagement
- make explicit provision for non-government schools to encourage attendance of students.

### Enact recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse

#### Current situation

Since the Act's last review, the Royal Commission into Institutional Responses to Child Sexual Abuse ('Royal Commission')<sup>1</sup> provided a series of recommendations that relate to child safety. This included the establishment and implementation of 10 national Child Safe Standards (Child Safe Standards).

The 10 Child Safe Standards are:

**Standard 1:** Child safety is embedded in institutional leadership, governance and culture.

**Standard 2:** Children participate in decisions affecting them and are taken seriously.

**Standard 3:** Families and communities are informed and involved.

**Standard 4:** Equity is upheld and diverse needs are taken into account.

**Standard 5:** People working with children are suitable and supported.

**Standard 6:** Processes to respond to complaints of child sexual abuse are child focused.

**Standard 7:** Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training.

**Standard 8:** Physical and online environments minimise the opportunity for abuse to occur.

**Standard 9:** Implementation of the Child Safe Standards is continuously reviewed and improved.

**Standard 10:** Policies and procedures document how the institution is child safe.

In response to the recommendations of the Royal Commission, the Australian Government, in collaboration with state and territories, developed and endorsed

the National Principles for Child Safe Organisations (National Principles)<sup>2</sup>. These National Principles incorporate the Child Safe Standards recommended by the Royal Commission but are extended to cover all forms of child abuse.

The National Principles are:

**National Principles 1:** Child safety and wellbeing is embedded in organisational leadership, governance and culture.

**National Principles 2:** Children and young people are informed about their rights, participate in decisions affecting them and are taken seriously.

**National Principles 3:** Families and communities are informed and involved in promoting child safety and wellbeing.

**National Principles 4:** Equity is upheld and diverse needs respected in policy and practice.

**National Principles 5:** People working with children and young people are suitable and supported to reflect child safety and wellbeing values in practice.

<sup>1</sup>A copy of the Royal Commission's report can be found here: [www.childabuseroyalcommission.gov.au](http://www.childabuseroyalcommission.gov.au)

<sup>2</sup>Further information on the Child Safe Standards can be found here: [National Principles | Child Safe Organisations \(humanrights.gov.au\)](http://NationalPrinciples|ChildSafeOrganisations(humanrights.gov.au))

**National Principles 6:** Processes to respond to complaints and concerns are child focused.

**National Principles 7:** Staff and volunteers are equipped with the knowledge, skills and awareness to keep children and young people safe through ongoing education and training.

**National Principles 8:** Physical and online environments promote safety and wellbeing while minimising the opportunity for children and young people to be harmed.

**National Principles 9:** Implementation of the national child safe principles is regularly reviewed and improved.

**National Principles 10:** Policies and procedures document how the organisation is safe for children and young people.

In the NT's Act, there is no requirement for schools (government or non-government) to adopt the Child Safe Standards or the National Principles for Child Safe Organisations.

## Jurisdictional comparison

Western Australia (WA), as part of the standards required for their Child Abuse Prevention entails a non-government school to implement the National Principles for Child Safe Organisations<sup>2</sup>.

Victoria (VIC) is currently finalising a review of their Child Safe Standards, with new Child Safe Standards to be introduced on 1 July 2022. Currently, organisations in Victoria that provide services to children are required to comply with the standards already in place.

Australian Capital Territory (ACT) Education Regulations states that a non-government school must work with the Minister to implement the recommendations of the Royal Commission.

## Proposal for reform

The Act is amended to include a requirement for all schools, government and non-government, to adopt the Child Safe Standards.

## Benefits of proposal

All schools would be required to adopt consistent practices that promote child safety.

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### Question

**1. Should all non-government schools be required through the Act to adhere to the Child Safe Standards? Should this be applicable to all schools, government and non-government?**

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## Explicit provisions for suspension, exclusion and expulsion of non-government school students

### Current situation

The only direction currently within the Act relating to behaviour management is, as per the registration requirements, that a non-government school must demonstrate it has a policy for disciplining students and that procedural fairness applies.

