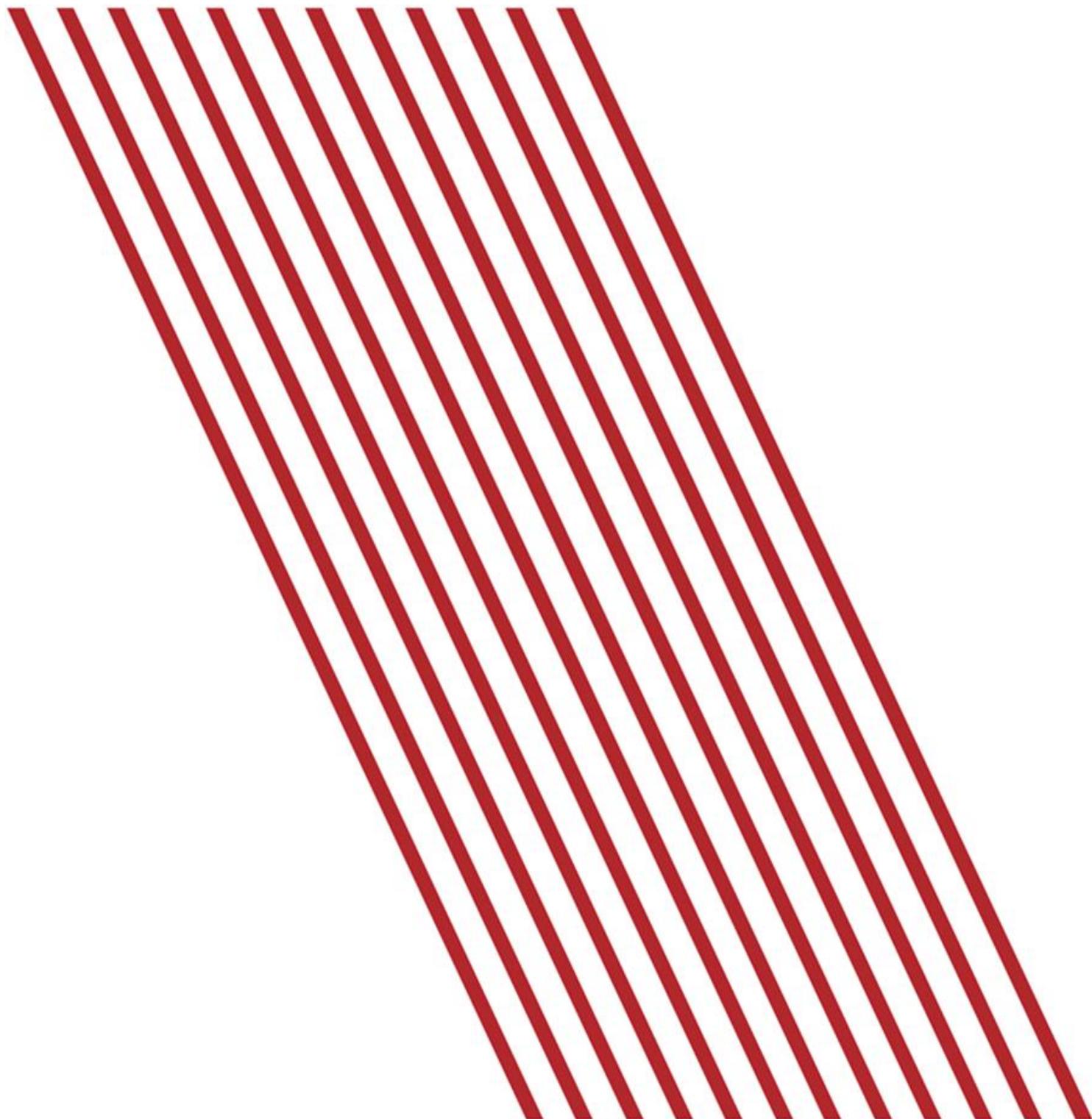


# Regulatory Impact Statement

Education and Training Reform Regulations 2017



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## Abbreviations

ACL	Australian Consumer Law
ASCRG	Australian Standard Classification of Religious Groups
ASQA	Australian Skills Quality Authority
ASV	Adventist Schools Victoria
ATAR	Australian Tertiary Admission Rank
BOSTES	Board of Studies Teaching and Educational Standards
CAP	Conveyance Allowance Program
CAV	Consumer Affairs Victoria
CEO	Catholic Education Office
CECV	Catholic Education Commission of Victoria
CSEF	Camps, Sports and Excursions Fund
DECV	Distance Education Centre Victoria
DEDJTR	Department of Economic Development, Jobs, Transport and Resources
DEECD	Department of Education and Early Childhood Development (now DET)
DEET	Department of Employment, Education and Training (now DET)
DET	Department of Education and Training
EMA	Education Maintenance Allowance
FTE	Full-Time Equivalent
HEN	Home Education Network
IBO	International Baccalaureate Organisation
ISV	Independent Schools Victoria
NAPLAN	National Assessment Program — Literacy and Numeracy
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
NSSC	National Skills Standards Council
OCBR	Office of the Commissioner for Better Regulation

PASS	Principals' Association of Specialist Schools Victoria
PPL	Principal Practice Leader
PTV	Public Transport Victoria
RIS	Regulatory Impact Statement
RTO	Registered Training Organisation
SBP	School Bus Program
SDTP	Students with Disabilities Transport Program
SFOE	Student Family Occupation and Education
SPAG	School Policy and Advisory Guidelines
SSC	Senior Secondary Course
SSQ	Senior Secondary Qualification
VAGO	Victorian Auditor-General's Office
VASSP	Victorian Association of State Secondary Principals
VCAL	Victorian Certificate of Applied Learning
VCAT	Victorian Civil and Administrative Tribunal
VCE	Victorian Certificate of Education
VET	Vocational Education and Training
VIT	Victorian Institute of Teaching
VPA	Victorian Principals Association
VRQA	Victorian Registration and Qualifications Authority

## Executive Summary

The Department of Education and Training (the Department) proposes remaking the Education and Training Reform Regulations 2007 ahead of their sunset on 26 June 2017. This Regulatory Impact Statement (RIS) presents the Department's proposal and explains the underpinning analysis and considerations.

The Department reviewed the 2007 Regulations to identify options for improving regulatory practices and outcomes. As part of the review, the Department consulted with key stakeholders and the public in May and June 2016.

Releasing this RIS begins the final phase of consultation. The Department invites organisations and individuals with an interest in education and training in Victoria to comment on the proposed regulations. Public feedback will inform the Department's final proposal for replacing the 2007 Regulations.

The 2007 Regulations are a consolidated version of the regulations associated with the *Education and Training Reform Act 2006* (the Act), including:

- several sets of regulations that are implemented by the Victorian Registration and Qualifications Authority (VRQA) relating to registering schools, home schooling, and other education and training providers
- specific regulations for the government school system, including government school education, government school councils, and parents' clubs and fundraising for government schools
- consumer protection in the vocational education and training sector
- complaint investigation by the VRQA
- transport and travelling allowances
- education maintenance allowances and scholarships
- government teaching service appeals
- elections for the council of the Victorian Institute of Teaching.

All of these regulations seek to achieve the intent of the Act—to provide for a high quality standard of education and training for all Victorians.

For some regulations, the Department identified reform opportunities for targeted or incremental improvement to Victoria's education and training regulatory regime. For other regulations, the Department considers it appropriate to replace the existing regulations without change. A small set of redundant regulations should also be allowed to sunset.

The key areas proposed for regulatory reform are:

- registration for home schooling
- arrangements for parents' clubs and government school fundraising
- minimum standards for registration of schools
- regulatory requirements for government school education.

## *Home schooling*

Parents have the right to choose an appropriate education for their child. They can either enrol their child of compulsory school age at school, or register to home school them. Parents who register for home schooling accept full responsibility for their child's education. It is a condition of registration that a home-schooled child must receive regular and efficient instruction.

Currently in Victoria, the home schooling registration process is largely declaratory and subject to minimal regulatory oversight. Parents submit an application form, attesting that they abide by the relevant regulations to home school their child. Home-schooling parents do not have to demonstrate any specific understanding of instructional practice that will meet their child's needs. While they are required to substantially address the key learning areas in the Act, they do not have to provide any detail about how they will do this, either when registering or annually indicating their intent to continue home schooling. Typically, a valid registration will not require any further contact with the parent nor follow-up monitoring or assessment of the child's learning progress.

The Department considers the current regulatory approach for home schooling to be unable to adequately assure quality in the instruction or educational progress of home-schooled children. The Department has no workable mechanism to manage the risk of low-quality education for home schooling. For children missing out on a quality education during compulsory schooling years, efforts later in life to remedy this situation are likely to be costly, not as effective, and difficult.

For these reasons, the Department proposes to replace the regulations for home schooling with increased registration and ongoing monitoring requirements. Under the proposed changes, parents must:

- at the application stage, provide a learning plan that outlines how they will deliver instruction and what resources and materials they will use to cater for their child's circumstances and learning needs
- if selected, participate in a review that would involve providing evidence of their child's learning progress, and possibly also undertake an interview with the regulator.

Even with these changes, Victoria would retain the 'lightest-touch' regulatory approach for home schooling when compared with other Australian states and territories. The proposed regulations do not contain common assessment practices used in other jurisdictions such as mandatory home visits or mandatory curriculum-based instruction.

## *Parents' clubs and government school fundraising*

A parents' club promotes and supports a school and its community. For this model to work, a parents' club needs some independence from the school authority while working in partnership with the school council. Given this independence, parents' clubs also require some oversight, to ensure appropriate accountability and transparency and effective partnership with the school council.

