

Report: Review of Part 7 of the Education Act 2015

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Acronyms	Full form
NT	Northern Territory
AISNT	Association of Independent Schools NT
AMSANT	Aboriginal Medical Services Alliance Northern Territory
CE	Chief Executive of the Department of Education
CENT	Catholic Education in the Northern Territory
DTFHC	Department of Territory Families, Housing and Communities
IEU-QNT	Independent Education Union Australia – Queensland and NT
LESNW	Lutheran Education SA, NT and WA
NTCoSS	NT Council of Social Services
NGSMAC	Non-Government Schools Ministerial Advisory Council
NTCAT	Northern Territory Civil and Administrative Tribunal
OCC	The Office of the Children’s Commissioner

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1. Background

The *Education Act 2015 (NT)* (the Act) and the *Education Regulations 2015 (NT)* (the Regulations) “provide for the availability of education in the Northern Territory and in particular to provide for the access of all children and young persons to education programs appropriate to their individual needs and abilities, and for related purposes”.¹ The Act is inclusive of both the government and non-government schooling sectors, with Part 7 of the Act and Part 6 of the Regulations relating to the regulation of non-government schools in the Northern Territory (NT).

In 2015, the Act underwent significant legislative reform; however, limited reforms relating to the regulation of non-government schools occurred at that time, with the main change being the creation of the statutory position of the registrar of non-government schools. The registrar replaced the Chief Executive (CE) as the regulatory authority. The registrar is appointed by, and reports directly to, the Minister for Education and is not subject to the direction of the CE in respect of the performance of their functions.

During consultation on the review of the Act in 2015, a commitment was made to review Part 7 at a later date. This was subsequently formalised within section 161 of the Act.

A report of the outcome of the review must be tabled in the Legislative Assembly within 12 months of the five-year review period. Part 7 of the Act commenced in full on 1 April 2016 and, therefore, this should occur by 1 April 2022.

This report gives effect to section 161 of the Act.

2. Review overview

An internal review of Part 7 of the Act has been conducted in two stages.

In the first stage, the department identified the national and local policy context, undertook a jurisdictional analysis and considered current implementation of Part 7 of the Education Act. The findings from this were utilised to draft a discussion paper that identified areas for potential reform. A copy of the discussion paper is at Appendix A.

In the second stage, the department undertook consultation with stakeholders on the proposals in the discussion paper.

This report summarises all information gathered as part of the review, including consultation feedback. The report makes recommendations for legislative reform, in consideration of the objectives of the review.

3. Review objectives

The objectives of the review 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

¹ <https://legislation.nt.gov.au/Legislation/EDUCATION-ACT-2015>

- 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 assurance
 - provide clarity for administrators on what is expected of them
 - ensure standards are maintained once registered.

4. Proposed reform areas

There were six areas identified as a focus for potential reform within the discussion paper. These were:

- 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.

5. Review context

The NT's non-government schooling sector is flourishing and vibrant; it consists of schools from a range of educational and/or religious philosophies. The variety in the non-government sector reflects the diversity of the community, and caters for the preference of families for a particular style of education for their children. As identified in the [Department of Education's \(the department\) Annual Report 2020-21](#) there are 39 non-government schools in the NT delivering education to 10,593 students across 11 independent schools, three Lutheran schools, seven Christian schools and 18 Catholic schools.

The student profile in the NT is very different from other jurisdictions, because there is a disproportionate number of disadvantaged students in the NT. These students attend both government and non-government schooling sectors. In some communities, the non-government sector provides the only face-to-face education option for families. The NT also has a highly mobile and transient population and there is a high number of students who move between schools and sectors. The complexity of school education service delivery is further compounded by the multidimensional needs of many NT children and students, within and outside the school gate.

It is recognised by the NT Government that engaging with Aboriginal and Torres Strait Islander students, families and communities in the development and implementation of education is the foundation for success. A number of formal and informal mechanisms exist to facilitate engagement with Aboriginal and Torres Strait Islander people, including the NT Government's 10-year commitment to local decision making and through the department's Community Led Schools initiative.

Ensuring that Part 7 of the Act is fit for purpose recognises the role of non-government schooling as an enabler of the broader policy direction in the NT.

6. Consultation approach

On 2 September 2021, the discussion paper was published on the NT Government's online engagement platform: The *HaveYourSay* website. The original consultation period was four weeks, until 30 September 2021. At the request of stakeholders, the period was extended for a further two weeks until 15 October 2021.

During its release, there were a total of 188 visits to the *HaveYourSay* website. The discussion paper was downloaded 95 times by visitors.

The discussion paper was promoted through direct correspondence from the department's CE to over 60 identified stakeholders, which included all principals of non-government schools. Non-government school principals were encouraged to share the discussion paper with their local community and relevant networks.

The department recognises the Non-Government Schools Ministerial Advisory Council as a primary stakeholder in this review and welcomed the opportunity to meet with its members during the consultation period to discuss the reform opportunities in detail.

7. Outcomes of Consultation

7.1. Feedback received

Fourteen written submissions to the discussion paper were received from stakeholders; this included two responses via the *HaveYourSay* website form.

The submissions were received from a range of peak bodies, non-government school representatives, parents and community members.

All of the submissions are publicly available on the department's website.

Face-to-face consultations were held, as requested, with the following stakeholders:

- Northern Territory Principals Association
- Northern Territory Council of Government School Organisations
- Northern Territory Government Department of Territory Families, Housing and Communities
- Australian Government Department of Education, Skills and Employment.

7.2. Summary of consultation feedback and proposed response

Feedback gathered through consultation has been analysed and a summary is provided below for each question from the discussion paper. A recommended response is provided within each section, with a rationale that balances the review's objectives with all inputs to the review.

It should be noted that not all recommendations relate to legislative amendment, if an alternative avenue for pursuing the policy intent of the proposed reforms has been identified.

While every effort has been made to represent feedback correctly within the summaries, it should be noted that, to best understand an individual stakeholder's feedback, their written submissions can be read in full. Written submissions are published online through the department's website. Feedback that was provided by stakeholders verbally has also been considered within the summaries below.

7.2.A Child safety, wellbeing and behaviour management

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?

Respondents were supportive of implementing the National Principles for Child Safe Organisations, with the majority recognising the opportunity for inclusion within legislation and for this to be applicable across all schools, government and non-government.

As highlighted within the submission from the Department of Territory Families, Housing and Communities (DTFHC), the NT is a signatory to the [National Strategy to Prevent and Respond to Child Sexual Abuse 2021-2030](#). This strategy includes a commitment to implement and promote the National Principles.

There were some suggestions around how this reform might be enacted, for example, whether it be included outside Part 7 or within registration requirements.

Recommendation 1: It is recommended that the Act be amended to require all schools in the NT, government and non-government, to adopt the National Principles for Child Safe Organisations.

