Schedule

ACT Government

Registration Review Guidelines for ACT Non-government Schools

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Education Directorate

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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Introduction

The 2022 amendments to the *Education Act 2004* (the Act) and the Education Regulation 2005 (the Regulation) changed registration for ACT Non-government Schools from five-year registration to ongoing registration.

The Education and Care Regulation Support (ECRS) Branch in the ACT Education Directorate implements and administers regulation, identifies breaches and enforces standards, monitors the functioning of regulatory arrangements, provides information about regulatory systems, and advises on government policy.

ECRS has a range of regulatory functions and powers, which are applied to regulated sectors in a flexible and integrated way to promote compliance and align the obligations, principles, and public purposes of the relevant laws.

ECRS prioritises its regulatory functions to be consistent with:

- the *Human Rights Act 2004* and the Convention on the Rights of the Child;
- the principles of responsive regulation; and
- application of harms-based regulation.

ECRS will work with regulated entities to solve problems, improve quality, uphold best practice when conducting a registration review, and implement the following strategies:

- use formal processes and informal education to direct regulated entities to meet their legislative obligations;
- create opportunities for regulated sectors to develop best practice and manage risk;
- use education and reviews to maximise best practice;
- use reviews and risk methodology to prevent, manage and reduce harm; and
- use legislative powers to protect children from harm and hazard and to ensure the integrity of the sectors.

This document is supplemented by the *Registration review fact sheet for non-government Schools*. The addendum contains additional information and guidance to support schools about what to expect during a registration review.

Good Regulatory Practice

In day-to-day implementation of the Act, the Registrar is guided by best practice regulation in education, auditing, reviews, investigations, and regulatory action. The Registrar will be:

- clearly focused on the underlying objectives;
- representing the course of action that is likely to achieve the most effective solutions;
- openly encouraging community confidence in all schools;
- working towards a common purpose, being flexible and innovative, and achieving the best result; and
- working constructively, building relationships, resolving conflicts that may impinge on the objective.

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Proprietors are expected to have a sound knowledge of the relevant legislation and regulation and understand their responsibilities under the Act.

The purpose of the Registration Review Guidelines is to outline how a registration review may be conducted.

These guidelines were developed in consultation with the Registration Standards Advisory Board, Association of Independent Schools in the ACT, and Catholic Education, Archdiocese of Canberra and Goulburn.

Information about the records and evidence that a school may keep, to demonstrate compliance with the Registration Standards and provide during a registration review, is outlined in the *Registration Standards Guidelines*.

Regulator and Stakeholder Relationships

Internal and External Government Relationships

ECRS is committed to continuous improvement of processes, practice and professional interactions between ECRS and stakeholders. ECRS work overlaps with ACT Policing, Working with Vulnerable People Team, Child, Youth and Families, ACT Community Services Directorate, the ACT Human Rights Commission, Access Canberra and any work undertaken between agencies subject to the Reportable Conduct Scheme.

ECRS works with other States, Territories and the Commonwealth in numerous capacities. These include sharing information and evidence with other regulators, participating in national conversations and within working groups.

ECRS promotes education awareness within the sector and the community and will be aligning the Educate and Engage Compliance Framework to support the Act.



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Accountability of Regulatory Functions

ECRS is accountable to a range of oversight bodies and courts. This includes the Auditor General, the Ombudsman, the Human Rights Commission, the ACT Civil and Administrative Tribunal, and the Supreme Court.

These guidelines apply concepts that are familiar to these bodies to ensure accountability of the exercise of powers. These guidelines explain bespoke terms in the Act in terms that are familiar to review entities and to regulators as a whole.

Regulation of Non-government Schools

The Registrar maintains oversight of non-government schools in a variety of ways to assess and promote compliance with the Act which includes activities such as physical visits, interviews, emails, phone calls, etc. The activity performed informs the Registrar about registrations, interactions with families, communities, and compliance. It also educates and informs schools and proprietors about their legislated requirements.

Along with the Minister and the RSAB, the Registrar has a responsibility to the community to provide assurance that schools are meeting the prescribed requirements. The Registrar considers factors which pose a higher risk of potential non-compliance and monitoring is prioritised accordingly.