The regulations for parents' clubs deal with their formation, financial arrangements and fundraising activities. Under current provisions, a parents' club can keep its funds in a school subprogram account or in a separate bank account. For clubs using a school account, expenditure is subject to a school sign-off process and the account is subject to departmental audit. For clubs using a separate bank

account, funds are managed by the club and can be expended without going through the same school sign-off process. In this instance, the funds must be used either for the particular purpose for which they were raised with the approval of the school council, or in the manner determined by the school council, after discussion with the parents' club, as being the most desirable in the interests of the school. However, this arrangement poses a risk that, in some instances, funds raised from the school community may be used for school-related purposes that have not been agreed with the school's governing body (the council) as being in the school's best interests.

Given this risk, the Department proposes changing the current regulations, to ensure appropriate oversight of all funds raised by parents' clubs for school purposes and to maintain the integrity of school finances. Specifically, the Department proposes several changes to the current regulations for parents' clubs:

- remove the option for a parents' club to maintain a separate bank account; instead, all clubs would hold funds in a subprogram under the school's official account
- provide for automatic dissolution of parents' clubs if a school closes or merges
- clarify that the function of an interim committee is limited to developing a constitution and seeking ministerial approval to form a parents' club
- mandate the use of the model constitution published by the Department.

The proposed changes would reduce the potential for funds raised by a parents' club to be mismanaged or misappropriated (including inadvertently). They would also enhance the transparency and oversight of a club's fundraising and expenditure.

### *Registration of schools*

School registration is a core mechanism for assuring a high quality of education in Victoria. The 2007 Regulations set out 21 minimum standards for registering schools, in addition to standards imposed by Ministerial Orders. These standards apply to government and non-government schools.

The Department considers it appropriate to maintain the substance of the minimum standards for school registration. But, the following proposed changes will strengthen or clarify the standards:

- replace the 'good character' test with a 'fit and proper person' test to strengthen the requirements for people holding positions of authority in governing and managing a non-government school
- introduce the concept of a 'responsible person' to identify all significant people who have influence over a school's operations and decisions
- introduce a definition of 'proprietor' to make it unambiguous who is responsible for a school's governance
- affirm the 'not-for-profit' status of a school proprietor so that schools and school proprietors must not be party to prohibited agreements or arrangements, including those between the school and the proprietor.

The proposed changes would affect the governance arrangements of schools. They seek to clarify responsibilities for school governance and to mitigate the greater risks associated with poor governance, improper conduct and inadequate financial management in non-government schools

that exist because these schools have a greater level of decision making responsibilities than government schools. Government school education

The Department proposes refining the existing regulations for government schools as follows:

- transfer from school council to principal the responsibility for notifying the Department's Secretary of school closure due to an emergency
- introduce an upper age limit of 21 years for school enrolment (in special circumstances)
- remove the Ministerial power to exempt a child from the minimum age requirement on the grounds that the child requires extra support or assistance
- for students living outside the metropolitan area and lacking reasonable access to senior secondary courses, change the condition for exemption from the age requirements from 45 minutes' travel time to a 50 kilometre travel distance
- move from school council to principal the responsibility for developing the student engagement policy
- refer explicitly to the student engagement policy as well as student behaviour policy
- clarify that a student can only be suspended or expelled in accordance with the relevant Ministerial Order.

#### *Other elements of the proposed regulations*

The Department also proposes the following additional minor changes:

- for complaint investigations by the VRQA, the Department proposes to replace the current provisions for complaint investigation with the following changes:
  - clarify the circumstances under which the VRQA does not need to be satisfied that the complaint was first raised with the subject of the complaint
  - make it explicit that the VRQA may refuse to investigate a complaint that is better dealt with or has already been dealt with by another person, body, court or tribunal
- for prescribing a reasonable excuse for a child aged nine years or over to not attend school, reduce the travel distance requirement from 5 to 4.8 kilometres as part of the excuse conditions
- include schedules that prescribe school enrolment and school attendance notices, and revoke the Education and Training Reform (School Attendance) Regulations 2013 (which currently contain these notices)
- for prescribing the grounds for appeal by an employee of the Department to the Disciplinary Appeals Board, add underperformance as a permissible reason for appeal on the appeal notice (to reflect changes to the Act to that effect)
- for school students to access the Conveyance Allowance Program, change the eligibility criteria from being prescribed in regulation to determination by the Minister
- on the operation of government school councils, clarify that a vice president can preside at a council meeting when the president is absent and all council members have the same membership status.

The Department proposes to repeal the regulations relating to the education maintenance allowance and the elections for the Victorian Institute of Teaching after they sunset. The education maintenance

allowance program has been discontinued since 1 January 2015. The council of the Victorian Institute of Teaching now has no elected positions following a change to its enabling legislation in 2014.

### *Guiding principles for this statement*

This statement assesses the Department's proposal against the requirements of the *Subordinate Legislation Act 1994* and the *Victorian Guide to Regulation* (DTF 2014). The Department took the following analytical steps to address these requirements:

- examined the problem to solve by means of the proposed regulations
- clarified the desired policy objectives
- identified options of fee intervention to achieve the desired objectives
- assessed the costs and benefits of the options relative to the base case of no regulations
- identified the preferred option and its consequences
- articulated the planned processes to implement and evaluate regulations.

The range of options that the Department could consider was limited by the subordinate relationship of the proposed regulations to the Act. Many of the proposed regulations respond directly to the intention of Parliament to regulate matters. Such regulations are integral to the Act's functioning, so the options analysis focused on scenarios of differing regulatory parameters or scopes, rather than on non-regulatory measures.

The options analysis also involves varying levels of detail that reflect the regulatory impact. It aimed to provide a qualitative, high-level discussion of a limited set of options deemed practically viable and relevant for specific regulatory objectives.

Most of the proposed regulations and their alternatives are not easily quantified. They are scenarios where it is impossible to quantify and assign monetary values to the full array of regulatory impacts, particularly the resultant social and equity benefits. For this reason, the Department used multi-criteria analysis to indicatively assess and rank the options.

With no reliable activity-based costing, the estimates of regulatory burdens are indicative and not comprehensive. For example, the Department calculated the administrative costs for regulating home schooling and school registration. From a program planning perspective, the cost estimates are generally robust. However, for impact assessment purposes, these estimates are based on considerable uncertainties because it is impossible to know the exact time and effort that an application would require. Further, these cost estimates omit some nominal cost drivers such as preparing learning plans by home-schooling parents.

### *Future evaluation of the proposed regulations*

The proposed regulations for respective areas were all assessed to have a small impact—that is, less than \$8 million annually, which is the threshold dividing low-impact and high-impact regulations in the *Victorian Guide to Regulation* (DTF 2014). Collectively, however, they could have a combined impact greater than this threshold.

Given the high combined impact of the proposed regulations, the *Victorian Guide to Regulation* requires an *ex post* evaluation be conducted within five years of their remaking. The proposed

regulations are scheduled to commence in 2017, so the Department must undertake this mid-cycle evaluation by June 2022.

The nature and scope of this mid-cycle evaluation will be based on the proportionality principle. Regulations with a high impact or significant change in their compliance requirements will be prioritised for this mid-cycle evaluation—specifically home schooling and school registration. For the other regulations, the Department will develop a broader evaluation program for implementation by mid-2022. This program will be proportional to the relative impact and policy significance of the respective regulations included.

This statement includes considerable evidence to support the Department’s analysis and proposal. Nevertheless, as with any policy analysis, there were data gaps affecting the comparison of options and predictions about the effects of preferred options—even in cases where they are the clear choice in an options analysis. Reducing these data gaps will be crucial to monitor and evaluate regulatory performance and to improve regulatory design over a longer term.

The Department will work with relevant stakeholders to better understand the empirical impact of the proposed regulatory changes. This statement includes evaluation plans and related performance indicators for the proposed regulations. Over the next two years, the Department will begin systematically collecting this data to prepare for the mid-cycle evaluation. Further, the Department will ensure this data collection is useful for calibrating regulatory practices over time.

## 1. Background

The Education and Training Reform Regulations 2007 (the 2007 Regulations) are a consolidated version of the regulations associated with the *Education and Training Reform Act 2006* (the Act). They include several sets of regulations that are implemented by the Victorian Registration and Qualifications Authority (VRQA) in relation to the registration of schools, home schooling, and other education and training providers. They also include specific regulations for the government school system, including government school education, government school councils, and parents' clubs and fundraising for government schools. In addition, the 2007 Regulations provide for consumer protection in the vocational education and training (VET) sector, complaint investigation by the VRQA, student transport and travelling allowances, education maintenance allowances and scholarships, and government teaching service appeals.

The 2007 Regulations are due to sunset in June 2017 under section 5 of the *Subordinate Legislation Act 1994* (SLA), which requires all statutory rules to be revoked no later than 10 years after coming into effect. The mandatory sunset clause seeks to have regulations regularly reviewed so that they remain efficient and effective in a contemporary context.

In May 2016, the Victorian Government announced a review of the 2007 Regulations. The review aimed to identify options for improving regulatory practices and outcomes that achieve the intent of the Act—to provide for a high quality standard of education and training for all Victorians. The review investigated how existing regulations are working and how they could be improved if they are remade. It was informed by detailed analysis undertaken by the Department of Education and Training (the Department), submissions to a public consultation process organised for this review and feedback from targeted stakeholders, as discussed in chapter 2.

The Department conducted the review in accordance with the requirements of the SLA and the *Victorian Guide to Regulation* (DTF 2014). The review included preparing this Regulatory Impact Statement (RIS) to assess proposed regulations in respect of their objectives, their effects, alternative approaches to achieving these objectives, and comparative costs and benefits of the proposed regulations and alternative approaches to government intervention. The Department also assessed the implications for small business and competition as part of the review.

This RIS presents the Department's analysis and considerations that underpin its proposal for replacing the 2007 Regulations.