Rationale:

All respondents supported implementing the National Principles, noting that this reform should be broader than Part 7 and relevant to all schools.

This change is consistent with existing commitments made by government.

Question 2: Should the Act provide standards for suspension, exclusion and expulsion for non-government schools?

Feedback from consultation was largely in support of the introduction of standards; however, there were some mixed views with regard to the level of prescription within legislation.

The Office of the Children's Commissioner (OCC), Aboriginal Medical Services Alliance Northern Territory (AMSANT), NT Council of Social Services (NTCoSS) were all in strong support of standards within legislation. NTCOSS emphasised the importance of the [United Nations Convention on the Rights of the Child](#) and relevance of Article 28 in consideration of this question. Article 28 describes the right of a child to quality education and requires that all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present convention.

Other stakeholders advised that any standards would need to be flexible enough to allow a case-by-case response relevant to the contextual situation. Yirralka Education, the governing body for Mapuru Yirralka College (Yirralka Education), in particular emphasised the need for procedural fairness principles to apply, but advised against overly prescriptive legislation that would not reflect that "*[e]ach individual school has standards and expectations of behaviour and behaviour management established as part of their culture and ethos.*"

AMSANT and OCC emphasised the need for schools to suspend, exclude or expel a student as a position of last resort, and advocated for alternative mediation approaches and restorative practices. The OCC particularly called for the need for "*reasonable adjustments, restorative practise, trauma-informed practices, culturally appropriate practice, and skill building in school suspension.*"

Remote Indigenous Parents Australia (RIPA) emphasised the importance of, "*ensuring that the child, family and community have a voice and can participate in the development of an appropriate culture that includes mutual expectations.*"

Catholic Education in the Northern Territory (CENT) recognised parental responsibilities within this section stating: "*[T]he Act should consider avenues to strengthen parent responsibilities in the proper management of student participation in school*". However, no stakeholder identified that it was necessary to extend offence provisions for parents and independent children who do not comply with a direction by the non-government school to not attend school.

Some respondents raised the relevance of the [2020 Inquiry into Suspension, Exclusion and Expulsion Processes in South Australian Government Schools](#). This inquiry found there to be some excessive use and inconsistent application of suspension, exclusion and expulsion practices within government schools in South Australia. It was recommended that findings from this inquiry be utilised to inform any standards, and that these be made applicable to all schools (government and non-government).

Recommendation 2:

It is recommended that:

- a) further consideration be given to whether the Act should be amended so that suspension, exclusion and expulsion reflect the relevant standards that already exist for government schools within sections 91, 92 and 93 through consultation with non-government sector stakeholders
- b) further consideration be given to implementing principles for suspension that can be applicable to all schools within future amendments of the Act.

Rationale:

In balancing feedback provided with the objectives of the review, it has been recommended that further consideration be given to how suspension, exclusion and expulsions can occur more consistently for both government and non-government schools.

It is noted that there are broader concerns relating to suspension practices across all schools, and the relevant learnings for the NT from inter-state inquiries such as the South Australia's *Inquiry into Suspension, Exclusion and Expulsion processes in South Australian Government Schools*.

As a first stage, it is recommended that further engagement occur with non-government sector stakeholders to understand the local implications better, so that a way to improve consistency in the application of suspensions, exclusions and expulsions can be achieved. This could be achieved through either legislation or policy changes. Consultation on this issue can occur with members of NGSMAC concurrently with drafting.

As a second stage, further investigation and broader consultation on a move to implementing principles for suspension should occur as part of any future amendments to the Act.

Question 3: Should there be a legislative requirement for non-government schools to notify the registrar/department of a student suspension, exclusion or expulsion?

Respondents to this question understood the rationale for greater notification obligations in order to prevent prolonged disengagement from education; however, opinions regarding the threshold for notification varied between stakeholders.

NTCoSS, for example, recommended notification should occur for suspension, exclusion and expulsion. NTCOSS also advocates for, in addition to notification, approval from the department for longer suspensions (more than two suspensions or more than 10 days suspension within a school year).

Others including, Lutheran Education SA, NT and WA (LESNW), Association of Independent Schools NT (AISNT), CENT, Yirralka Education and NT Christian Schools understood the need to notify in the event of an expulsion, but expressed caution with regard to suspension or exclusion.

Recommendation 3: It is recommended that the Act be amended to require that the department, through the Registrar, be immediately notified of any expulsions, with further work to occur with NGSMAc members regarding the application of exclusions.

Rationale:

In line with most feedback, and in order to provide support where possible to minimise the risk of disengagement, the department should be notified in instances of any exclusions and expulsions.

For exclusions, where a student has been charged with an offence punishable by a term of imprisonment of more than two years, conditions can be placed on attendance where there are risks presented to others. It is recognised that this relates to matters being considered by a court, which may mean a student has a prolonged or uncertain length of absence from school. However, a student's education may continue. It may be possible that, where alternative arrangements cannot be made by a school, a student can instead access an alternative education program facilitated through the department.

Due to the temporary nature of suspensions, and the predominant feedback from the non-government sector to the contrary, it was concluded that the provision of this information was not necessary at this time. This is also in light of recommendation 2 which will put in place consistent standards across government and non-government schools. By focusing on information sharing related to exclusions and expulsions only, support from the department may be best directed to where it is most needed.

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 of scope for information sharing?

Views differed between stakeholders with regard to this question. Caution was expressed in response to this question, with stakeholders (LESNW, AISNT, Yirralka Education and NT Christian Schools) outlining the need to adhere to privacy requirements. For example, Yirralka Education in particular stated: "*Mapuru Yirralka College is regularly asked by a range of [department] schools, their principals and Attendance Officers to provide current enrolment details for the entire college, revealing a lack of understanding of privacy regulations or the independence of non-government schools.*"

The CENT supports "*appropriate information sharing across government and non-government schools giving full consideration to the best interest of the child and privacy.*"

AMSANT stated there would need to be "*strict parameters around the governance and custodianship on data pertaining to a child, with a strong rationale for accessing data, together with monitoring and evaluation to ensure that the data is being used in a way that is encouraging or maintaining education engagement.*" AMSANT stated there is an opportunity for a new Aboriginal peak education body to oversight any legislative and policy changes with respect to information sharing.

A number of stakeholders, including AISNT, CENT and NT Christian Schools, noted that there are existing information sharing arrangements already utilised, particularly in relation to children at risk from harm under the [Care and Protection of Children Act 2007 \(NT\)](#).

The OCC believes there would be benefits in a shared database with comprehensive education information to support students as they move between schools, public and private, and interstate boarding schools.

The Independent Education Union Australia – Queensland and NT (IEU-QNT) suggest that there could instead be greater mechanisms for referring vulnerable children for external support. An anonymous respondent identified that information should be shared with health providers, this would ensure earlier support and better outcomes for vulnerable children.