There is evidence that the application of suspension, exclusion or expulsion can further disadvantage and marginalise children and young people. Acknowledging that, in education, the wellbeing of students is at the heart of all we do, there is an opportunity to consider whether there should be further regulation of how suspension, exclusion or expulsion is applied.

If a child is suspended, excluded or expelled by a non-government school, the department does not currently have visibility of this occurring. This group of students is likely to be some of the most at-risk students and could benefit from wrap-around support from the department where possible to re-engage them back at school successfully, whether that be in the government or non-government schooling sector.

## Jurisdictional comparison

Other jurisdictions have standards relating to suspension and expulsion for government and non-government schools, either in legislation or policy.

For example, the ACT provides specific provisions in its legislation regarding the suspension, transfer or exclusion of students in non-government schools.

This includes:

- a 20-day limit for suspensions
- suspensions, transfer or exclusions must occur on the grounds of persistent non-compliance, violent or disruptive behaviour
- giving the student opportunities to learn while suspended
- notice of the suspension, transfer or exclusion to be provided to the registrar.

## Proposal for reform

The Act could be amended to include provisions relating to suspension, exclusion and expulsion that is specific to non-government schools. Requirements to notify the registrar of non-government schools/ chief executive of suspension, exclusion or expulsion could also be included.

It could also extend offence provisions for parents and independent children who do not comply with a direction by the non-government school to not attend school.

## Benefits of proposal

These amendments would provide greater consistency and expected standards for both government and non-government sectors.

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### Questions

- 2. Should the Act provide standards for suspension, exclusion and expulsion for non-government schools?**
  - 3. Should there be a legislative requirement for non-government schools to notify the registrar/department of a student suspension, exclusion or expulsion?**
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<sup>2</sup>Further information on the Child Safe Standards can be found here: [National Principles | Child Safe Organisations \(humanrights.gov.au\)](#)

## Improve information sharing between the sectors to mitigate against the risk of disengagement

### Current situation

The NT has a highly mobile and transient population and there are a high number of students who move between schools and sectors. This mobility between schools, and sectors, poses a significant risk to ensuring every child is engaged in learning, which is of particular concern for vulnerable and at-risk students.

A review of practices in preparation for a Coroner's inquest in 2020 identified a need for greater information sharing between the sectors to occur in order to best protect and support children.

Engagement officers work directly with children and families to prevent disengagement in both the government and non-government sectors; however, officers rely on referrals from the non-government sector and have limited access to information to support identification of a child at risk who requires intervention and support.

This review also provides an opportunity to determine if and where improvements can be made for more explicit provisions for information sharing or child safety requirements as part of registration requirements. There are no explicit legal provisions that enable the mass exchange of information regarding a school's enrolment and attendance information with a relevant party (i.e. Chief Executive or authorised officer). For example, an authorised person under part 8 of the Act (e.g. engagement officers or compliance officers), regularly work with non-government schools but do not have explicit means to gather regular information to support efforts to ensure children are enrolled and attending non-government school.

### Jurisdictional comparison

Other jurisdictions have additional provisions within their legislation to enable greater information sharing between the

sectors. For example, ACT legislation provides specific provisions for their director-general or an authorised person to request that a non-government school gives information relating to enrolment and attendances of students at the school during a stated period.

### Proposal for reform

The Act could be amended to allow the Chief Executive or an authorised officer to request information from a non-government school principal or a system of schools relating to whole school student enrolment and attendance.

There is also the opportunity to share more information in relation to a student's wellbeing, educational progress and other pertinent data that could allow for greater support from the department for vulnerable students.

### Benefits of proposal

Access to a whole-school or whole-system list of student enrolment and attendances provides useful operational information for Engagement Officers to track and support children and young people to better engage with schooling.