Organisations and individuals with an interest in education and training in Victoria are invited to provide comment on the proposed regulations. Public feedback will inform the Department's final proposal for replacing the 2007 Regulations.

The rest of this chapter explains the legislative framework and the regulated sectors, and outlines the Department's approach in preparing this RIS.

### *Legislative framework*

The Act sets out the overarching requirements for regulating school education and post-school vocational education and training in Victoria. Before the 2006 revision, some sections of the earlier

legislation were inherited largely unchanged from the *Education Act 1872*. The 2006 update of the Act replaced and consolidated about a dozen separate acts, establishing consistent regulatory regimes that apply to the majority of education and training services in Victoria.

Adopting a common legislative framework across education sectors reflects the growing need for connectedness, consistency and flexibility in education and training services. In its current form, the Act covers government and non-government school education, home schooling, vocational education and training, and adult, community and further education. It provides the Government with a lever to influence system performance and improve outcomes for all Victorians across the learning lifecycle.

The Act confers powers on ministers to set policies for education and training. Regulations are made to operationalise the Act. In addition, an array of Ministerial Orders and Directions are issued to govern specific matters.

Education and training services are subject to a variety of legislation and regulations that apply to areas that are broader than the Department's portfolio. Examples include the Child Safe Standards, which apply to Victorian organisations that provide services for children, and the *Financial Management Act 1994* and *Public Administration Act 2004*, both of which apply to public sector entities. These and other relevant statutory rules and laws prescribe wide-ranging requirements and responsibilities relating to equity, wellbeing, duty of care, probity and accountability in the education and training system.

### *Victoria's education and training sectors*

Regulatory impact depends on the size and scope of the regulated services. The proposed regulations would affect many individuals and entities that provide school education, home schooling, and training and skills development services in different settings.

In Victoria, school education is compulsory for children between the ages of 6 and 17. In 2016, over 930,000 students attend 2,243 schools (DET 2016a). Approximately 55 per cent of these students attend primary schools, with another 43 per cent in secondary settings and two per cent in special or language schools.

In 2016, 4,192 children from 2,604 households were registered for home schooling in Victoria (VRQA 2016a). The number of registered home-schooled children is rising, increasing by more than 50 per cent since 2010. However, children registered for home schooling represent less than one per cent of all school enrolments.

School education in Victoria is provided by schools in three sectors. The Department owns and operates 1,538 government schools. There are 493 Catholic schools registered in Victoria and supported by the Catholic Education Commission of Victoria, which acts as the overarching, strategic planning and policy-making body for the Catholic school system in Victoria. There are 212 Independent schools operated by other organisations with a variety of affiliations. All schools receiving government funding are not-for-profit, as required for school registration under the Act.

Vocational training providers that enrol international students or operate in other states and territories are regulated by the Australian Skills Quality Authority (ASQA) under Commonwealth

legislation. Only those that deliver training solely in Victoria or in Victoria and in Western Australia are subject to the State's regulation.

The VRQA regulated 271 VET providers during 2015-16. The majority were small private registered training organisations (RTOs); others are community-based adult education providers and schools that are registered to deliver VET courses. In aggregate, VRQA-regulated providers represent around 25 per cent of VET providers. About 10–15 per cent of Victoria's VET students are enrolled in VRQA-regulated providers.

### *Review approach*

The *Victorian Guide to Regulation* (DTF 2014) requires close examination of legislative proposals to ensure they represent the best option available to meet the relevant policy objective. The Department fulfilled this requirement for replacing the 2007 Regulations by assessing the rationale for government intervention in education and training, and establishing that the proposed regulations are the most appropriate approach based on an analysis of their advantages and disadvantages.

### *Rationales for intervention*

Education and training services are delivered to children and young people who are among the most vulnerable members of the community. The Department's assessment indicates regulation, as a form of government intervention, is generally necessary to address market failures, promote social equity and manage public risk in delivering learning and development outcomes for the community.

'Information asymmetry' occurs when the service provider has more information or knowledge about service quality than the service user or consumer. The quality of education and training is not always fully observable to students and their parents, making decisions difficult, such as which school to attend and which learning pathway to undertake. This could create disincentives for providers to make sufficient effort and attain high service quality.

This type of information-related market failure can be addressed through regulation to compel minimum standards for education quality and information disclosure. To this end, schools and training providers are required to make performance data available and meet minimum quality standards. These provisions acknowledge community expectations for delivering high quality education and training.

Compulsory schooling is a government response to 'principal-agent issues' in decision making for the education of children. Parents have strong incentives to ensure their child receives a high quality education. However, there may be cases when the best interest of a child (as principal) in pursuing education is not fully reflected in decision making by their parent (as agent) where the parent is unable or incapable of promoting education for their child.

If uncorrected, the principal-agent problem could result in children receiving suboptimal levels of education at critical early stages of learning, which can be costly to remedy. Similarly, children may receive low quality learning experiences due to poor teaching and instructional practices within a school, or may suffer poor health or wellbeing outcomes due to their learning environments.

Accordingly, the proposed regulations prescribe matters on school education and home schooling to enforce a legitimate role of government in defining the educational rights and interests of children and ensuring their universal access to schooling. Regulation can compel service providers to meet vital risk mitigation requirements.

The proposed regulations provide for the care, safety and wellbeing of students in government schools, particularly relating to student behaviour and responses to dangerous behaviour. Further, the proposed regulations establish minimum standards for school registration that would help protect students from poor education.

Regulation can also be justified on the grounds of social equity. By requiring schools to register as not-for-profit, the proposed regulations include clauses to strengthen service providers' accountability to students and the community. The regulations also enable students in rural and regional Victoria to receive school transport assistance, so that they may not be disadvantaged by high transportation costs in accessing school education.

### *Levels of governance*

Subsidiarity is a key factor to consider in replacing regulations. Under this principle, regulation should take place at the lowest appropriate governance level. The aim of this principle is to promote efficiency and local ownership of regulatory outcomes. Achieving this aim would require consideration of trade-offs in delegating decision making powers and responsibilities to different levels.

A major benefit of delegating decision making is the increased variety of regulations that are suited to local circumstances. Effective decision making depends on collecting and synthesising the relevant and necessary information on an on-going basis. When decisions are made at a local level, information costs reduce while individuals and organisations have the flexibility to optimise regulatory practices. By contrast, information costs tend to increase appreciably when decision making or regulation is centralised.

On the other hand, decentralised regulation could lead to efficiency loss in harmonising legal norms and standards. The enactment of a harmonised or uniform rule facilitates economies of scale in making regulations, which allow for further efficiency gains. These efficiency gains materialise through internalising decision making and reducing coordination needs at the system level.

The Department applied the principle of subsidiarity in assessing its proposal of regulations for the Victorian Government school system. The regulatory regime for government school education sets responsibilities for compliance or decision making within a multi-level governance structure. This approach seeks to optimise the mix of decentralised and uniform decision making in line with the objectives of specific regulations.

As noted by the Victorian Competition and Efficiency Commission (2013), Victorian government schools 'have relatively devolved decision-making authority when compared with other government school systems, particularly in Australia'. In the regulations, decision making responsibilities are distributed across different levels of governance—from Parliament to the Minister, the Secretary and Regional Directors, and further to principals and school councils. The Act also permits the Minister to delegate his or her power to another person, and to revoke the delegation at any time.

The 2007 Regulations include provisions that apply uniformly to all schools, such as the prescribed minimum standards for registration of schools. Others apply uniformly to government schools, such as minimum and maximum ages for school enrolment. Some other provisions provide for decision or discretion by the Minister or Secretary, such as government scholarships and student transport assistance provided by government. These rules help reduce administrative burden for regulatory compliance on individual schools, and achieve economies of scale in decision making at the system level.

For example, exemption from minimum and maximum ages provisions for entry into a government school may be obtained on a case-by-case basis. Clear rules for exemption are set in the regulations and may require ministerial approval. In practice, the Minister has in the past delegated this power to Regional Directors with specific conditions. The Minister's delegation of his or her power to decide on matters such as student transport assistance arrangements to the responsible Deputy Secretary could help ensure consistent eligibility criteria for access to these programs.

In the Victorian Government school system, much of the decision making occurs at the school level. Decentralisation allows schools and regional offices to make decisions that meet the specific needs of their local community. For governance matters within individual schools, decision making is generally devolved to the school authority that comprises the school council and the principal. Under particular provisions of the regulations, school councils have the oversight responsibility for school governance operations; for example, they determine the scheduling of student-free days and school fundraising activities.

Likewise, the regulations give government school authorities the responsibility to develop and implement student engagement policies and to authorise the emergency closure of their school (currently delegated to Regional Directors). In remaking the 2007 Regulations, the Department has taken the opportunity to reconsider the appropriate decision maker within the school authority structure on these matters.

### *Analytical method*

The Department identified options and assessed their relative merits for achieving specific policy objectives. The range of options considered was limited by the subordinate relationship of the proposed regulations to the Act. Many of the proposed regulations respond directly to the intention of Parliament to permit regulations to be made about specific matters such as home school registration, minimum standards for school registration, minimum and maximum age requirements for government school enrolment, and prescribed distance for exempting school attendance. Such regulations are integral to the functioning of the Act, so the options analysis focused on scenarios of differing regulatory parameters or scopes rather than using non-regulatory measures.

The options analysis was conducted with varied levels of detail, which reflected the regulatory impact of the relevant regulation. This approach is consistent with the *Victorian guide to regulation*, which suggests a proportionate approach to preparing the RIS. The proposed regulations for respective areas were all assessed to have a low impact—that is, an annual gross cost impact of less than \$8 million. Collectively, however, they could have a combined impact greater than this threshold. In keeping with the proportionality principle for low-impact regulations, the RIS provides a qualitative,

high-level discussion of a limited set of options deemed practically viable and relevant for specific regulatory objectives.