The DTFHC identified that “*the sharing of information for the safety and wellbeing of children should be in line with Part 5.1A of the Care and Protection of Children Act 2007 (NT)*”.

Recommendation 4:

It is recommended that:

- a) the Act be amended to allow the CE 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 data for the purposes of implementing Part 8 of the Act relating to enrolment and attendance enforcement.
- b) further consideration be given to opportunities for information sharing both to and from the government and non-government sectors that adhere to privacy requirements but support the safety and wellbeing of children as an overarching principle.
- c) as occurring through the [NT's Education Engagement Strategy 2022-2031](#), consideration be given to the role of the Aboriginal peak education body by providing advice on how the legislation and policy settings can be utilised to support Aboriginal students across education systems.

Rationale:

A lack of access to enrolment and attendance information at a whole-school level impedes implementation of Part 8 of the Act, which provides for Authorised persons and their enforcement powers in relation to the enrolment and attendance of compulsory school-aged children. Amendments in this regard support the original policy intent of the legislation, and will allow authorised officers to better service and support non-government schools and their students.

Given the diversity of perspectives, and the related amendments currently being considered through the *Care and Protection of Children Act 2007 (NT)*, it is recommended that, separately, further consideration be given to the scope of information sharing provisions within the Act and how they may be strengthened. It is recognised that two-way information sharing between the government and non-government sectors to better support the educational and wellbeing needs of all children in the Northern Territory is important.

To ensure that information exchange is appropriate and culturally responsive, it is advisable for the approach to be further considered by the Aboriginal peak education body.

Stakeholders will have further opportunity to comment on this during consultation on the Exposure Draft of the Amendment Bill.

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

Stakeholders, including the IEUA-QNT, LESNW, Yirralka Education, AMSANT, NT Christian Schools, AISNT and CENT were clear that school engagement is of high priority and concern for the non-government sector, and that all non-government schools already undertake engagement activities to encourage students to

attend school. As such, these stakeholders would be hesitant to support any additional requirements of this nature within the Act.

AISNT stated that this proposed reform was unnecessary as “*non-government schools rely on healthy student enrolments and attendance to survive and all non-government schools encourage student attendance to maintain their economic viability*”.

AMSANT stated that it would be hesitant for this to be included within legislation for non-government schools, without it also being required for government schools.

The OCC also recommended that “*all schools are required to encourage attendance of students by aligning provisions with the [National Mental Health and Wellbeing Strategy for Children and Young People](#), the objectives and indicators within this strategy include useful and practical steps that will generate a shift towards a culture of wellbeing, essential elements to improving student engagement and attendance.*”

IEUA-QNT similarly suggested that appropriate services to locate and support students would be preferential over amendment to the legislation as described.

CENT proposed that the Act may consider avenues for strengthening parent commitments to supporting student attendance; however, such consideration should be applicable to government and non-government schools.

Recommendation 5: It is recommended that no legislative amendment be undertaken to mandate non-government schools to encourage attendance in recognition of efforts to improve attendance occurring through the [NT’s Education Engagement Strategy 2022-2031](#).

Rationale:

It is recognised that the non-government schooling sector in particular did not see the necessity of legislating encouragement, given this is something that schools already do to sustain a vibrant school community and their own economic viability. Supporting schools to locate and access appropriate support services that will enable vulnerable students to be re-engaged with schooling is recognised as being of paramount importance.

It is also noted that the non-government schooling sector is a partner in implementing the *NT Education Engagement Strategy 2022-2031*. Our partnership with the non-government sector to implement this strategy is greatly valued, and integral to improving engagement of all children in the NT.

7.2.B Financial viability and reporting

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

Yirralka Education, NT Christian Schools, AISNT and CENT identified that the term “*barriers to operations*” was unclear, and could therefore be determined in a variety of ways. As such, some stakeholders hesitated to give full support, however, did provide examples or situations which may result in notification to the registrar.

CENT indicated that it would “*not be opposed to notifying the [r]egistrar of identified barriers to operations provided those barriers concern extreme or ongoing circumstances that threaten the long-term viability of a school*”. However, short term barriers to operations or one-off events should remain at the discretion of the school’s determination on how best to proceed, and not reported to the registrar.

NT Christian Schools similarly indicated that it would not support reporting requirements on any short-term operational barriers without further details and greater clarity on the purpose of this but *“recognised any barriers which may impact on the viability of a school need to be reported.”*

LESNW suggested that it would be appropriate for a school to report to the registrar if the school was likely to be closed for a period of 7 days or longer.

IEUA-QNT identified that this provision would be helpful if the *“intention is to connect schools with programs or resources that might help them overcome the identified barriers”* but also identified that depending on how the information is used it could be detrimental. IEUA-QNT proposed that if this was to be legislated, it should be part of the annual self-assessment requirement under section 145 of the Act.

AISNT indicated that *“independent schools already have multiple levels of checks and balances applied to them to ensure their viability. This includes the NT Education Department and Australian Government reporting requirements. These requirements are extensive and thorough”*.

Recommendation 6:

It is recommended that:

- a) any additional reporting requirements relating to closure be guided by similar regulatory regimes, such as those contained within Education and Care Services (National Uniform Legislation) Act 2011 and its regulations.
- b) the Act be amended to include a requirement for a non-government school to notify the registrar when a situation arises which would affect the long-term viability of a non-government school, as prompted through the existing annual self-assessment under section 145.

Rationale:

It is proposed that notification is provided where operations are impeded. Under Regulations (section 175) of the Education and Care Services (National Uniform Legislation Act) 2011, it states that notification should occur for:

- (a) any change to the hours and days of operation of the education and care service;
- (b) any incident that requires the approved provider to close, or reduce the number of children attending, the education and care service for a period.

It is recognised that greater consistency between regulatory regimes will be of benefit and would be a reasonable expectation for providers.

In addition, the ability for government to effectively support the non-government sector, where appropriate, in circumstances where viability concerns emerge, is better enabled if early advice is provided

For any viability concerns specifically, feedback from the IEUA-QNT suggested alignment with existing processes. This proposal has merit as it could be implemented in policy, under existing provisions.

Stakeholders will have further opportunity to consider this approach during consultation of the Exposure Draft of the Amendment Bill.

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 requirements extend to these bodies?

Feedback varied for this reform proposal amongst stakeholders, reflecting the differentiating business models of the non-government schools within the NT.

Yirralka Education, LESNW and AISNT indicated that schools are separately incorporated bodies and that the accountability and reporting obligations should rest with the respective individual school's governance arrangements.

NT Christian Schools and CENT both indicated an interest in financial reporting being extended to the single legal entity responsible for a group of schools. The single legal entity would maintain a consolidated financial report rather than individual school accounts. This could ease the financial reporting burden on the single legal entity.

NT Christian Schools particularly stated that "*[s]hould an amendment eliminate this bureaucratic discrepancy and reduce the red tape for all, that would be welcomed and we imagine beneficial for all involved*".