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### Question

*4. Should information sharing provisions be strengthened within the Act to allow the department to better respond to vulnerable students? What should be in and out scope for information sharing?*

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## Explicit provisions for non-government schools to encourage attendance of students

### Current situation

The department recognises that one of the most important issues facing education in the Territory is student engagement in learning. During 2021, the department is

developing an engagement strategy for all children and young people, from birth to Year 12. This includes young people in flexible learning arrangements, non-government schools and early childhood education services.

### Jurisdictional comparison

The ACT has a specific section of legislation relating to procedures to encourage attendance at non-government schools.

These entail that a principal of a non-government school must set up procedures:

- to encourage students to attend school regularly
- to help parents to encourage their children to attend school regularly.

Further, a principal must refer a parent and child to support services to encourage children to attend school regularly.

### Proposal for reform

The Act could include an additional section for non-government schools to encourage school attendance similar to that of ACT's.

### Benefits of proposal

Providing provisions requiring non-government schools to encourage attendance will promote greater consistency and expectations across the schooling system. It recognises the shared responsibility across both sectors to the educational outcomes of all children in the NT.

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### Question

*5. Should the Act be amended to include an additional provision for non-government schools to encourage school attendance?*

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## B. Viability and financial reporting

As a significant recipient of public funds, and in the best interests of its students, it is vital for the government to ensure the non-government schools are both financially viable and sustainable, and that funding is used for the intended purposes.

It is acknowledged that the vast majority of non-government schools have been successfully operating without viability concerns. However, it is recognised that non-government schools operate within the context of a small open economy in the NT which is highly influenced by external factors and conditions. For example, interstate/ international migration flows, defence force movements and the natural resources and commodities market influence population numbers. Many non-government schools are small schools with low enrolments which means that, despite best efforts and good budget management/planning, there may be circumstances where financial difficulties are experienced.

Given this, it is necessary to consider the opportunities for strengthening assurances of financial viability and better enabling early-intervention and support for the sector if required.

In this reform area, there are opportunities to:

- require advice from the non-government school or sector heads where there is a barrier to operations
- extending the scope of the legislation to be inclusive of governing bodies
- strengthen provisions that relate to financial accountability, assistance and recovery.

### Require advice from the school or sector heads where there is a barrier to operations

#### Current situation

The department currently has no means within the Act to understand if there are any barriers to operations for non-government schools. Temporary school closures can occur for a variety of reasons, for example, in the event of an emergency response (flood, fire, cyclone, pandemic etc.), staffing shortages or infrastructure deficiencies (structural issues, power, water etc.).

#### Jurisdictional comparison

In Queensland, for example, notifications are provided to the registrar where there is a school closure.

### Proposal for reform

The Act could include a requirement for a non-government school to advise of barriers to operations and any temporary school closures.

#### Benefits of proposal

Advice of barriers to operation provides an opportunity for the department to support a non-government school, and its students, where possible. Longer term closures could impact a school's viability and, as such, would be useful for engagement with the department to occur early.

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#### Question

*6. Should there be a legislative requirement for a non-government school, or sector, to provide advice on barriers to operations?*

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### Extending the scope of the legislation to be inclusive of governing bodies

#### Current situation

In the NT, there are a range of governance models in operation for non-government schools and the fitness and propriety of all those in a governing body or in charge of the operations of school, should be assessed.

The Act requires the governing bodies of all non-government schools to provide information at the point of registration and assessment. Further to this, the governing body must produce an annual financial statement (section 143) and an annual report (section 144). These provisions focus primarily on information pertaining to an individual school, and do not effectively capture information for the governing body for a system of schools.

An assessor, in conducting routine assessments or special investigations, is also limited in their scope because the Act does not sufficiently recognise the broader governance and varying operating structures of a non-government school that is within a system of schools.

## Jurisdictional comparison

Other jurisdictions have additional requirements relating to governing bodies including:

- the ability to seek additional information in order to determine the suitability of the body administering a school or schools, as well as powers for an assessor to enter places other than a school's premise to obtain information from the school or any person involved in the management or operation of the school.
- notification requirements for identified changes in circumstances (for example, Queensland (QLD) has an offence provision for a failure to notify a change in circumstances including a person ceasing to be a director.