Multi-criteria analysis (MCA) is the main decision tool used to assess and rank the options. Most of the proposed regulations and their alternatives covered in this RIS are not easily quantified. They are scenarios where it is impossible to quantify and assign monetary values to the full array of regulatory impacts, the resultant social and equity benefits in particular (box 1.1).

**Box 1.1: Multi-criteria analysis**

Multi-criteria analysis (MCA) is a numerical representation of qualitative judgements about one option over another option. It involves using a numerical scale to calibrate judgements on distinct aspects of an option and aggregating these judgements into an overall indicator of its attractiveness.

MCA requires judgements about how different options contribute to an array of criteria linked to achieving a specific policy objective. These judgements are expressed as relative scores against each criterion for respective options. Individual criteria receive a weighting factor to indicate their relative significance for the policy objective. Weighted scores are calculated for the options to determine their rankings of overall effectiveness in meeting the policy objective.

For this RIS, somewhat different sets of criteria were applied to tailor the assessment of options for a broad range of regulations. Weights were allocated across criteria to ensure neutrality between benefit-related and cost-related criteria. The *Victorian Guide to Regulation* (DTF 2014) requires that an equal combined weighting of 50 per cent be applied for the sets of benefit-related and cost-related criteria respectively.

The scoring of options against each criterion is based on a scale from -10 to +10 relative to a zero score set for the base case. The base case represents the scenario in which the regulations sunset and are not remade. The scores applied reflect the Department's assessment based on its experiences with service provision and regulatory practices:

- A zero score indicates a neutral effect on outcomes or costs compared with the base case.
- A positive score indicates a better outcome for a benefit criterion, or a lower cost for a cost criterion, than achievable in the base case.
- A negative score indicates a worse outcome for a benefit criterion, or a higher cost for a cost criterion, than achievable in the base case.

**Report structure**

The remainder of the RIS is structured as follows:

- Chapter 2—Consultation
- Chapter 3—Regulations for home schooling
- Chapter 4—Regulations for registration of schools and other education and training providers
  - 4.1—Registration of schools
  - 4.2—Registration of senior secondary course providers and registered training organisations

- Chapter 5—Regulations for government school education
  - 5.1—Admission and age requirements
  - 5.2—Student behaviour
  - 5.3—School terms and temporary closures
- Chapter 6—Regulations for government school councils and parents’ clubs
  - 6.1—Government school councils
  - 6.2—Parents’ clubs and fundraising for government schools
- Chapter 7—Regulations for transport and travelling allowances
- Chapter 8—Other regulations
  - 8.1—Reasonable excuse – prescribed distance
  - 8.2—Consumer protection in education and training
  - 8.3—Senior secondary qualification awarding bodies
  - 8.4—Prescribed forms
  - 8.5—Scholarships and allowances
- Chapter 9—Regulations to sunset
  - 9.1—Education Maintenance Allowance
  - 9.2—Elections for the council of the Victorian Institute of Teaching
- Chapter 10—Impact on small business and competition
  - 10.1—Impact on small business
  - 10.2—Competition assessment

The proposed regulations are in an annex to this RIS.

Unless otherwise specified, reference to the Secretary is to the Secretary of the Department of Education and Training, and reference to the Minister is to the Minister for Education or the Minister for Training and Skills. Reference to parents also applies to guardians and carers of students.

## 2. Consultation

The Department consulted a range of stakeholders in the education and training sector over two stages during the remaking of the 2007 Regulations. In the first stage, a public submission process ran from 20 May 2016 until 17 June 2016. The Department called for submissions on its website and in school circulars. It also reminded key stakeholders of the opportunity to submit feedback. The Department also met with a range of stakeholders to discuss issues of particular interest to them. The Department received 45 written submissions: 43 focused on home schooling issues, including 39 made by individuals and community groups, and two from representative bodies of the home schooling community. Distance Education Centre Victoria also submitted on this matter, and the Victorian Commission for Children and Young People and the Commissioner for Aboriginal Children and Young People made a joint submission that focused on children's' rights and safety generally, including in home schooling.

In the second stage, the Department invited the stakeholders listed in table 2.1 to meet with it. It subsequently met with the following non-government organisations:

- the Home Education Network
- the Catholic Education Commission of Victoria
- Independent Schools Victoria
- Parents Victoria
- the Victorian Association of State Secondary Principals.

Participants in the consultation expressed views on home schooling and other issues, including parents' clubs and fundraising for government schools, registration of schools, and school governance arrangements. This RIS reflects the views of stakeholders consulted and those who made submissions. Following s. 11 of the *Subordinate Legislation Act 1994*, a notice of the RIS will appear in the Victorian Government Gazette and major daily newspapers in Victoria.

The release of the RIS begins the final phase of consultation, through which interested members of the public can provide input into the remaking of the 2007 Regulations. For a minimum of 28 days, the Department will invite public comments or submissions to consider before it finalises the proposed regulations. Information on how to lodge submissions can be found on the Department website:

<http://www.education.vic.gov.au/about/departments/legislation/Pages/act2006regsreview.aspx>

**Table 2.1: Stakeholders and agencies engaged for consultation**

Adult, Community and Further Education Board
Australian Council for Private Education and Training
Australian Education Union, Victoria Branch
Australian Primary Principals Association
Australian Principals Federation
Catholic Education Commission of Victoria Limited
Commission for Children and Young People, Victoria
Community and Public Sector Union
Commissioner for Better Regulation, Victoria
Distance Education Centre Victoria
Gippsland Home Educators Group
Home Education Advisory Service
Home Education Association
Home Education Network
Independent Education Union of Victoria and Tasmania
Independent Schools Victoria
Parents Victoria
Principals Association of Specialist Schools Victoria
Privacy Commissioner
Red Tape Commissioner
School Governance Australia Limited (formerly Association of School Councils)
Victorian Association of State Secondary Principals
Victorian Council of School Organisations Inc.
Victorian Curriculum and Assessment Authority
Victorian Equal Opportunity and Human Rights Commission
Victorian Institute of Teaching
Victorian Parents Council
Victorian Principals Association
Victorian Registration and Qualifications Authority
Victorian TAFE Association
Wimmera Home Educators Group

### 3. Regulations for home schooling

#### *Background*

The *Education and Training Reform Act 2006* recognises the right of parents to choose an appropriate education for their child. It also provides for a child of compulsory school age to be either enrolled at school or registered for home schooling. Specifically, the Act:

- establishes that all children should have access to a high-quality education, and that it is the legal duty of the parent to ensure their child of compulsory school age (6–17 years) is either enrolled in a registered school or registered for home schooling, and is receiving instruction in accordance with the registration (s. 2.1.1)
- makes it an offence for parents of children registered for home schooling to not provide instruction to the registered child (s. 2.1.2A), with the offence carrying a penalty of one penalty unit (\$155.46 as of 1 July 2016) for each day that the child does not receive instruction in accordance with the registration.

The Victorian Registration and Qualifications Authority (VRQA) is responsible for the registration and regulation of home schooling. Under the Act, the VRQA:

- registers students for home schooling (s. 4.2.2(1)(b)) in accordance with the 2007 Regulations (s. 4.3.9(1)(a))
- assures minimum standards in home schooling (s. 4.2.2.(1)(g)(ii))
- authorises officers to request and review evidence of registered parents' compliance with the requirements of the registration or any regulation relating to home schooling (s. 4.3.9(1)(b)(i))
- cancels the home schooling registration of a student if the parents or the student fail to comply with the requirements of the registration or any regulation relating to home schooling, or refuse to provide authorised VRQA officers with evidence of compliance (s. 4.3.9(1)(b)).

School attendance officers appointed by the Minister (s. 2.1.7) may request from the VRQA any information about the home schooling registration of students. The VRQA must provide the requested information (s. 5.8.5), so school attendance officers can determine whether children of compulsory school age who are not at school during school hours are registered for home schooling or truant.

The Act empowers the VRQA to investigate a complaint from a member of the public about the standard of education being provided to a home-schooled child, as part of its general obligation to maintain minimum standards in home schooling (section 4.2.2(1)(g)(ii)). The VRQA received seven complaints about home schooling families in 2015-16, and 10 complaints in 2014-15 (VRQA 2016a). The complaints mostly related to concerns from the public or family members. If a matter relates to child safety, then the VRQA refers the complaint to Child First for investigation. If a registration is found to be non-compliant with the registration conditions, the registration may be cancelled.

The 2007 Regulations include home-schooling provisions that set the process and conditions for registration. Under these provisions, a child must receive 'regular and efficient instruction' that taken as a whole 'substantially addresses' the eight key learning areas and is consistent with the principles of Australian democracy. The current registration process is largely declaratory, requiring parents to:

- submit a completed application form as specified in Schedule 6 (r. 65)
- attest to the VRQA that they will provide home schooling in accordance with the 2007 Regulations
- notify the VRQA every year of whether home schooling will be continued and whether the registration details have changed (rr. 69–70).

The VRQA assesses applications for completeness (signature, date, name, address) and evidence of the child's date of birth (r. 65). It must give the applicant notice of its decision within 14 days of the application lodgement (r. 66).

A minimal regulatory approach is in use for home-schooled children. The parent must attest that the child will receive regular and efficient instruction that substantially addresses the eight key learning areas set out in Schedule 1 of the Act, in a manner consistent with the principles and practices of Australian democracy (r. 68). Instructional approaches for home schooling are not defined, and registered parents are not required to address a particular curriculum or use a specified instructional approach. Moreover, at initial registration or annual notification, home-schooling parents do not need to explain any curriculum, program or instruction materials to the VRQA.