However, CENT did further state that "*significant reporting on financial performance is already provided and there is no requirement to include reference to varying models of governance and that this was a matter for policy or regulations and not the Act*".

IEUA-QNT supported that, where recurrent government funding is received by a single governing body on behalf of a network of individual schools, the governing body should be accountable for the distribution of that funding, and that this would be appropriate to be held within the Act. Although it was noted that additional resources would likely be required as a result of any changes.

Recommendation 7:

It is recommended that:

- a) the Act's definitions be amended to align with the *Australian Education Act 2013 (Cth)*, recognising the varying models of governance and operation within the non-government sector.**
- b) further consideration during the drafting stage be given to any relevant sections within the Act that could also apply to a governing body.**

Rationale:

Amendments to definitions are recommended in the interest of clarity within the legislation. Further, in recognition that governance models and funding distribution is occurring differently across the non-government sector, any applicability to relevant sections within the Act will be considered during the drafting stage. Stakeholders will have further opportunity to consider this approach within the Exposure Draft of the Amendment Bill.

Separately, recommendation 8 can support the intent of reforms within this section, and limit the need for legislative amendment.

Question 8: How should the Act be amended to strengthen the financial provisions?

Many stakeholders, including AISNT, CENT, Yirralka Education, LESNW and NT Christian Schools, indicated that financial reporting for non-government schools is extensive. Checks and balances are already in place, including an annual [Financial Questionnaire through the Australian Government](#), annual reporting and obligations through the [Australian Securities and Investment Commission](#) and [Australian Charities and Not-for-Profit Commission](#). This is in addition to existing annual reporting requirements under the Education Act 2015. During consultation with the Australian Government, recognition and support was provided for greater harmonisation across all requirements.

Some stakeholders, including NT Christian Schools, Yirralka Education and CENT, provided support for amending the provisions of the Act to include reference to the NT Government's contribution to the non-government sector under [the National School Reform Agreement](#). CENT provided further that *"the non-government sector should have independent access to the Registrar to address issues of funding with the treasury through the Minister and not through DoE acting as intermediary"*.

IEUA-QNT was again very supportive that, where a school is in receipt of government money, there should be appropriate mechanisms, such as audits or funding agreements, in place to ensure funding is being used appropriately. IEUA-QNT also recognised that *"an extension to financial reporting requirements is likely to require an increase in funding/resources"*.

No stakeholders spoke in favour of additional measures relating to debt recovery.

Recommendation 8:**It is recommended that:**

- a) the Act be amended to provide that the CE may enter into funding arrangements for the NT Government's funding contribution through a funding agreement, and the on passing of Australian Government funding.
- b) the amended registration requirements (per recommendation 9) identify opportunities to strengthen financial and governance requirements.
- c) the Act be amended to acknowledge the national funding arrangements through the *Australian Education Act 2013 (Cth)* for all schools.
- d) the department work with the Australian Government to identify any opportunities to harmonise reporting requirements for the non-government schooling sector.

Rationale:

There is no mechanism currently within the legislation describing the way in which funding is administered from the department to the non-government schooling sector. In the interest of separating funding from regulation, it is proposed to clarify that the CE of the department's role as the funder (of NT Government funding) and stipulate the way in which this is disbursed. Non-government school representatives would be able to meet with and discuss their funding arrangements with the Minister; however, the Chief Executive of the Department of Education, would have the authority to enter into bilateral funding agreements with each of the sectors and the independent schools. Further consultation would occur with the non-government sector to establish such an arrangement.

Registration requirements are the subject of a separate section, and related to recommendation 9.

Powers to investigate and audit the finances of a school governing body have been deemed reasonable given the use of public money and are in line with other jurisdictions.

Including a provision within the Act acknowledging the current national funding arrangements would provide clarity on the national funding arrangements of the non-government sector, and help provide context for the NT to enter into bilateral funding agreements with each of the governing body of a non-government school.

In the interest of reducing red tape and administration for the non-government schooling sector, further work should be undertaken with the Australian Government to identify opportunities where reporting requirements can be harmonised. In May 2018, the New South Wales (NSW) Government strengthened the accountability requirements for non-government schools as a direct response to the NSW Auditor-General's report [Grants to non-government schools](#). The audit made recommendations to strengthen the ways funding was administered to non-government schools to improve oversight of public funds. A similar audit in 2016 in Victoria found that there was *“limited assurance that grants to non-government schools are used for their intended purpose or are achieving intended outcomes. This is primarily due to weaknesses in funding agreements and DET’s ineffective grants management, including limited oversight of grant recipients and their use of grants, as well as inadequate monitoring and reporting.”*

7.2.C Registration

Question 9: How should the existing registration requirements be updated?

Clarification was sought by some stakeholders as to the need to update the registration requirements. However, CENT, NT Christian Schools and IEUA-QNT were broadly supportive of the proposed registration requirements as outlined within the discussion paper. NT Christian Schools, LESNW, Yirralka Education opposed the inclusion of a “school improvement” component to the registration requirements.

LESNW, Yirralka Education, and NT Christian Schools endorse the position that any update to the registration requirements should be related to high order principles and policies, not operational procedures and processes, with NT Christian Schools adding *further details around the requirements can be stipulated through regulation and/or policy*. In contrast, IEUA-QNT identified *a shift in emphasis from documentation of policy to demonstration of practice* is appropriate.

LESNW referenced the [South Australian Education Standards](#) which provide a very helpful framework for consideration.

Several stakeholders including CENT, AISNT, NT Christian Schools and Yirralka Education all expressed that the registrar should be an independent body, whom sits outside of the department that ideally would be a [Ministerial appointment](#) so as to address any potential conflicts of interest.

The Professional Teachers Association of the Northern Territory noted that several elements of the proposed reforms could benefit from teachers and school leaders engaging in ongoing professional learning, and *“that newly registered schools could benefit from close engagement with professional teaching associations to assist them in meeting their requirements of registration as well as ensuring ongoing success in meeting the needs of students”*.

One anonymous respondent stated that accountability for ongoing compliance with registration requirements should be considered. Currently the Act, has limited powers for the registrar to act on complaints.

Recommendation 9:

It is recommended that:

- a) the registration requirements be amended and move towards a standards-based approach, similar to South Australia i.e.:

Standard 1 - School Governance	The school is accountable for its safe, legal and financially viable operation and has corporate governance arrangements in place to lead this.
Standard 2 – Student Learning and Assessment	The school has curricula, teaching and performance policies and practices and staffing in place to effectively deliver education services for each stage of schooling and monitors its educational achievement.
Standard 3 – Student Safety, Health and Wellbeing	The school provides a safe, healthy and supportive learning environment that protects the well-being of students.

- b) adherence to these standards must be demonstrated during registration, routine assessment, special investigation processes and annual self-assessments.