## Proposal for reform

The Act could be updated to better capture the role of the governing body of a school system of schools and clarify application of the act to varying governance and operating models.

## Benefits of proposal

Expanding the Act to encompass the governing body of a non-government school would recognise that:

- schools do not always operate independently
- the viability of a system of schools is relevant to the viability of an individual school.

## Question

*7. Should the Act better recognise the varying models of governance and operation within the non-government sector? For example, the situation that many non-government schools sit within a broader system of schools? Should financial accountability and reporting requirement extend to these bodies?*

## Strengthening the financial division of the Act

### Current situation

Division 6 of the current Act does not acknowledge how funding is administered or the National School Reform Agreement.

The Act as it stands allows for the Chief Executive of the Department of Education to:

- provide government financial assistance or support with any conditions
- withdraw financial assistance or support
- require the governing body to report on its use of any government financial assistance or other support
- recover funding that has been distributed to an entity under the Australian Education Act via the court.

The Act explicitly prohibits government financial assistance to be provided to a non-government school that is operating for profit.

## Jurisdictional comparison

Other jurisdictions have greater detail within equivalent sections of their legislation.

With regard to the acknowledgement of the current national funding arrangements, New South Wales (NSW), VIC and Tasmania (TAS) explicitly reference the national agreements or Commonwealth legislation and the disbursement of funds as per the relevant national agreement.

Other jurisdictions also have additional powers that allow for financial assistance to be suspended, reduced, recovered, withdrawn or conditions imposed for a non-compliant school. This includes where:

- a school or the proprietor has failed to comply with a direction of the relevant authority (NSW, TAS, QLD)
- a school is found to be operating for profit (NSW, QLD)
- a school has been found to be non-compliant in some form with the registration requirements or condition (NSW, TAS, QLD).

With regard to powers to investigate and audit the finances of a non-government school, NSW outlines that the Minister may give a direction to a non-government school to undergo an audit of the financial affairs of the school or proprietor, or any other information relating to the affairs of the school or proprietor.

TAS, VIC and WA legislation contains provisions that the governing body of a non-government school must provide information, or any other relevant records, including financial records to the Minister if requested.

## Proposal for reform

The Act could be amended to:

- detail funding arrangements – for example, the use of a funding agreement
- strengthen registration requirements relating to financial provisions
- provide for debt recovery through additional measures (i.e. suspension, reduction, withdrawal or conditions imposed for a non-compliant school)
- acknowledgement of the national funding agreement with the Commonwealth, including obligations of the Territory to provide financial assistance to non-government schools (funding allocations under the National School Reform Agreement)
- include powers to investigate and audit the finances of a school or governing body/system of schools
- provide greater clarity within legislation of financial reporting requirements.

## Benefits of proposal

Expanding this section of the Act as proposed will ensure greater alignment with other jurisdictions and better reflect current arrangements. It will also ensure explicit powers to recover Commonwealth funding if required. Funding, Commonwealth or NT Government, can be recovered through a variety of means to allow for a flexible approach that is determined on a case by case basis.

Additional powers under this section to enable the audit of the finances of a non-government school, or governing body/system of schools, will mean that action can be taken by the Chief Executive Officer directly.

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### Question

*8. How should the Act be amended to strengthen the financial provisions?*

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## C. Registration

The current registration requirements of non-government schools have not been substantially amended since 2009.

Since 2009, substantive changes have occurred in other jurisdictions across Australia having reviewed their legislation and increased the legislation requirements for non-government schools in response to community expectations. This includes amendments to incorporate nationally agreed undertakings as a result of the Royal Commission, and Coroner inquests. The NT registration requirements, by comparison, are now out of date and in need of amending.

This review provides an opportunity to bring the NT in line with other jurisdictions, and their registration requirements. Equally, there is an opportunity to ensure there are some consistent features of service applicable to all children in the NT, irrespective of where they access their schooling.