Home-schooling approaches range from formal and structured to more informal and abstract methods (NSW Parliament Legislative Council 2014). They include:

- school-at-home (also called structured approach)—the parent takes standard school practice and translates it into the home. Learning is typically structured by subject and taught in time periods, and instruction materials are similar to those used at school.
- unit studies—the parent focuses on the child's interests and ties those interests to a subject area such as maths, science or history. A child interested in space, for example, might study the history of space travel, read books and do projects on the solar system, visit science museums and learn about the physics of rockets (Allan and Jackson 2010).
- classical—the parent organises learning around three categories, or 'trivium': grammar, logic and rhetoric. Classical home schooling is based on the education method common in pre-modern Europe and focuses on stages of development.
- Charlotte Mason—the parent uses an approach developed in the nineteenth century by teacher Charlotte Mason. Similar in many respects to classical home schooling, the approach focuses on classical literature, copying of relevant materials, dictation, nature walks, structure and the early establishment of good habits.
- Montessori—this approach uses the principles of Montessori education in the home environment. It advocates for children making spontaneous and free choices within a carefully prepared environment. Learning is generally self-directed and experiential.
- Steiner/Waldorf—the parent applies the principles of Rudolf Steiner. The focus is on creativity, imagination, analysis and critical understanding, and interdisciplinary learning. The parent emphasises the importance of different aspects of learning (such as daily life, crafts, music and movement) as well as academic and intellectual pursuit.
- Unschooling/natural learning—the parent focuses on child-directed learning whereby the parent supports and facilitates the child's interests. Often, children are encouraged to try a wide range of experiences, such as reading, research, media, play, hobbies, chores, work experience and volunteering. Generally, there are no formal 'classes'.

- Eclectic—the parent uses parts of multiple models to create a specific program.

Families may use a combination of approaches (NSW Parliament Legislative Council 2014) and change styles over time. Research has noted that home education becomes ‘less school like and more informal over time as [families] gain experience and confidence in their children’s learning abilities and outcomes’ (Jackson 2014, p. 10). Results from a Home Education Association survey of 236 home educators found:

- 15 per cent used the unschooling approach
- 31 per cent used natural learning methods
- 8 per cent adopted a school-at-home structured approach
- 11 per cent used the Charlotte Mason approach
- 8 per cent used a classical approach
- 27 per cent were eclectic home schoolers who used a combination of approaches.

Similarly, Allan and Jackson (2010) found the common approaches to home schooling were structured, unit studies, classical, Charlotte Mason, unschooling and natural learning, and eclectic.

At June 2016, 4,192 children in 2,604 households were registered for home schooling in Victoria. The number of home-schooling registrations has increased steadily each year since the requirement to register was introduced in 2007. Between 2008 and 2015, the number of home-schooling registrations increased by 164 per cent. This significant growth is also occurring in other states and territories. In 2016, Victoria had the highest total number of home-schooled students of all Australian states and territories. It has a middle rank in the relative proportion of home schooling registrations as a percentage of school enrolments.

### *Base case and its consequences*

The base case is defined as the situation without the 2007 Regulations—that is, provisions in the Act require registration for home schooling, but a process for registration is not prescribed by regulation.

Specifically, the Act provides that the VRQA may register a student for home schooling ‘in accordance with the regulations’ and cancel a home-schooling registration in certain circumstances, including if the ‘parents or the student fail to comply with the requirements of the registration or any regulations relating to home schooling’. It is clear from these provisions that the Parliament intended a regulatory framework for home schooling. In light of the requirements of the Act, having no regulations to detail the registration process would not enable the regulator to give effect to the legislative intent.

In the absence of regulations, there would be no certainty as to how a family should go about registering for home schooling. If there were no regulations setting out the requirements of the registration process, the VRQA could develop a registration process based on the current regulatory approach; however, it would be policy based. There may be members of the home-schooling community who would prefer a policy-based registration process. However, a policy-based approach would not provide the same certainty or clarity, or the same level of scrutiny, as regulation can provide for both the regulator and the home-schooling community.

### *Identifying the problem*

The Act provides two options for the education of children of compulsory school age: enrolment at school and registration for home schooling. Parents who register for home schooling accept full responsibility for the education of their child. Their home-schooled children can benefit from the individual tuition and attention, compared with a school setting in which a teacher is responsible for the whole class. In the Department's consultation so far, parents commonly cited the ability to individualise tuition to their child's strengths as a key advantage of home schooling.

However, some home-schooled children may not receive a quality education, and Government does not have effective mechanisms to manage this risk. The Department considers this presents a level of risk to the objectives of the Act. Under the current regulatory arrangements, there is no way of ensuring or monitoring quality in home schooling because the regulator requires no information from an applicant, aside from the names, addresses and ages of the children to be home schooled. Little is known about how instruction is delivered, which educational style is used, or what outcomes home-schooled students achieve.

By comparison, a number of policy and regulatory settings are designed to assure the quality of instruction and student outcomes in school education. Only formally qualified persons can teach at schools and teachers receive ongoing professional development and on-the-job instruction to obtain and develop their skills. Schools also allow resources to be pooled and education to be delivered efficiently, and the VRQA ensures schools comply with the minimum standards for registration. Further, the educational progress of students is monitored and reported. In contrast, no equivalent settings exist for ensuring the quality of instruction and student outcomes from home schooling.

The submission from the Commission for Children and Young People raised concerns about vulnerable children who may be home-schooled. It noted the lack of visibility of home-schooled children compared with children in the school system, particularly from a child safety perspective. Schools' mandatory reporting obligations, for example, provide a mechanism for monitoring child safety that is not available to the same degree in home schooling. However, mandatory reporting obligations apply to professionals who may have contact with a home schooling family—for example, health care professionals. Further, oversight of a home-schooled child is available via complaints investigation (and referral to Child First if the concerns relate to child safety rather than educational provision).

In terms of educational attainment, a lack of information about home-schooled students creates the risk that some of them may be disadvantaged in any future school, post-secondary education and labour market, compared with peers who received an education from professionals in schools. If a child did not receive a quality education during the years of compulsory education either through home schooling or school education, then later efforts to remedy this situation are likely to be difficult for the individual. Further, interventions to provide education later in life are likely to be costly and may not be as effective. Home-schooled children with poor outcomes at an early stage of learning could continue to be disadvantaged when they transition to a school or tertiary institution.

How parents manage the process of learning is a key influence on their home-schooled child's academic achievement and skill development. Parents have a strong interest in ensuring they provide a high quality education for their child, and anecdotal evidence suggests the majority of home

schooling families have made the choice in the best interests of their child, and their children are achieving acceptable learning outcomes. However, those choosing to home school may have varied motivations for doing so, and different capacity and capability for providing effective instruction. From research on parents’ reasons for home schooling (Harding and Farrell 2003; Jackson 2014; Jeffrey and Giskes 2004; NSW Parliament Legislative Council 2014), the main motivations include:

- special learning needs (for students who are gifted or have a disability)
- bullying
- dissatisfaction with school
- religious belief
- philosophical belief
- distance.

In other words, the reasons for and approaches to home schooling are diverse. With this in mind, it is unlikely that all home schooling families have access to the resources that they need, and not all will have adequately planned how to best provide regular and efficient instruction that substantially addresses the eight key learning areas in the Act. Table 3.1 shows the number of curriculum materials distributed to home schooling families (between prep and year 10) in 2013 to 2016.

**Table 3.1: Distribution of curriculum materials from DECV to home schooling families**

Year	Total curriculum distributed	Total home schooling registrations
2013	131	3,545
2014	154	3,582
2015	180	4,136
2016	159	4,192

Source: VRQA 2016a.

These figures show a small percentage of families are accessing the curriculum resources available through Distance Education Centre Victoria (DECV). Notably, other resources are available (including some that are free of charge) that families may use to support home schooling instruction.

Home schooling families can obtain support from a variety of sources and organisations, including online materials to develop a home schooling curriculum and programs, local community resources (such as libraries, clubs, tutors and specialist classes, and excursion sites) and support networks to organise educational and social activities and to source teaching resources. The Victoria based Home Education Network (HEN), for example, provides support and information to home educators via a website, newsletters, events, camps and activities. HEN also works with the Department to develop resources and information to support home schooling families.

The range of Government assistance programs and support services for home schooling families includes:

- the School Start bonus
- public transport concessions
- online learning resources available from the Department’s FUSE portal (which enables educators to Find, Use and Share quality Educational resources)

- home schooling materials published by the VRQA and the Department, comprising the *Guide to home schooling in Victoria* (DET 2016b) and *Support materials for registration of home schooling in Victoria* (VRQA 2010).

In Victoria, children registered for home schooling are eligible to partly enrol at their neighbourhood government school for activities such as sport, art, science or language classes, and sitting the National Assessment Program – Literacy and Numeracy (NAPLAN) tests. The enrolment period, extent and conditions for home-schooled students are at the discretion of the school principal, within the parameters of Department policy. The relevant policy is explained in the Department's *Partial enrolment for registered home schooling students guidelines*.

Notwithstanding the support and assistance available, some home-schooled children may not receive quality instruction. This risk is increasing with the growth of the home-schooled cohort, because the absolute number of home-schooled children is increasing.

Alongside numerous reports of home schooling success, there is little representative empirical evidence of outcomes for home-schooled students. There has been no systematic research in Australia on the academic outcomes of home-schooled students (Jackson 2014; NSW Parliament Legislative Council 2014). Relevant studies of home schooling tend to suffer from small sample sizes and selection biases, or are anecdotal. These data limitations make study findings difficult to translate across the diverse cohort of home schooling families. In general, however, research has found many home-schooled students had no difficulty making the transition to schools or tertiary education institutions, and achieved results equal to greater than their peers (Jackson 2014).

The available data on the standardised test outcomes of home-schooled students is very limited. Only a small number of home-schooled students have participated in standardised testing, which makes the test results difficult to compare across the diverse cohort. In NSW in 2015, only five per cent of home-schooled students participated in NAPLAN. In Victoria, NAPLAN participation by home-schooled students was apparently even lower, with less than five registered students known to have voluntarily participated in NAPLAN in 2015. The actual number of home-schooled students participating in NAPLAN may be higher because parents might not have provided this information to the Department. These small numbers of students sitting NAPLAN are unlikely to be representative of the broader home-schooled cohort.