Rationale:

The current registration requirements should be contemporised and sufficiently high-level to capture the breadth of service delivery for a non-government school. Shifting the focus of the requirements from evidence of documentation, to demonstration of practice through standards, will improve the rigour of the registration and regulation of the sector and is consistent with other jurisdictions. It is noted that changes to registration requirements should be supported with greater prescription through regulation and/or policy, which can provide clarity for the sector to support implementation and compliance.

Question 10: Should the registration requirements be amended to allow for a greater focus on the effectiveness of how requirements are operationalised?

Respondents expressed a view that registration requirements should not be subjective, which a move towards effectiveness would be. Instead, suggestions were provided, such as “*establishing principles of effectiveness may be more helpful*” (CENT). Stakeholders made clear that if any issues were identified in relation to registration requirements adherence, reasonable time should be provided in order for the school to be able to rectify.

IEUA-QNT stated that, whilst they did support a more comprehensive assessment of school operations, the requirement for schools to have and maintain policy documents should not be diminished as policy documentation provides an important point-of-reference when breaches of policy occur. IEUA-QNT also suggested that any assessment of effectiveness would need to occur alongside additional training for assessors/investigators.

One anonymous respondent stated that the current registration requirements are problematic as they do not prescribe enough detail with regards to the health, safety and wellbeing of staff and students, for example, the teaching of protective behaviours is not considered.

Recommendation 10: It is recommended that greater consideration be provided with regard to how registration requirements are operationalised effectively through regulation, policy or funding agreement with a focus on providing greater clarity and examples to the non-government sector.

Rationale:

Concerns around subjectivity of registration requirements are noted. It is recognised that the current legislative and policy framework relating to a non-government school’s regulation can be strengthened to provide greater clarity to the sector on requirements.

It is important that the approach taken represents a shift towards building a culture of reflection and continuous improvement, rather than punishment for non-compliance.

Any changes to registration requirements will require additional training and capacity building for assessors/investigators.

Question 11: How should the registration requirements be set out within primary legislation, regulation and/or policy?

There was a general theme within the feedback that supported higher-level principles within legislation, and greater detail within policy.

IEUA-QNT identified that any *“introduction of new processes by which compliance with registration requirements is evaluated will take time, and the processes themselves may pass through several iterations before they work effectively and efficiently. It would therefore be appropriate for the changes to be set out in regulation or policy in the first instance.”*

Yirralka Education, NT Christian Schools and CENT related this section to the subject of independence of the registrar of non-government schools. It is believed that, to effectively regulate and assess compliance of registration requirements, the independence of the registrar is vital.

Recommendation 11:

In addition to related recommendations 9(a) and 10, it is recommended that consideration be given to:

- a) the development of shared standards for government and non-government schools, and any registration or regulation requirements, in future amendments to the Act
- b) whether the Minister should establish an education advisory council that is broader in remit, i.e. for government and non-government schools, under Part 2, Section 19 of the Act to support the progression and implementation of recommendation 11(a).

Rationale:

It is important that an effective balance is achieved so that there is flexibility for non-government schools in the way they operate, but while also ensuring there are appropriate assurances for the public on the quality of an education service. As per the rationale for recommendations 9 and 10, a move towards higher-level principles within the legislation, concurrently with greater documentation within standards set out in regulation and/or policy, should occur to provide greater clarity to the non-government schooling sector on the expectations of the sector. Further opportunities for stakeholders to comment on how this is structured within legislation will occur when there is an Exposure Draft for the Amendment Bill.

It was also noted that each jurisdiction is using education standards differently, and in some instances, these are applicable to all schools, including government. As such, this recommendation seeks to consider the scope of the standards in future amendments to the Act. Other states and territories also have advisory bodies equivalent to the Non Government Schools Ministerial Advisory Council, but extending to both government and non-government schools. Victoria, for example, has a School Policy and Funding Advisory Council which provides advice to the Minister for Education on regulatory, policy and funding issues that affect both government and non-government schools. The establishment of an advisory council, utilising existing powers under the Act, could support the development of shared education standards. Further consideration would also need to be given as to whether NGSMAC would also continue in its current form should a new council be established which has the remit of all education in the Northern Territory. Consultation with stakeholders would occur to design the advisory council, including its membership and terms of reference.

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?

Stakeholders most predominantly responded in support of option 2, which, as set out in the discussion paper, would provide a non-government school with full registration but would see the initial assessment occurring within 12 months. Stakeholders had varying views as to the length of time that should pass before an initial assessment take place. CENT and NT Christian Schools both noted that the proposed 60 days is too short, with CENT identifying that *“the school may not have had sufficient time to adequately test its process and procedures”*. CENT in particular *“holds the view that oversight should be in year 2 semester 2 of the operation of the school”*, whilst NT Christian School believes *“the schools be running for a minimum of half a year prior to the initial assessment being conducted”*. The LESNW believed that the first routine assessment should occur within 6 to 12 months. NT Christian School particularly noted that *“the current situation, where a school is registered and then there is no mechanism for checking how they are going for five years is problematic and does not provide the best support possible to a newly established school, especially one operating without a system of support”*.

IEUA-QNT was the only stakeholder to support option 1 which would see provisional registration awarded to a newly established non-government school.

AISNT and Yirralka Education both expressed that this matter is one that should be implemented through policy rather than legislation. Yirralka Education explained *“that the oversight and guidance to newly registered non-government schools must not be legislated. Currently the provision of guidance comes through the AISNT and other member schools. This is the organisation that best understands and can meet our needs”*. Yirralka Education alternatively recommended that:

“Successful applicants seeking non-government school registration be fully registered in the first instance.

This change is necessary because provisional registration creates overwhelming uncertainty for the community, staff and parents. Provisional registration also negatively impacts the ability of securing funding from financial institutions.

Initial assessments be conducted by an independent body between 12–24 months from the commencement of operation.

Where the Registrar has concerns regarding compliance, then clear guidance, support and accountability measures would be put in place with a review timeframe.”

Recommendation 12: It is recommended that the approach outlined within option 2 of the discussion paper be progressed within amended legislation, but adjusted so that the timeframe for the initial assessment is between 6 months and 2 years.

Rationale:

As per the Act, a person intending to apply for the registration of a non-government school must apply to the registrar, and the application must be made prior to the school providing education programs. The amendment proposed would not replace that requirement; recommendation 12 would require that the first routine assessment occur between 6 months and 2 years of the school being approved for registration.

The timeframe proposed is flexible so that a decision can be made on a case-by-case basis by the registrar with regard to the appropriate time period for an initial review. In recognition of the feedback from Yirallka Education in particular, in addition to the recommended legislative amendment, there is an opportunity for greater partnership with AISNT to support individual non-government schools who may benefit from guidance and support from their peak body and other member schools.

7.2.D Assessment and review

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?