In this reform area, there are opportunities to:

- contemporising the registration requirements for a non-government school and shifting the focus to demonstrated evidence of effective implementation
- implementing provisional registration for the first 12 months of operation for a non-government school.

### Contemporising the registration requirements for a non-government school and shifting the focus to demonstrated evidence of effective implementation

#### Current situation

Section 125 sets out the registration requirements for non-government schools. The requirements for operating in the NT cover:

- governance and financial management
- safety (children and staff)
- curriculum standards
- student discipline
- students with a disability
- compulsory school age and age of entry
- complaints management.

The requirements mostly focus on ensuring non-government schools have the expected policies in place.

#### Proposal for reform

On reviewing the scope of registration requirements in other jurisdictions, requirements in relation to the following areas are proposed:

- School governance
- Financial viability
- Staffing and teacher requirements
- Teaching and learning
- Care, safety and welfare of students
- Buildings, facilities and grounds
- Boarding facilities (where applicable)
- Complaints management
- Administration and record keeping

- Students with additional needs
- School improvement.

It is proposed that the language within the Act is more explicit to capture how effectively the registration requirements are operationalised within the non-government school.

Further, it is proposed, in line with other jurisdictions, the registration requirements within the Act are high-level and principles based. Further details around the requirements can be stipulated through regulation and/or policy.

#### Benefits of proposal

Reviewing the elements required for registration will ensure that the Act aligns with current practices and can achieve greater alignment with other jurisdictions.

Shifting the focus of the requirements from evidence of documentation, to demonstration of practice, will also improve the rigour of the registration and regulation of the sector.

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## Questions

9. *How should the existing registration requirements be updated?*
  10. *Should the registration requirements be amended to allow for a greater focus on the effectiveness of how requirements are operationalised?*
  11. *How should the registration requirements be set out within primary legislation, regulation and/or policy?*
- 

## Implementing provisional registration for the first 12 months of operation for a non-government school

### Current situation

For the NT, once a non-government school has been approved for registration, the mechanisms for oversight from the registrar on a school's compliance with its registration requirements are:

- routine assessment (once every 5 years)
- special investigation
- submission of annual financial records and statements and the annual report.

It is recognised that the most challenging time for a new school is in its initial stages of establishment. While there is the ability to impose conditions on registration under section 138, it will not always be the case that challenges experienced in the first year of establishment are foreseeable.

## Jurisdictional comparison

Other jurisdictions have greater ability to support non-government schools in their establishment stage. The ways in which this has been approached in other jurisdictions differs, with two predominant pathways.

### Provisional registration for 12 months

In ACT and NSW, the legislation provides for 12 months provisional registration. Following the first 12 months of provisional registration, full registration can be granted once registration requirements are affirmed.

### Initial assessment of a new registered non-government school

QLD's legislation provides a full registration; however, an initial assessment is to be at least 60 days after, but within 6 months of, registration date.

## Proposal for reform

There are two options proposed:

### Option 1:

- a) All non-government schools would be considered provisional for the first 12 months of registration.
- b) After the first 12 months, an assessor/panel would conduct an assessment to determine if full registration could occur.
- c) If the registrar requires, the registrar could provide full registration with conditions to be satisfied within a specific time period. If there were no elements of concern with regard to compliance, the non-government school could be awarded full registration free of additional conditions.

### Option 2:

- a) All non-government schools would be awarded registration in the first instance.
- b) An initial assessment would be conducted by an assessor (at least 60 days after but within 12 months of registration date).
- c) If the registrar has concerns about compliance of the non-government school, the registrar could place conditions to be satisfied within a specific time period. If there were no elements of concern, the non-government school could be awarded full registration free of additional conditions.

## Benefits of proposal

Either of the two proposed options would provide greater support and guidance to a newly established non-government school with regard to compliance with the registration requirements. This gives a non-government school the opportunity to identify any potential areas of non-compliance for adjustment early to the benefit of the school community more broadly.