Some achievement data is available for students who have had both a period of school enrolment and registered home schooling in Victoria. This data is drawn from the Victorian Student Register. For this subset of home-schooled students, NAPLAN results are comparable to those for their peers at schools. However, data limitations make it difficult to generalise this comparison. In particular, the very small numbers and the students' period of school enrolment mean the results may not represent the home-schooled cohort.

Data on VCE results and post-school pathways for home-schooled students is also limited and may not reflect the broader cohort or provide a complete picture of their achievement and progress. The limitations of these datasets mean the Department can draw no meaningful conclusions about the effectiveness of the current home schooling policy settings.

In summary, the current regulatory approach does not allow the regulator or the Department to ascertain the quality of home schooling in Victoria. Anecdotal evidence and the limited available data support the contention that most home schooling families are providing their children with regular and efficient instruction, and their children are attaining acceptable outcomes. The current regulatory settings do not enable the regulator or Department to identify whether families meet the condition of providing regular and efficient instruction, including whether learning outcomes are being achieved.

For these reasons, some home-schooled students are at risk of not receiving regular and efficient instruction and attaining acceptable outcomes. The current available information does not allow this risk to be better defined or mitigated.

The residual problem is how to ensure students registered for home schooling are receiving a high quality education. The current arrangements do not support the collection of evidence on what parents are doing to ensure their home-schooled children receive a high quality education. The current regulations do not allow for any assessment of a parents' capacity to home school. The lack of such information means it is not possible to monitor whether home-schooled children receive regular and efficient instruction. The VRQA has limited power to compel the provision of information and limited capacity to enquire about these matters. Increased regulatory oversight of home schooling would improve the VRQA's ability to ensure quality in home school instruction, and to mitigate the risk that some home-schooled students are not receiving quality instruction.

### *Specifying the objectives*

The primary objective of regulating home schooling is to ensure all school-age children in Victoria have access to quality education. Because the Act recognises home schooling as a legitimate form of education in Victoria, and allows parents to make this choice, the Victorian Government is obliged to ensure students registered for home schooling are receiving a quality education.

In the home schooling context, quality is defined as 'regular and efficient instruction' that as a whole 'substantially addresses' the eight key learning areas and is provided in accordance with principles of Australian democracy. The secondary objective is to ensure parents meet the requirements of home schooling registration. The Department aims to ensure home-schooled children can easily transition to school, post-secondary or tertiary education, or the labour market, and are equipped with social and cognitive skills to be lifelong learners.

### *Identifying options*

The starting points for this RIS are the current provisions in the Act. The Act requires registration for home schooling—in particular, section 2.1.1(b) provides that home schooling students must be registered in accordance with regulations. As such, not prescribing the home schooling registration process in regulations (as in the base case) is not a viable option.

In keeping with the Parliament's legislative intention in providing for registration, regulating the registration requirements would remove ambiguity and arbitrariness about how to register for home schooling, for both the regulator and home schooling families. The 2007 Regulations provide for a 'light touch' registration regime, whereby parents applying to the VRQA need to only supply basic information to register. Both the current and proposed regulatory regimes are the lightest among all states and territories (table 3.2—see appendix 3.1 for details).

Table 3.2: Characteristics of home schooling regulation across Australia

Jurisdiction <sup>^</sup>	NSW*	SA*	ACT	NT*	TAS*	WA*	QLD*	VIC
Registration form	✓	✓	✓	✓	✓	✓	✓	✓
Learning/education plan	✓	✓	Assessed at home visit	Assessed at home visit	✓	Assessed at home visit	✓	✗
Curriculum-aligned learning plan or instruction	✓ NSW Board of Studies curriculum	✓ Australian curriculum	No formal curriculum required	Eight learning areas	Eight learning areas	✓ WA curriculum	Eight learning areas	Requirement to substantially address the eight key learning areas
Home visit assessment (or at another appropriate venue) for initial registration	✓	✓	✓ Demonstrate educational opportunities and learning strategies	✓ Demonstrate proposed learning program and method of recording child's learning achievements	✓ Within two months of registration	✓ Demonstrate the program is satisfactory and the child's learning achievements within first three months	✗	✗
Ongoing registration	✗	✗	✗	✗	✓	✓	✓	✓ Annual notification required
Registration form required for renewal or regular routine monitoring	✓ Form	✓ Annual review to monitor educational development	✓ Parent report	✓ Form	✓ Routine monitoring at intervals of up to two years	✗	Parent to complete annual report	✗ <sup>#</sup>
Home visit assessment for ongoing/renewal registration	✓	✓	✓	✗	✓	Evaluation meeting at least once a year	✗	✗
Maximum renewal registration period	2 years	1 year	2 years	1 year	2 years	N/A	N/A	N/A

<sup>^</sup>The progressive shading of the jurisdiction columns indicates the level of prescription in the regulation for home schooling, with New South Wales being most prescriptive and Victoria being least prescriptive. \*Jurisdictions that do not have a charter of human rights. <sup>#</sup>Registered families are required to notify the VRQA by 30 November each year that they intend to continue home schooling in the following year.

The Department understands some stakeholders would prefer to retain the existing regulatory regime. For this reason, it assessed the option of maintaining the status quo, along with two options that increase monitoring of home schooling quality:

- Option 1—maintain the status quo
- Option 2—move to a more active regulatory approach that includes the requirement for learning plans and reviews
- Option 3—move to a regulatory model similar to the model in New South Wales.

#### *Option 1—maintain the status quo*

The current approach prescribes minimal compliance requirements for registration: parents must provide basic information about their home-schooled children to the VRQA, and they must attest that they will provide regular and efficient instruction in the eight specified learning areas. The approach fulfils the Act's intention that students of compulsory school age must be either enrolled at school or registered for home schooling, and that registration will be in accordance with the 2007 Regulations.

#### *Option 2—move to a more active regulatory approach that requires learning plans and reviews*

This option takes a more active approach to regulating home schooling. The requirement for parents to attest that they will provide regular and efficient instruction will be maintained. Further, parents will be required to provide a 'learning plan' at the application stage. The learning plan should specify when and where instruction will take place, and the subject matter that will be covered by the instruction during the first year of registration. The plan should also state which educational materials and resources are proposed to be used in the instruction, including how the child's learning outcomes will be recorded.

The learning plan must be tailored to the circumstances and learning needs of the individual child. This option has no ongoing requirement to submit a learning plan, apart from with the initial application.

An applicant for home schooling registration would need to consider the educational needs of their child, how they would provide regular and efficient instruction, and the resources and materials that they would use to support instruction. The information in the learning plan would also allow the regulator and the Department to form a better understanding about the types of home school education occurring in Victoria. They could then target support and resources accordingly, better engage with home schooling families, and inform policy development.

This option would also provide the regulator with the power to review the learning progress of home-schooled students. If a family were selected for review, the parent would be required to provide details of the learning plan being used, and evidence of student progress (for example, samples of student work). After receiving this material, the regulator could request further information and arrange to conduct an interview with the parent.

The review sample each year would be selected using a combination of random and representative criteria. The review material would help identify the possibility of low-quality instruction and learning outcomes, from the information provided about student learning progress. The review would reveal whether the child is receiving regular and efficient instruction and whether the parent is meeting the

conditions of registration. The regulator and the Department could then better quantify the risk that some home-schooled students may not be receiving a quality education.

Any non-compliance would contribute to the review sample, and the VRQA could undertake another review of registrations deemed to be partially non-compliant or 'at risk'. Registrations that are successfully reviewed would not be reviewed again for a period of years. Under this risk-based model, compliance would reduce the regulatory oversight, and non-compliance would increase the regulatory oversight.

At both the application and review stages, the VRQA could seek further information, including an interview with parents who do not submit sufficient material to demonstrate that they meet their registration conditions. Parent interviews would occur only with the parent's consent, and could occur at the home (if the parent agrees) or another suitable location, such as a local library. This option thus takes a risk-based approach to quality assurance. However, it also minimises regulatory intrusion by providing a mechanism for a family to demonstrate compliance by submitting documentation alone.

The changes under this option would be accompanied by increased information, including information for enquiring or prospective home schooling families on the VRQA website, and information, advice and support from regional offices to promote partial enrolment and to support moves between school enrolment and home schooling, or vice versa. The option to voluntarily participate in NAPLAN would also be promoted to families.

The proposed model would allow flexibility for a registered family to continue using any method they see fit to deliver instruction, as long as that method meets the registration requirements. For families that already document their learning methods and their child's educational progress in some form, the new provisions would not be onerous.

### *Option 3—move to a regulatory model similar to the New South Wales model*

This option would be a more interventionist approach to home schooling regulation. It would adopt common features of the quality assessment practices in other Australian jurisdictions, including home visits to assess the parent's capacity and the home learning environment, a requirement to align instruction with a specified curriculum, and a finite registration period after which a family must re-apply for registration. At both the initial application and re-registration stages, a home visit would be conducted to assess quality factors driving the success of home education, including the capacity of the parent and the adequacy of the home environment.

Information would be required at the time of application, including the educational program used to deliver instruction. An applicant for home schooling registration would be required to consider the educational needs of their child, how they will provide regular and efficient instruction, including the instructional method, or combination of methods they will use, and the resources and materials they will use to support instruction. The information in the learning plan would also allow the regulator and the Department to gather information about the types of home school education occurring in Victoria, and to target support and resources accordingly.