Respondents saw benefit in alignment to enhance existing processes. IEUA-QNT submitted that “*the establishment of a single pool of trained individuals capable of undertaking a review at any point in a school’s registration process would simplify existing processes without compromising efficacy*”. Although not directly against the reform proposal, Yirallka Education, NT Christian Schools, AISNT, CENT and LESNW all regarded this as an operational consideration, and should therefore not be included within the Act.

While there was a preference for this to be placed within policy, several stakeholders also provided information on the type of personnel who should make up the pool of trained and qualified persons for the process of assessment, registration and routine. The stakeholders indicated that the panel of personnel should be expanded, and should be made up of experts from a range of education backgrounds that understand the non-government sectors’ uniqueness, and have no real or perceived conflicts of interest.

CENT further proposed that this was an opportunity to “*establish an independent chair for assessments managed through a ministerial appointed [r]egistrar*”. CENT also proposed that the current 5-year assessment cycle should remain in place.

Recommendation 13: It is recommended that:

- a) the Act be amended to better align the processes for registration assessment, routine assessment and special investigation so that there is one pool of assessors
- b) the Act be amended so that the registrar establishes a panel (including a chair) from the pool of assessors for an assessment process
- c) consideration be given to the role of the Non-Government Schools Ministerial Advisory Council, or any newly formed education advisory council as per recommendation 11(b), to provide advice on implementation of this part of the Act.

Rationale:

Opportunities to align and provide greater efficiencies within the processes, without compromising quality, should be implemented as part of reforms. In current practice, operational challenges limit the way in which the Act is currently administered and requires adjustment. Merging the two separate processes recognises that common skills and understanding, including a strong expertise in registration requirements, is needed for both assessments. Consideration of how to integrate the CENT's feedback to capture the role of a chair will also be undertaken through drafting.

As a small jurisdiction where independence is challenging to achieve, it will be important to ensure there are mechanisms to manage conflicts of interest within these processes, and ensure there is a high degree to transparency.

Stakeholders will have further opportunity to comment on this within the Exposure Draft of the Amendment Bill.

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

Although all respondents were supportive in general to training requirements for assessors, similar to question 13, they were clear to identify that this is considered a matter for policy as opposed to being included within the Act.

Recommendation 14: It is recommended that policy be developed that sets out training, and competency requirements for assessors and investigators.

Rationale:

The intent of this reform can be achieved through either policy or legislation. As such, in recognition of feedback, and to improve flexibility and responsiveness, training requirements, and competency considerations, can be addressed through policy.

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?

In summary, while respondents saw the benefit of reducing duplication of effort, it was clearly articulated within the majority of responses that routine assessment, or new registration, should occur at an individual school level, and not through a school system, with the exception of NT Christian Schools who indicated that it may be useful for financial and governance aspects to occur through a school system or school group.

IEUA-QNT in particular expressed that in their experience in dealing "*with large, systemic employers, individual schools show significant variation in matters with regard to educational programs and operational approaches*". It was this variation which caused IEUA-QNT to "*caution against any move to allow grouping of schools for registration purposes. Any such grouping might be attractive to schools in that it would reduce administrative burdens, but the increased risks to students and families in assessing registration compliance at any level higher than that of the individual school cannot be underestimated.*"

Recommendation 15: It is recommended that the Act is primarily focused on review and consideration of individual schools; however, it is flexible enough, that through operationalisation, some assurances of adherence to requirements may occur through a school system.

Rationale:

In recognition that, for most respondents, this approach would not be beneficial, and the risk highlighted by the IEUA-QNT, it is intended that legislation will continue to focus on adherence to registration requirements at an individual school level. That being said, the department believes that there can be greater coordination and collaboration opportunities in operationalisation across a system of schools, which should not be limited through legislation.

7.2.E Decision-making and review

Question 16: Should the Act be amended to include Northern Territory Civil and Administrative Tribunal (NTCAT) as a recourse available to a decision made by the registrar?

All respondents agreed that this is an appropriate amendment to take, and is in line with the principles of procedural fairness.

Recommendation 16: It is recommended that the Act be amended to include NTCAT as a recourse available to a decision made by the registrar.

Rationale:

As supported by respondents, the Act should be amended to include NTCAT as a recourse when other avenues are exhausted. However, consideration needs to be given to which decisions this should apply to, and whether there needs to be greater detail within the legislation for the registrar with regard to how that decision should be made (i.e. process, principles and criteria). Further detail on this will be included and consulted upon within the Exposure Draft of the Amendment Bill.

Question 17: Should greater clarity be provided within legislation of the role and duties of the registrar in exercising their powers under the Act?

All respondents agreed that greater clarity with regard to the role and duties of the registrar should be considered as part of any legislative amendment. Further, there was a desire from respondents to understand what exactly is being considered as part of these reforms.

The CENT agreed greater clarity would be of benefit, but questioned the need for this to occur through legislation.

There was a strong theme within the responses that emphasised the importance of the registrar's independence.

Recommendation 17: It is recommended that:

- a) the Act be amended to include greater clarity on the role and duties of the registrar, including functions, responsibilities and decision-making
- b) the department: (i) in the short term, identify ways to strengthen the independence of the role of the registrar through organisational realignment; and (ii) in the longer term, consider amending the legislation to establish an independent statutory body that combines a range of existing regulatory functions
- c) additional controls be identified to ensure greater independence of the role of the registrar, for example, the development of operating protocols.

Rationale:

As per the rationale in recommendation 16, there will be consideration within the legislation for the registrar with regard to how certain decisions should be made (i.e. process, principles and criteria). Additional clarity on roles and responsibilities will be integrated through the drafting process, and will be influenced by comparative legislation in other jurisdictions. It should be noted the interconnected nature of all recommendations for reform, which will all need to be considered with regard to the role and duties of the registrar. There is no detail within the legislation currently around:

- the functions of the registrar
- the responsibilities of the registrar
- how decisions are made by the registrar.

Recommendation 19 is related to this recommendation, with greater clarity regarding complaint management considered.

With regard to independence, as a small jurisdiction, the NT does not have the economies of scale to establish an independent statutory body for the sole purpose of regulating non-government schools. Opportunities can be taken to combine existing identified regulatory functions through organisational realignment during 2022, with further consideration in the longer term around the feasibility of establish an independent statutory body. There are also additional controls that can be put in place, in consultation with the non-government sector, to achieve independence through the development of a set of operating protocols, for example.

Further detail will be included and consulted upon within the Exposure Draft of the Amendment Bill.

7.2.F Complaints and special investigation

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

Responses to this question varied, but there was a prevalent theme supporting some degree of reform in this area. Some stakeholders noted that complaints processes were already a requirement and legislative change was not necessary, while other stakeholders saw value in strengthening and broadening these requirements.

Yirralka Education stated “[t]he Act should capture the principles for complaint investigation but not the process.” Similarly, the LESNW indicated requirements similar to Queensland would be supported and as was highlighted within the discussion paper, i.e. that there should be a process for “receiving, assessing,

investigation and otherwise dealing with complaints” which includes procedural fairness.