The powers to undertake the functions of the Registrar under the Act prevent, manage and reduce non-compliance with educative tools such as formal emails, meetings, administrative letters or by issuing statutory compliance directions.

Registration Reviews

A registration review means an assessment of whether the school is complying with the Act. This includes a review carried out under an annual registration review program; or as a result of a concern raised about a registered school's compliance with the Act.

Registration reviews will be conducted by ECRS authorised persons delegated by the Registrar in accordance with the Act. Information for proprietors, principals and school staff about what to expect during a registration review can be found in the *Registration Review Guide for ACT Non-government Schools*.

Annual Registration Review Program: Auditing

Annual Registration Review Program

Each year the annual registration review program (the program) is prepared in accordance with section 109 of the Act. The program outlines the methodology the Registrar will use to select schools and the areas of focus for the registration reviews. The Registration Standards Advisory Board (RSAB) is consulted on the program each year.

ECRS Functions

Registration reviews are part of ECRS' auditing functions, ECRS works proactively to identify non-compliance in its early stages. The aim is to prevent more serious breaches of the Act, to reduce harm and to ensure safe educational environments.

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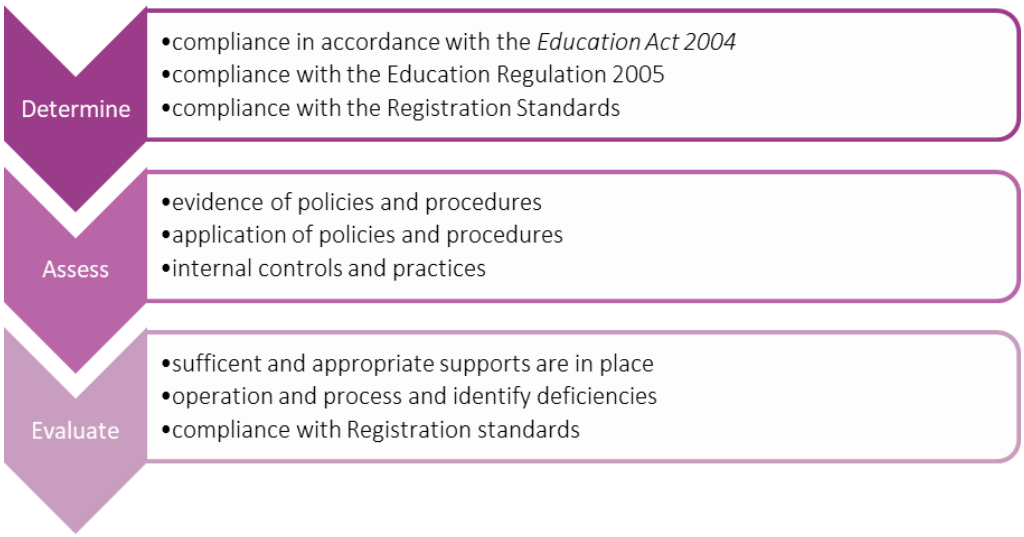
Auditing Strategies

The strategies include proactive monitoring which aims to identify potential non-compliance early to assist schools to comply.



The review program is developed carefully to ensure monitoring is effective and minimises the regulatory burden on the school. The program is also an important part of relationship management with stakeholders and is combined with providing support to improve schools' capacity to comply.



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Outline of methodology

School Selection for the Program

In Probability Selection (Random)

The method of sampling ensures that all non-government schools stand an equal chance of selection. The method uses random number tables or random number generators from which a sample will be selected. The Registrar will have no special knowledge and the objective to the sampling is non-statistical.

Once a school has been reviewed it will be excluded from subsequent reviews under this selection (only) for 3 years.

Non-probability Sampling

This method of sampling involves selection based on risk or other criteria and, at the Registrar's discretion, reviews compliance with the registration standards. The Registrar, to fulfill the registration review objectives, may apply statistical sampling methods when probability sampling is not possible.

Non-probability sampling is effective in maintaining balance against risk where the measure is evidence-based, derived from information and gathered from regulatory activities (e.g. assessment, investigations, intelligence, and enforcement). Including proactive monitoring identifies potential non-compliance early and assists schools to comply.