Under this option, home schooling would be required to align with the Victorian curriculum, limiting the ability of families to conduct home schooling in their chosen method. Another change for families

is that registration would be for a maximum of two years, then families would need to re-apply. At the re-registration stage, a home visit would be required to assess student learning progress. Every registration would be reviewed at least every two years, providing a high degree of regulatory oversight of home schooling practice in Victoria.

### *Assessing options*

The Department used the following four criteria to compare the options:

- Criterion 1—parent choice
- Criterion 2—quality of education
- Criterion 3—administrative burden on the VRQA (which captures the ongoing resource implications and the costs to the VRQA of registering home school students)
- Criterion 4—compliance burden on parents (which captures the additional time and effort required of parents)

Across the four criteria, weights were allocated evenly between benefit-related and cost-related criteria. The first and second criterion directly reflects a positive outcome. The Department weighted quality of education (at 0.3) higher than parent's right to choose (at 0.2) because the former has lifelong implications. Underpinning this decision were the high cost and reduced effectiveness of later efforts to remedy poor learning and development outcomes during school ages. The third and fourth criterion is cost related: the Department considered them to be equally important, so assigned each a weight of 0.25.

The options were rated relative to the base case for each of the criteria. The Department used a symmetric scoring scale between +10 and -10, with the base case set at zero. The ratings reflect the following qualitative assessment of the merits and disadvantages of the options.

#### *Criterion 1—parent choice*

Like the base case, all three options allow parents to choose home schooling for their child. The base case and option 1 would provide the same level of choice because parents only need to register with the VRQA by providing basic details. Options 2 and 3 would constrain choice, because the augmented requirements on parents may discourage some families from registering for home schooling (but they do not need to pay a registration fee).

Regulatory requirements may be difficult to meet and may incur costs, and the VRQA may cancel home schooling registration if parents do not meet the registration requirements. In which case, parents would have to enrol their child in a registered school. By comparison, option 3 would constrain parent choice the most, because the stringent monitoring requirements (including home visits every two years) may be barriers to registration for some families. Other families may be unable to demonstrate compliance with the registration requirements, and may have their application for registration refused or cancelled.

### *Criterion 2—quality of education*

Options 2 and 3 would be more conducive than option 1 and the base case to attaining a quality of education, because they provide for more assessment of parent capacity to deliver a quality education. Option 3 would be most likely to provide a higher level of quality education because it provides for more intensive monitoring that would induce greater parent effort and reduce the risk of suboptimal learning progress. Options 2 and 3 would also allow the regulator to develop an information set to better target support and resourcing towards families whose home-schooled children are at a greater risk of not receiving a high quality education. Timely interventions could thus be undertaken to support parents.

The option 3 model is designed to drive improved outcomes for home schooled students by:

- encouraging families who do not currently document how best to meet the learning needs of their child and the registration conditions to document these considerations in a learning plan
- providing a framework for delivering instruction and monitoring student learning progress, so parents can target instruction to the child's age and circumstances.

The requirements to prepare a learning plan and possibly then to have this plan reviewed are intended to encourage parents to consider their child's educational needs and how they will be met, and how to ensure their child is learning, appropriate to their age and circumstances. During a review, parents would need to demonstrate they are using this information to meet the registration requirements. A parent may find they are no longer providing instruction in accordance with the learning plan. But, as long as they can demonstrate how the child's learning needs or circumstances have changed, then they will not be penalised for adapting the instructional approach.

The learning plan would be a tool to prompt, at the initial application stage, a careful consideration of what home schooling will mean for each child. Many applicants already consider this, so the new requirement would not be onerous for them. Other applicants could find the learning plan prompts them to consider other methods of educating their child, develop a deeper understanding of their child's learning needs, or make a clear plan for achieving education outcomes.

### *Criterion 3—administrative burden on the VRQA*

Compared with the base case, options 2 and 3 place a higher administrative burden on the VRQA because it would need greater resources to assess learning plans, undertake home visits and review learning progress. The VRQA would also need to assess a significant number of applications each year. Option 1 would reduce the administrative burden on the VRQA, relative to the base case, because it prescribes a clear process for registration. Under the base case (in which the 2007 Regulations would sunset), the Act would continue to require registration and the VRQA would need to develop a process for registration. So, when registering for home schooling, parents may provide unnecessary or inadequate information that would require support to remedy, which would increase both administrative and compliance costs.

The Department estimated the additional costs associated with the different options relative to the base case (table 3.3), using the following assumptions:

For all options, having clearly established processes will save 15 minutes per application (giving option 1 a negative cost change relative to the base case).

*Option 2*

- The added burden of processing the more complex registration applications will take 0.9 full-time equivalent (FTE) of a Victorian Public Service level 3 (VPS 3) officer and 0.2 FTE VPS 4.
- The assessment of learning plans will require 1.3 FTE VPS 5.
- Follow-up interviews for registration will require 0.3 FTE VPS 5.
- Annual reviews will require 0.3 FTE VPS 3, 0.1 FTE VPS 4 and 0.6 FTE VPS 5.
- Complex issues, legal advice and decision making will require 1.2 FTE VPS 6 and 0.1 FTE of a level-two Executive Officer (EO2).
- Establishing processes for learning plan reviews, annual reviews, the development of new guidance material, stakeholder consultation and recruitment will require 0.1 FTE EO3, 1.0 FTE VPS 6, 2.0 FTE VPS 5 and 1.0 FTE VPS 4 for six months. These costs are annualised across a 10 year period.

*Option 3*

- The added burden of processing the more complex registration applications will take 0.9 FTE VPS 3 and 0.2 FTE VPS 4.
- An assessment of learning plans will require 1.3 FTE VPS 5.
- Follow-up interviews for registration will require 1.9 FTE VPS 5.
- Annual reviews will require 1.7 FTE VPS 3, 0.4 FTE VPS 4 and 5.1 FTE VPS 5.
- Complex issues, legal advice and decision making will require 2.5 FTE VPS 6 and 0.1 FTE EO2.
- Establishing processes for learning plan reviews, annual reviews, the development of new guidance material, stakeholder consultation and recruitment will require 0.1 FTE EO3, 1.0 FTE VPS 6, 2.0 FTE VPS 5 and 1.0 FTE VPS 4 for nine months. These costs are annualised across a 10 year period.

The estimated costs are based on the current level of home schooling registration. The actual costs could be greater than estimated if the prevalence of home schooling continues to increase in the future.

**Table 3.3: Administrative costs to the VRQA for various options, relative to base case**

Cost component <sup>#</sup>	Option 1	Option 2	Option 3
<i>Administrative costs</i>			
Internal processing	-\$16,000	-\$16,000	-\$16,000
Initial registration	\$0	\$116,000	\$116,000
Assessment of learning plans	\$0	\$163,000	\$163,000
Registration follow-up interviews	\$0	\$37,000	\$245,000
Annual reviews	\$0	\$120,000	\$883,000
Complicated registrations	\$0	\$250,000	\$466,000
<i>Establishment costs</i>	\$0	\$28,000	\$42,000
<b>Total costs</b>	<b>-\$16,000</b>	<b>\$698,000</b>	<b>\$1,899,000</b>

# Negative figures indicate relative savings.

#### Criterion 4—compliance burden on parents

As under the base case, option 1 places a low compliance burden on parents. Under option 1, the only requirements would be to register using the prescribed form, attest to understanding responsibilities, and provide a birth certificate. Under the base case, the registration process would be similar, implying a zero incremental compliance burden on parents for option 1. Option 2 would have a higher compliance burden on parents compared with the base case and option 1, because parents must prepare and provide a learning plan at registration to demonstrate that they have capacity to deliver a high quality education. Option 3 has an even higher compliance burden, because parents would also need to take part in home visits and demonstrate student learning progress every two years.

To derive the incremental burden above the base case, the Department estimated the additional burden associated with the different options (table 3.4).

**Table 3.4: Compliance burden on parents for various options, relative to base case**

Cost component <sup>#</sup>	Option 1	Option 2	Option 3
<i>Compliance costs</i>			
Processing application	-\$10,000	-\$10,000	-\$10,000
Registration preparation	\$0	\$59,000	\$59,000
Registration follow-up interviews	\$0	\$9,000	\$59,000
Annual review follow-up interviews	\$0	\$2,000	\$81,000
Preparing learning plans	\$25,000	\$271,000	\$338,000
<b>Total costs</b>	<b>\$15,000</b>	<b>\$331,000</b>	<b>\$527,000</b>

# Negative figures indicate relative savings.

To calculate the compliance burden costs, the Department assumed:

- clearly established processes will save 15 minutes per application, so option 1 saves parents application time relative to the base case
- the additional burden of documenting the learning plan for registration will take parents 1.5 hours
- interviews will take up to 1.5 hours
- some households will spend more time preparing learning plans.

#### Preferred option and its effects

Table 3.5 summarises the multi-criteria analysis conducted to compare the costs and benefits of the different options relative to the base case. The Department identified that a more active regulatory approach that requires learning plans for initial registration and risk-based reviews is the most cost-effective option for achieving the objectives.

Maintaining the current ‘light touch’ approach is a viable alternative that provides a high level of parent choice and has low levels of administrative and compliance burden. But it provides less assurance of quality of education. Moving to an interventionist regulatory approach consistent with the practices in other states and territories is also a viable option because it would do the most to assure quality education. But it would reduce parent choice and have higher levels of administrative and compliance burden.

**Table 3.5: Multi-criteria analysis of regulatory options for home schooling**

Criterion	Weight	Base case	Option 1		Option 2		Option 3	
		Score	Assigned score	Weighted score	Assigned score	Weighted score	Assigned score	Weighted score
Parent choice	0.20	0	0.00	0.000	-1.5	-0.300	-3.0	-0.600
Quality of education	0.30	0	0.50	0.150	6.5	1.950	8.0	2.400
Administrative burden on VRQA	0.25	0	0.03	0.075	-1.5	-0.375	-4.1	-1.025
Compliance burden on parents	0.25	0	-0.03	-0.075	-0.7	-0.175	-1.1	-0.275
<b>Overall</b>	<b>1.00</b>	<b>0</b>		<b>0.150</b>		<b>1.100</b>		<b>0.500</b>

The Department prefers option 2, which would provide a better balance between children’s right to a quality education with the regulatory burden imposed on parents and the parent’s right to choose an appropriate education for their child. Option 2 would introduce a more stringent approach to registration of home schooling. The augmented requirements for learning plans and annual reviews would strengthen the monitoring of home-schooled students’ progress.