The OCC highlighted the importance of this to occur to ensure alignment with the National Principles for Child Safe Organisations. The OCC stated *“During consultations with children and young, students informed the OCC for complaints processes and policies to be successful, there must be:*

- *A person(s) in every organisation who was there specifically to deal with young people's issues.*
- *A way to complain anonymously if you wanted.*
- *Feedback and information on what happened with your complaint, and what it led to.*
- *Provision of information on how to complain in a child friendly and accessible manner.”*

One anonymous respondent emphasised the importance of natural justice within the complaints process, providing examples of this occurring in South Australia and Victoria. At present, a complainant has limited

access to information with regard to how their complaint has been investigated and what responses have been taken.

Recommendation 18: It is recommended that the Act be amended to include specific direction to require non-government schools, and their governing bodies, to have processes for receiving, assessing, investigation and otherwise dealing with complaints that adhere to procedural fairness.

Rationale:

In order to reserve special investigation for only the most extreme circumstances, the Act, or the revised registration requirements if more appropriate, should stipulate more explicit instructions requiring processes for complaints. Requiring the application of procedural fairness ensures an appropriate balance between being too prescriptive and affording assurances to the public. In drafting this section, consideration will be given with regard to the role of the school board regarding complaints and how independence through investigation can best be achieved.

It is noted, as referred by the OCC, that this question relates to the implementation of the National Principles of Child Safe Organisations. Adherence to these principles through registration requirements would also support the way in which complaints are managed, in government and non-government schools.

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?

There was general support for greater clarity regarding the role of the registrar in relation to complaints but, similar to responses to question 17, stakeholders highlighted that further detail would be needed so that more specific feedback could be given.

Some stakeholders expressed caution with regard to the involvement of the registrar within a complaint matter and/or emphasised the need for de-escalation of complaint matters so that they may be resolved at a school level wherever possible in the first instance. For example, Yirralka Education stated that *“the” registrar should not be involved in decisions or outcomes that result in complaint handling processes”*.

The CENT raises the question as to whether further clarity of the registrar’s role could be achieved through policy, rather than legislation.

On the other hand, the IEUA-QNT stated *“given the vulnerability of school students within the education systems, and the significant impact that negative school experiences can have on individuals, families and communities, it is important that processes for dealing with complaints are explicit within legislation. This includes the role of the registrar.”*

The OCC also emphasised that the role and responsibility of the registrar should be provided in the Act and should include “*child focussed processes for receiving, assessing, investigation and otherwise dealing with complaints*”.

One anonymous respondent questioned the need to recognise the inherent conflict of interests of board members, who have children or have an interest in the school's representation. As such, ensuring there are effective mechanisms for accountability that extend beyond the board, i.e. through the powers of the registrar, should be considered in any reforms.

Recommendation 19: It is recommended that the Act be amended to:

- a) **clarify the role and responsibility of the registrar to investigate a suspected breach with registration requirements, arising from a complaint relating to a non-government school**
- b) **include the right for a non-government school to investigate a complaint in the first instance, unless the incident is of such an extreme nature.**

Rationale:

Amendment to the legislation can provide clarity on how complaints are escalated. It is recognised that complaints are best resolved closest to where they occur, which is why recommendation 18 is a key component of any response to complaints, with the principle of de-escalation supported. However, there may be rare and extreme circumstances which warrant immediate intervention by the registrar through commencement of a special investigation. This would only be the case where the complaint matter is indicative of a broader issue of a school's non-compliance with registration requirements. A description within the legislation should be included as to when this response may be triggered rather than a de-escalation approach.

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?

Stakeholders mostly responded that existing provisions within the legislation were sufficient, and any imposition of penalty units would not be conducive to supporting the non-government sector in its delivery.

The NT Christian Schools stated, for example, that: “*Issues of non-compliance should be addressed with a) identification of any issues; b) providing reasonable opportunity for rectification; c) consideration of registration in case of ongoing non-compliance.*” Yirralka Education further believed that: “*The decision for disciplinary provisions needs to be made by the Minister and not the registrar or Department of Education Chief Executive Officer.*”

What could be of value, based on the feedback received, is a clearer articulation of processes and procedures, as well as escalation.

Recommendation 20: It is recommended that:

- a) **the Act be amended to more clearly articulate the process and grounds for escalation of a non-compliance issue and any disciplinary response, rather than include penalty units**
- b) **further consideration of ways to improve regulatory responses by considering opportunities of alignment with the Quality Education and Care NT Responsive Regulation Model, which includes both supportive and compliance approaches to regulation.**

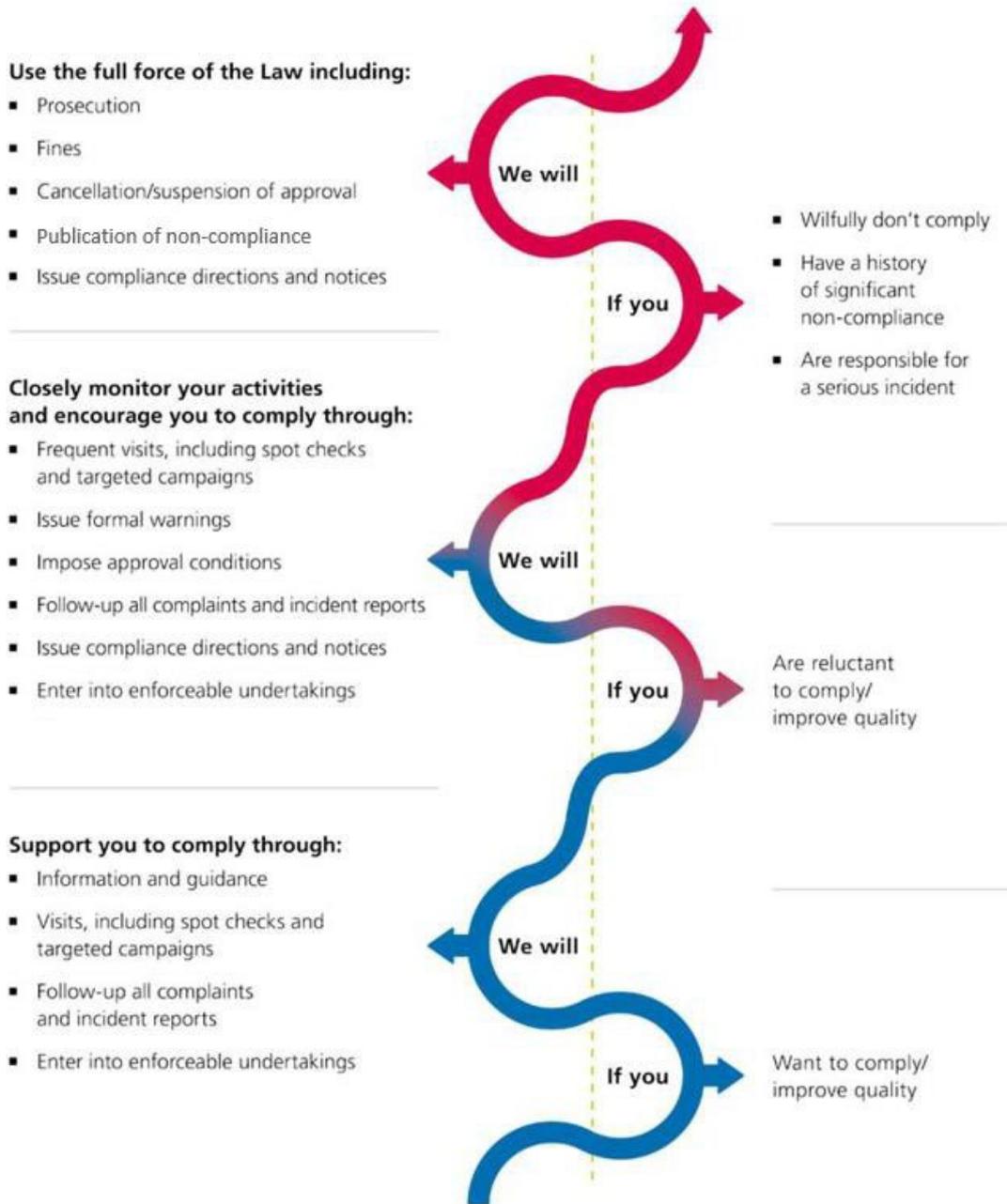
Rationale:

It is recognised that the best way to achieve the policy intent within this section is to provide greater clarity within the Act around escalation and response to an issue of non-compliance. It should be noted that non-compliance can be identified by the registrar during registration, routine assessment or special investigations that may have commenced as a result of a complaint.

One of the challenges with the legislation currently is an expectation by complainants for the registrar to personally resolve a complaint matter, when the registrar's role is focused on ensuring compliance with registration requirements more broadly. While drafting the amendments, consideration will be given to providing clarity on how a complaint matter will be considered through a special investigation process, as one piece of evidence relating to a non-government schools adherence to registration requirements.

Further, through further consideration of the types of disciplinary action, the Quality Education and Care NT Responsive Regulation Model has been identified as a way to achieve greater alignment between the early childhood sector and non-government schooling.

Figure 1: Quality Education and Care NT Responsive Regulation Model (Source: Quality Education Care NT Regulation and Compliance Framework, Version 2, 2019)



While the difference between the two sectors is noted, there is an opportunity for greater efficiencies through greater alignment of what are currently disparate regulatory activities undertaken by the department (linked to recommendation 21).

Further detail will be included and consulted upon within the Exposure Draft of the Amendment Bill.

7.2.G Other

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

Two stakeholders took the opportunity to identify other areas of the Act which may require reform:

- the IEUA-QNT indicated that section 130(1)(g) could be interpreted so that non-government schools will be considered not-for-profit even if profits are used “*to advance the school’s philosophy and objects as stated by the school’s governing body*”. It stated “*We would suggest that the concept of for-profit schooling is highly problematic*”.
- AISNT emphasised the need for the registrar to be an independent statutory body outside the department.

Recommendation 21:

It is recommended that legal advice be sought with regard to section 130(1)(g) and the definition of not-for-profit schools and ensure alignment with the Australian Education Act 2013.

Rationale:

Further consideration based on the attainment of legal advice with regard the feedback obtained by IEUA-QNT.

With regard to greater independence, recommendations 17(b) and (c) have been included to address this issue.

Further detail will be included and consulted upon within the Exposure Draft of the Amendment Bill.

8. Next steps

The recommendations from this review will be utilised to inform drafting instructions for an Amendment Bill to the Education Act 2015.

An Exposure Draft of the Amendment Bill will be released and consulted upon with stakeholders during 2022.

Feedback gathered through this process will 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: [Non-government schools - NT.GOV.AU](#).

10. Acknowledgements

The department would like to take this opportunity to thank everyone who participated, and contributed towards the review of Part 7 of the Education Act. Particular acknowledgement is provided to the Non-Government Schools Ministerial Advisory Council's members who have dedicated significant time and consideration to the proposed reforms.

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.

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

A. Child safety, wellbeing and behaviour management	
Enact recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission)	Question 1
Explicit provisions for suspension, exclusion and expulsion of non-government school students	Questions 2 and 3
Improve information sharing between the sectors to mitigate against the risk of disengagement	Question 4
Explicit provisions for non-government schools to encourage attendance of students	Question 5
B. Financial viability and reporting	
Require advice from the school or sector heads where there is a barrier to operations	Question 6
Extending the scope of legislation to be inclusive of governing bodies	Question 7
Strengthening the financial division of the Act	Question 8
C. Registration	
Contemporising the registration requirements for a non-government school and shifting the focus to demonstrated evidence of effective implementation	Questions 9, 10, 11
Implementing provisional registration for the first 12 months of operation for a non-government school	Question 12
D. Assessment and review	
Streamlining the registration and assessment processes	Question 13
Strengthening the training requirements of an Assessor	Question 14
Better recognition of system schools within the assessment process	Question 15
E. Decision-making and review	
Administrative review to Northern Territory Civil and Administrative Tribunal	Question 16, 17
F. Complaints and special investigation	
Require that a non-government school investigates complaints effectively through registration requirements and/or explicit additional provisions within the Act	Question 18
Clarify the role and responsibility of the registrar to act in response to a complaint	Question 19
Make explicit the disciplinary action that could occur on the discovery of a breach of registration requirements through a special investigation.	Question 20
Other	Question 21

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')¹ 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)². 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.

²Further information on the Child Safe Standards can be found here: [National Principles | Child Safe Organisations \(humanrights.gov.au\)](https://www.humanrights.gov.au/national-principles-child-safe-organisations)

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 Organisations².

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.

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?**

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.

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?**

²Further information on the Child Safe Standards can be found here: [National Principles | Child Safe Organisations \(humanrights.gov.au\)](https://www.humanrights.gov.au/national-principles-child-safe-organisations)

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

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.

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?

greater information sharing between the

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.

Question

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.

Discussion paper - Review of Part 7 of the *Education Act 2015*
During 2021, the department is

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

³https://justice.nt.gov.au/_data/assets/pdf_file/0009/957258/D02392017-James-Mamarika-and-Leering.pdf

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.

Question

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

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.

Question

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

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.

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.

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?
-

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.

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?
-

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.

Question

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

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.

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?

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

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

- being flexible and adjusting procedures to best fit the circumstances of a particular proceeding.

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.

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

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?
-

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.

Question

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

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.

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?

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.

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?

7. Other

Question

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

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>.

Department of EDUCATION

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