When there is a change to ACT or Commonwealth legislation or functions associated with the registration standards (e.g. curriculum, disability standards) that relate to non-government schools, all non-government schools may be reviewed against the standards associated with the change.

Registration Review after a Concern is Raised: Investigation

Any person can raise a concern with the Registrar about a non-government school's compliance with the Act or Regulations, including the Registration Standards.

A concern may be referred from another regulatory body of a serious incident, a complaint, or a potential or apparent contravention. Concerns may also result from an annual registration review.

The Registrar must consider whether to refer the concern to the school, to refer the issue to another entity if appropriate or determine that a registration review (investigation) is necessary.

The Registrar may initiate a registration review if:

- there is a suspicion of an offence being committed; or
- the nature or circumstances are so serious that the matter should be considered by the Registrar.

If the matter is referred to a school, the Registrar may also require the school to provide a written report about how they investigated the concern, the results of the investigation and any action taken or proposed to be taken in relation to the concern.

The Registrar does not need to conduct a registration review following a concern being raised if satisfied that the concern is otherwise not appropriate for the Registrar to consider.

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Reviews and Investigation Methodology

Where the Registrar initiates a registration review, ECRS aims to implement best regulatory practice and has adopted the following principles to guide its investigation strategies and help to achieve effective regulatory outcomes.



ECRS' investigations team is obligated in its investigative function to exercise the powers necessary and take all reasonable steps to obtain evidence and identify the facts of the matter being raised.

The primary purpose of an investigation is to gather evidence that goes to proving or disproving allegations and if proven informs any subsequent regulatory action.

Offence and Non-compliance

An 'offence' is a contravention of a provision under the Act that has a penalty attached for a failure to comply i.e., a criminal or civil penalty is set out at the end of the provision.

Certain offences under the Act can be both administrative offences as well as criminal offences.

Non-compliance is a failure by a natural person or a corporate entity to comply with a requirement of the Act. These provisions do not carry an offence or penalty provision. Non-compliance can also be a breach of a criminal offence that does not lead to prosecution.

Information and Evidence

Approaches to Obtain Relevant Information

Registration Review functions

Within the Act, the Registrar appoints authorised persons, assisting the Registrar to perform their functions under part 4.4 of the Act and enforce compliance in accordance with the Act. Division 4.6.3 defines the way in which an authorised person exercises their powers under the Act.

Authorised persons from ECRS Investigations and Audit Teams carry out registration reviews on behalf of the Registrar.

In exceptional circumstances, the Registrar may appoint authorised persons who have specialist expertise or training.

For the purpose of this guide, an investigation, as defined by the Australian Government Investigation Standards (AGIS), as a process of seeking and/or obtaining information relevant to an alleged, apparent or potential contravention of the Act. This also involves possible judicial proceedings.

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The Principle of Investigation Powers

Investigation powers are the legislative tools to require a party to provide certain items, information or respond to questions which they would otherwise not be required to provide.

These powers are contained in Part 4 of the Act and are subject to various conditions. They provide an avenue to obtain information which may not otherwise be provided voluntarily.

The exercise of these powers can be subject to review by the Ombudsman, the Human Rights Commission and the Supreme Court.

Information Required by the Act

Documents, records, statements, policies and procedures required by the Act may form information and evidence that informs a registration review. For example, a document made for the purpose of meeting the Annual Statement in standard 2.6.

Voluntary Statements

In certain circumstances a person may choose to make a statement in relation to the event, complaint or situation. This statement is classed as voluntary as no statutory powers are required to obtain the evidence.

Requirement to Provide Information

Under section 125U of the Act, the Registrar or authorised persons can exercise a power to obtain documents, records etc from a proprietor, a school staff member, or another person or entity that has documents relevant to assessing compliance with the Act.

Witness Statements

Authorised person functions include interviewing and taking witness statements from witnesses (including notifiers) and third persons.

An authorised person may request in writing, require a person to give information, or produce documents. The witness statements will be obtained in the exercise of 125U of the Act.