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## Question

12. *Should the Act be amended so that greater oversight is afforded, and guidance provided, to new schools in their first 12 months of registration? If so, which option would be the most effective and why?*
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## D. Assessment and review

The review provides an opportunity to consider the effectiveness of current processes relating to the review and assessment of compliance by non-government schools with the Act.

In this reform area, there are opportunities to:

- streamlining the registration and assessment processes
- strengthen the requirements of an assessor
- better recognition of systems of schools within the assessment process.

### Streamlining the registration and assessment processes

#### Current situation

The Act currently has two separate stand-alone processes for the registration assessment and routine assessment of non-government schools.

For assessing a registration, under section 133, the registrar establishes a Registration Assessment Panel. The registrar may invite members from agencies that the registrar considers appropriate and the non-government schooling sector. In practice, however, a panel has been established on a case by case basis to consider one non-government school's application for registration at a time. This has been the preferred approach given that, as a small jurisdiction, applications for a new registration occur infrequently.

For routine assessment, the registrar may appoint one or more assessors under section 146 of the Act. The registrar may establish a panel of nominees for appointment as an assessor.

#### Jurisdictional comparison

All jurisdictions operate differently in terms of how non-government schools are assessed at the point of registration and ongoing. Due to its smaller size, the NT has limitations with regard to how it can operate in comparison with other jurisdictions.

#### Proposal for reform

The registration and routine assessments processes are aligned so that they are, in effect, the same process and can be undertaken by an identified, appropriately skilled and trained, group of persons (an assessment panel) from one established pool.

#### Benefits of proposal

One pool of trained individuals capable of undertaking a review that determines compliance with registration requirements, whether that be at the point of registration or routine assessment, provides greater flexibility than the current Act.

Merging the two processes recognises that common skills and understanding, including strong expertise in registration requirements, is needed for both assessments. Efficiencies can be achieved through this approach whereby there is only training and maintenance of one pool of qualified and capable persons, who will be utilised throughout the processes as reviewers within our registration team/ assessors will be required. There should also be mechanisms to manage any conflicts of interest.

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### Question

- 13. Should the processes for assessment, registration and routine, be combined so that there is one pool of qualified and trained persons? Should this pool be extended to include investigators conducting a special investigation?*
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## Strengthening the training requirements of an assessor

### Current situation

Division 8 covers provisions relating to the establishment and requirements of the assessor.

Under the Act, an assessor's authority relates to conducting routine assessment or special investigations for non-government schools. The scope of authority is determined by conditions specified by the registrar.

There are no provisions that relate specifically to the training of an assessor.

### Jurisdictional comparison

Other states and territories have similar requirements for assessors as the NT under legislation. One identified gap, however, is with regard to training. ACT and QLD require an assessor to have completed relevant training to enable them to effectively assess registration requirements.

### Proposal for reform

The Act or Regulations could be amended to capture the training required by an assessor prior to undertaking assessments and/or investigations.

### Benefits of proposal

The registrar, the non-government sector and the community more broadly would be better assured of a person's capacity in assessing a school's compliance with registration requirements.

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## Question

*14. Should the Act be amended to include training requirements for assessors? Should this also apply to investigators?*

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## Better recognition of system schools within the assessment process

### Current situation

The term "System School" is defined within the Act. However, the application of this term is only utilised in relation to section 146, which relates to the appointment of assessors. This means that, despite these schools having a single body with "overall management, policy and planning responsibilities", there is no appreciation of this differing operating model in the process for routine assessment.

There is an opportunity to streamline routine assessment processes and reduce duplication of efforts across system schools to confirm registration requirements.

### Jurisdictional comparison

Every other jurisdiction recognises system schools or groups of schools in comparative legislation relating to non-government schools.

### Proposal for reform

The Act could be amended to allow for the routine assessment to occur through the governing body for a system school which can confirm those registration requirements that relate to their overall management, policy and planning responsibilities.

## Benefits of proposal

There could be efficiencies for both the body administering a system of schools and the department in allowing for a differentiated assessment of system schools.

The amendment is intended to still maintain a similar level of assurance as to registration requirements, albeit information collected as part of both processes may be collected and reviewed in a more streamlined way through the system for a group of schools.

These reforms would bring the NT in line with other jurisdictions.

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## Question

*15. Should processes for assessment be more flexible to allow for multiple schools to occur concurrently through a school system or school group? Should this principle also be extended to the registration process?*

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## E. Decision-making and review

The non-government sector has a right to natural justice, and procedural fairness for any decision made under the Act which has the potential to adversely affect them.

Therefore, it is proposed that a reform be included for there to be a right of review to the Northern Territory Civil and Administrative Tribunal (NTCAT), which is the NT's main forum for review of government decisions.

### Administrative review to Northern Territory Civil and Administrative Tribunal

#### Current situation

Decisions of the registrar are not subject to review by the Northern Territory Civil and Administrative Tribunal (NTCAT). Currently, the only recourse for applicants is under section 137, which permits the Minister to review a decision by the Registrar.

NTCAT was established in 2014 to provide a centralised system for the review of the merits of decisions by government agencies in the NT. The objectives of NTCAT include:

- being accessible to the public;
- being responsive to parties, especially those with special needs;
- ensuring that proceedings are processed and resolved as quickly as possible;
- keeping costs to parties to a minimum insofar as is just and appropriate;
- using straightforward language and procedures;
- acting with as little formality and technicality as possible; and
- being flexible and adjusting procedures to best fit the circumstances of a particular proceeding.

#### Jurisdictional comparison

VIC, NSW and TAS comparative legislation all contain provisions permitting a person, whose interests are affected by a decision made by the relevant Authority may apply to their equivalent Administrative appeals tribunal for review of the decision.

#### Proposal for reform

The Act could be amended to vest jurisdiction in NTCAT to consider and review the Registrar's decision in refusing an application for the registration of a non-government school, refusing an application for the variation of the registration of a non-government school, a decision to vary, suspend or cancel the registration of a non-government school, as well as any potential review considerations established as a result of the current reform process.

#### Other requirements in reviewing a decision of the Board

The Act could be amended to provide that an application for review must be made in accordance with the NTCAT. This includes that a person must file the application within 28 days, after the person was notified of the decision by the registrar. NTCAT can, however, extend the time allowed for making an application. The application to NTCAT must be accompanied by the prescribed fee.

#### Benefits of proposal

Review through a body like the NTCAT will ensure that a person or organisation dissatisfied with the decision of the Registrar has the opportunity for the decision to be assessed by an independent tribunal against the principles of administrative law. It will ensure greater transparency as to how a decision is reviewed.

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#### Questions

16. *Should the Act be amended to include NTCAT as a recourse available to a decision made by the registrar?*
  17. *Should greater clarity be provided within legislation of the role and duties of the registrar in exercising their powers under the Act?*
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## F. Complaints and special investigation

The registrar has a responsibility to ensure the effective regulation of non-government schools.

This includes ensuring that a complaint process is accessible to all relevant parties, and are handled proportionately and appropriately by the registrar or the non-government school according to the nature of the complaint. Some complaints received may result in suspected non-compliance with the registration requirements, and may require a special investigation.

In this reform area, there are opportunities to:

- require that a non-government school investigates complaints effectively through registration requirements and/or explicit additional provisions within the Act
- clarify the role and responsibility of the registrar to act in response to a complaint
- make explicit the disciplinary action that could occur on the discovery of a breach of registration requirements through a special investigation.

### Require that a non-government school investigates complaints effectively through registration requirements and/or explicit additional provisions within the Act

#### Current situation

Non-government schools are required to have a complaints policy as part of registration requirements. There is no direction with regard to how a complaint is handled within the Act.

#### Jurisdictional comparison

ACT requires the proprietor of a non-government school to not only develop and implement a complaints policy for the school, but must also, as soon as practicable, investigate any complaint about the administration, management

and operation of the school that, in the proprietor's opinion, is not frivolous or vexatious complaint.