On-Site Visits

The Registrar may elect, at any reasonable time, an authorised person to enter a registered school's premises to assess whether the school is complying with the registration standards under section 125Q of the Act. Visits may be conducted with or without notice or consent.

An authorised person may request necessary assistance from one or more people who, in the opinion of the authorised person, have the knowledge or skills that could assist the authorised person to carry out their functions.

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When conducting a visit on school premises, including inspections of schools, the authorised person can gather evidence, including:

- examine anything;
- examine and copy, or take extracts from documents, take photographs, films, or audio; and
- video or other recordings.

The authorised person can question or request documents (whether the information, document or other thing is at the premises or elsewhere) of a person at a school who has or has access to information about the alleged matter.

Other entities

Evidence, information or intelligence is obtained or provided by other regulatory or Government entities. This includes information provided under 115(4) of the Act.

Desktop

The management of compliance includes assessing documents via a desktop review. The intent is to promote self-regulation where schools are willing and able to comply without the exercise of regulatory powers.

Other Operational Requirements

Cooperation

The proprietor of a non-government school must liaise with the Registrar as reasonably required. The proprietor's level of cooperation may be considered in determining compliance monitoring and regulatory action.

For the greatest benefits, schools should aim to allocate resources at hand, target areas of improvement and prioritise efforts where risks are more significant. Schools are required to consider the Act and be willing and able to develop a consistent approach in applying the Registration Standards.

By building positive relationships, the aim is to promote self-regulation without significant regulatory intervention.

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Registration review fact sheet for non-government schools

Information for proprietors, principals and school staff about what to expect during a registration review.

Introduction

The 2022 amendments to the *Education Act 2004* (the Act) and the Education Regulation 2005 (the Regulations) changed registration for ACT non-government schools and created new regulatory arrangements for non-government schools.

The amendments also established an annual registration review program. This program replaces the previous five-year registration renewal process.

Under the Act, ACT non-government schools (schools) are expected to be able to demonstrate compliance with the non-government school registration standards.

The registrar has a range of regulatory functions and powers, which are articulated in the Act.

The Act requires schools to apply and implement the registration standards.

The Act also requires schools and school systems to provide information including statistical, educational, and financial information and any other information relating to the registration standards or other requirements as requested.

The purpose of the *Registration review fact sheet for non-government schools* is to outline how a registration review may be conducted.

The registrar's role

The registrar is responsible for the following under the Act:

(a) administering the registration of non-government schools;

(b) keeping a register of ACT non-government schools (schools);

(c) developing an annual registration review program;

(d) carrying out registration reviews;

(e) supporting the Minister's regulatory functions;

(f) reviewing or referring concerns relating to alleged non-compliance;

(g) giving compliance directions;

(h) supporting, consulting and reporting to the Registration Standards Advisory Board (RSAB) in relation to:

i. registration and registration amendments;

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ii. non-compliance;

iii. the annual registration review program;

iv. concerns about non-government schools;

(i) making registration standards and registration review guidelines; and

(j) appointing a person to be an authorised person (non-government).

What is an authorised person

An authorised person is an officer appointed by the delegate to conduct specific functions listed in the Act. Authorised persons hold Working with Vulnerable People (WWVP) registration. The registrar is also deemed under the Act to be an authorised person.

Using this guide

This guide sets out and explains how reviews may be conducted. The information about the records and evidence that a school may keep to demonstrate compliance with the registration standards and provide during a registration review is outlined in the *Registration standards guidelines*.

Registration reviews

A registration review means an assessment of whether the school is complying with the Act. This includes a review carried out under an annual registration review program; or as a result of a concern raised about a registered school's compliance with the Act.

Registration reviews will be conducted by authorised persons delegated by the registrar in accordance with the Act. In conducting a registration review, the registrar must:

a) apply natural justice and procedural fairness; and

b) comply with the registration review guidelines.

Annual registration review program

Each year the annual registration review program (the program) will be prepared in accordance with section 109 of the Act. The program will outline the methodology the registrar will use to select schools and the areas of focus for the registration reviews. The RSAB will be consulted on the program each year.