Majority of jurisdictions require comprehensive complaint procedures be developed, implemented and shared with relevant parties as part of the registration requirements for a non-government school.

QLD requires that a governing body must have processes for receiving, assessing, investigation and otherwise dealing with complaints made by staff, students or parent/guardian. These must include procedural fairness, and ensure all relevant stakeholders are aware of their existence.

#### Proposal for reform

The Act could be amended to include specific direction to develop and implement a policy, as well as investigating complaints as soon as practicable.

#### Benefits of proposal

Amendment will clarify the expectation that non-government schools will respond to concerns raised by those accessing its services.

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#### Question

*18. Should the Act be amended to include specific requirements on complaint response for non-governments schools and/or the governing body?*

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## Clarify the role and responsibility of the registrar to act in response to a complaint

### Current situation

The Act does not provide any guidance with regard to when and how a complaint will be managed by the registrar.

### Jurisdictional comparison

VIC has specific provision outlining the process the regulator will follow when receiving a complaint. There are also procedures for investigating any complaints by which alleges a school is not complying with the relevant Act.

South Australia (SA) has legislated a complaints procedure which must be followed if a complaint is received by the regulatory authority. This includes referring the complaint to the school in question if it considers the complaint can be dealt with within their established procedures for handling complaints, or will be dealt with by the regulatory authority if complaints are of nature that could constitute non-compliance with registration requirements.

### Proposal for reform

The Act could be amended to provide greater clarity on complaints handling by the registrar. For example, that complaints where a breach of registration requirements are reasonably suspected must be acted upon by the registrar directly.

### Benefits of proposal

Clarity on how complaints are managed and/or escalated for response would be provided to stakeholders.

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## Question

*19. Should the role and responsibility of the registrar in responding to complaints relating to a non-government school be provided within the Act?*

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## Make explicit the disciplinary action that could occur on the discovery of a breach of registration requirements through a special investigation

### Current situation

Although the Act does provide the registrar the ability to vary, suspend or cancel the registration of a non-government school for breach of the registration requirements, the Act provides minimal guidance for addressing concerns identified as a result of a special investigation.

The registrar may respond to an act of non-compliance through conditions on registration, cancellation or suspension of registration. to respond to non-compliance.

### Jurisdictional comparison

SA provides guidance on what matters/ or complaints constitute grounds for disciplinary action. If the Board is satisfied on the balance of probabilities that there is proper cause for disciplinary action against the respondent, the Board may, if the respondent is a registered school, either impose conditions, cancel or suspend the respondent's registration. SA then outlines penalties associated with any registered school that contravenes or fails to comply with a condition imposed by the Board.

## Proposal for reform

The Act could be amended to include penalties for continued non-compliance.

### Benefits of proposal

The amendments will clarify the resulting disciplinary actions that will occur for a breach of the registration requirements for a non-government school.

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## Question

*20. Should the Act be updated to make more explicit the disciplinary action that can result from a special investigation? Should the current disciplinary provisions (variation, suspension or cancellation of registration) be reviewed and penalty units added?*

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## 7. Other

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### Question

21. *Are there any other areas of the Act where you would like to see reform?*

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## 8. Next steps

Upon receipt of submissions on the discussion paper, consideration will be given to the positions of stakeholders and will inform a draft bill for introduction to Parliament.

An additional consultation period will occur based on the draft bill which will provide stakeholders with an additional opportunity to provide comment.

Feedback gathered through this process can also be utilised to improve governance and administrative arrangements more broadly, for example, operational policy and processes that support implementation of the legislation.

## 9. Further Information

For further information about the legislative provisions, please refer to the Act. This link also includes access to the Regulations. (If the link is broken, you can navigate to the Act and Regulations from the NT Legislation Database, available at <https://legislation.nt.gov.au/>).

For further information about non-government schools, please refer to the NT government website, available at: <https://nt.gov.au/learning/primary-and-secondary-students/non-government-schools>.

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