The program consists of a representative sample of registered schools, comprising both independent schools and Catholic systemic schools.

Registered schools are selected for review under the program annually via two methods, non-probability sampling (criteria) and probability (random).

The criteria for the non-probability sampling include change in student population, registration amendment, notifiable changes, new school, and disruption or serious incident.

The random selection method uses random number tables or random number generators from which a sample will be selected. The method of sampling ensures that all schools have an equal chance of selection.

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Once a school has been reviewed under the scheduled reviews, it will be excluded from subsequent reviews under this form of selection for 3 years.

Schools will be notified of the selected standards for review when they receive their letter.

What happens in an annual registration review

At least four weeks prior to the review, the registrar will write to the school notifying of their selection to participate in the program.

The letter will provide the timing and the selected standards for the review, and request evidence of the school's compliance. Schools should note that most reviews are of a selection of the standards not all the standards.

An authorised person appointed by the registrar will support schools through the process. This person will be available to answer any queries prior to commencement and during the registration review process.

If necessary, the authorised person might visit the school and review the documentation the school keeps as evidence of its compliance with the registration standards. While at the school the authorised person may:

- inspect and request copies of documents;
- make copies of documents;
- examine and inspect any equipment;
- take photos, films and audio, video and other recordings;
- require anyone at the premises to give information; and
- answer questions.

In assessing the response, the authorised person will aim to keep the school informed throughout the review. There is no set timeframe; every review will be conducted on its merits and material submitted will vary between schools.

Once the documentation is assessed, schools will be provided with the outcome of the review and, where relevant, any feedback that would support the school to improve compliance with the registration standards.

Registration review after a concern is raised

When a person raises a concern with the registrar about a non-government school's compliance with the Act or Regulations including the registration standards, the registrar must consider whether to:

- refer the concern to the school; or
- refer the matter to another entity if appropriate; or
- determine that a registration review is necessary.

If the registrar refers the matter to a school, the registrar may also require the school to provide a written report about how they investigated the concern, the results of the investigation, and any action taken or proposed to be taken in relation to the concern.

What happens in a registrar determined review

The registrar will appoint an authorised person to conduct the registration review. The authorised person will review only of the standards relating to the concern.

The authorised person may write to the principal or proprietor to request information from the school under section 125U of the Act.

If necessary, the authorised person might visit the school and review the documentation the school keeps as evidence of its compliance with the registration standards. While at the school the authorised person may:

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- inspect and request copies of documents;
- make copies of documents;
- examine and inspect any equipment;
- take photos, films and audio, video and other recordings;
- require anyone at the premises to give information; and
- answer questions.

Once the review has been completed, the registrar must tell the person raising the concern the results of the review and any action taken or proposed to be taken in relation to the concern. The registrar may also write to the school with feedback that would support the school to improve compliance with the registration standards.

Addressing non-compliance

The aim is to work collaboratively with proprietors and the school, so they meet their obligations to provide safe and effective learning environments for children. If this approach is unsuccessful, or not appropriate given the seriousness of the matter, the registrar is required to take a responsive approach considering all risks and the powers that can be applied.

The registrar may take the following actions:

- refer to the Minister to take regulatory action (section 121 of the Act);
- impose a compliance direction (section 120 of the Act);
- identify the evidence and reasons for the non-compliance, or risk of non-compliance and provide information to resolve or prevent the non-compliance (section 119(1)(a) of the Act);
- issue a non-statutory formal caution; or
- refer the matter to the registration advisory board to consider regulatory action (section 123 of the Act).

How privacy is managed

Personal information gathered by the registrar is protected in accordance with the Territory Privacy Principles set out in the *Information Privacy Act 2014.* It is important to note the *Information Privacy Act 2014* does not negate the requirement of schools or proprietors to provide information required by the registrar or an authorised person when exercising the evidence gathering powers in division 4.6.3 of the Act.

References

- *The Education Act 2004*
- Education Regulation 2005
- Navigating the Regulatory Framework
- Non-government schools Registration Standard Guidelines 2023
- Registration Review Guidelines

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Contact Information

Non-government Education

NonGovSchools@act.gov.au

(02) 6205 4059

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