These measures would improve the quality assurance of home education by increasing the monitoring of instruction and student outcomes. The increased information that could be gathered under option 2 would also allow the Department to develop a better understanding of home schooling in Victoria. This information would be used to test the contention that most home-schooled students are receiving quality instruction and achieving suitable learning outcomes, and to inform a review of the effectiveness of the regulatory approach in two to three years.

This option is intended to drive behaviour change by requiring parents to document their child’s learning needs and how these needs will be addressed, and that their child’s learning is appropriate to their age and circumstances. For many families, the requirement will not impose material change apart from the preparation of the documentation; but for some, the requirement to consider these matters in a deliberate way is intended to drive behaviour change and improve the quality of instruction in the home setting. The preferred model does not require every registration to be reviewed or renewed every year in recognition that, for families who are providing quality instruction and whose children are progressing well, any additional requirements will be seen as an unnecessary burden. The preferred option balances the Department’s need to increase quality assurance by gathering increased data, with the impost on home schooling families who are meeting the registration requirements.

Option 2 would allow home schooling families to use an ‘own program’ method, so long as the program substantially addresses the eight key learning areas set out in the Act and is documented in a learning plan at registration. The option would also allow the VRQA to select families each year for review of students’ learning progress. That is, the approach combines accountability via inputs (the learning plan) and outcomes (reporting on student learning progress). It would increase regulatory oversight to address the identified risks without imposing requirements common in other jurisdictions, such as demonstrating:

- how the learning plan is based on the curriculum

- how the plan will meet the learning outcomes and content of the curriculum
- strategies for monitoring student progress and achievement.

### *Changes from the 2007 Regulations*

The preferred option 2 would involve several changes from the 2007 Regulations, including:

- a new requirement that parents provide a learning plan when applying for initial registration
- a new provision for review of a proportion of registered households. This monitoring would involve examining learning plans and evidence of student progress, and would likely affect 10 per cent of registered households each year (about 270 of 2,700 total registered home schooling households, or 450 of 4,192 total registered children being home schooled)
- changes to support the above new requirements (for example, changes to the timeframe in which the VRQA must decide on registration applications, given the more intensive registration requirements)
- minor technical changes, including:
  - changing the information required at registration to evidence a child's full legal name and date of birth
  - giving the VRQA 28 days (instead of 14 days) to assess an application for registration
  - removing the list of learning areas in the 2007 Regulations, and replacing it with a reference to the list in Schedule 1 of the Act. Currently, the eight key learning areas are specified in Schedule 1 and repeated in the 2007 Regulations. The proposed regulations will have this unnecessary repetition removed.

### *Implementation*

#### *Transitional provisions*

The new provisions would not take effect until the start of the 2018. Families who are currently registered (or registered prior to 1 January 2018) will be notified of the changes and the transitional arrangements. Families will be notified that, as from 1 January 2018, they may be subject to a review and, if reviewed, will need to demonstrate evidence of student progress. They will not be required to fill out a new application or provide a learning plan.

New applications will be required to provide a learning plan at the time of registration, and will be subject to the new application process starting from 1 January 2018. These changes will be clearly communicated to both existing home schooling families and the public.

#### *Home school community*

An overarching communication campaign will be launched in July–August 2017 to notify all affected parties of the new regulations once they are re-made in June 2017. The Department will also work with the VRQA to develop specific material to inform the home schooling community and families intending to register for home schooling of the changes. This material will include:

- a revised *Guide to home schooling in Victoria*
- a direct communication to all currently registered home schooling families, advising them of the changes and providing a factsheet in the third quarter of 2017

- a factsheet to be published on the Department and VRQA websites from July 2017
- revised information to be posted on the Department and VRQA websites from July 2017
- VRQA-facilitated information sessions, at which HEN, VRQA assessors and home schooling families can discuss the application and review process, and how to meet the new requirements

### *VRQA*

As the regulator, the VRQA will require a range of changes to its processes to implement the new regulatory model. This will include the following key elements:

- The VRQA board will consider the impact of the home schooling regulations and impact on business processes, forward communication plan, implementation plan milestones and budget reporting processes shortly before the proposed regulations are made (April–May 2017).
- The VRQA will establish a dedicated home schooling reform team (April 2017–April 2018).
- The VRQA will develop regulatory tools and support, including forms, guidance material and procedures (April–August 2017).
- The VRQA will establish a panel of assessors, which will require a tender process, procurement and training of the assessors (September–December 2017)
- The VRQA will develop a communication plan, including new material for website, electronic newsletters, workshops and direct communication with registered families (May 2017 onwards).

### *Compliance strategy*

All existing and new applicants for home school registration will be advised of the new requirements before 2018. If new applicants or current home schooling families do not comply with the new requirements from 1 January 2018, their application for registration may be refused or their registration cancelled. In these cases, the parent will be notified of the requirement to enrol their child at school. If a family chooses to neither enrol their child at school nor register for home schooling, they are in breach of their obligations under the Act. In practice, school attendance officers can follow up children of compulsory school age who do not appear to be attending school or home schooled.

The new regulatory requirements may result in an increase in home schooling families who are not registered. To minimise this possibility, the Department will provide existing home schooling families and new applicants with information about the new requirements and with compliance guidance (on how to meet the learning plan and review requirements).

The VRQA is required to accord procedural fairness in decision making generally and in relation to registration for home schooling. It is thus obliged to inform a parent of the substance of any material that the VRQA may consider in determining to cancel, suspend or refuse to grant a registration. It is also obliged to allow the parent the opportunity to respond.

When a registration is refused, suspended or cancelled, the parent has a right to (i) an internal review of the decision and (ii) a review by the Victorian Civil and Administrative Tribunal (VCAT) under s. 4.8.1 of the Act.

## *Evaluation*

The objective of the new regulatory requirements for home schooling is to increase the ability of the regulator to assure the quality of home education in Victoria.

Baseline measures currently available (and collected by the VRQA) are limited to the number of:

- applications received per year
- notifications of continuing home schooling per year
- notifications of cessation of home schooling per year
- complaints relating to home schooling.

The Department and VRQA will put additional processes in place for the VRQA to collect data on the following:

- the number of applications requiring follow-up and further information
- the number of applications refused per year and the reason for refusal
- the number of registrations cancelled per year and the reason for cancellation
- measures of the quality of instruction and student progress
- the number of VRQA decisions on registration that result in a request for internal review
- the number of VRQA decisions on registration that result in VCAT proceedings against the VRQA.

The Department intends to evaluate the new regulatory approach after two years (2018–20) to assess its effectiveness and identify whether further changes are required. The VRQA will use the evaluation data to improve the quality of its services and examine whether resources can be used more efficiently and effectively. The data will include compliance data gathered as part of the new regulatory approach, which will help identify the risk of home-schooled children not receiving a quality education. The VRQA will also use the data to better target resources towards those students at the greatest risk of not receiving adequate instruction. Additionally, the VRQA will monitor any cases taken to VCAT to challenge regulatory decisions. The VRQA board will use this information to advise the Minister about the effectiveness of the regulations.

More information about the cohort of home schooling families in Victoria will also be collected over 2018–20 through voluntary surveys on:

- why a family chooses to home school
- the approach used to home school
- the highest educational attainment level of the parent applying to home school
- post-school education, training and employment outcomes of previously home-schooled students.

The Victorian Student Number (VSN) currently identifies students with a period of home schooling registration and can be used to collect information about learning outcomes when these students transition to school enrolment (via NAPLAN results, for example) and into post-school pathways. Consideration could be given to the use of the VSN to improve data, including whether it could assist in providing stronger evidence of the longer term educational attainment of home schooled students, and another indicator of the quality of home schooling. The Department will also investigate other

mechanisms to gather information on post-school pathways, including the feasibility of surveying previously home-schooled students.

### *Consultation*

The Department undertook a public submission consultation process on the 2007 Regulations between 20 May and 17 June 2016, and received 45 submissions. Of these submissions, 43 concerned home schooling, and 41 were from individuals, networking groups or home schooling peak bodies against changes to the existing home schooling regime. Many respondents noted the flexibility of the current system is a strength because it considers the individual needs of the child and does not impose a burden on parents to complete paperwork or other documentation. Approximately 2,700 families are registered for home schooling in Victoria, so the views of the 43 submissions are unlikely to represent the whole home schooling community. The proposed model would retain the flexibility of the current system, while introducing new requirements that allow quality assurance and a better understanding of how the sector operates.

The submission from Distance Education Centre Victoria expressed concerns about the educational outcomes of home-schooled students, and noted some students experience difficulty when transitioning to a formal school setting. The Commission for Children and Young People also raised concerns about vulnerable children who may be home-schooled, and the lack of visibility of these children compared with those in the school system, particularly from a child safety perspective. Mandatory reporting obligations in the school setting, for example, provide a mechanism for monitoring child safety that is not available to the same degree in home schooling. But these obligations do apply to professionals (for example, health care professionals) who may come into contact with a home schooling family. Further, when a child is registered for home schooling, the regulator has a degree of oversight via complaints investigations and referrals to Child First when concerns relate to child safety. The proposed model will increase the oversight available and allow the regulator to request information from a family at any time. The current arrangements for child safety will remain, and issues will continue to be referred to Child First.

The Department has met three times with HEN members, who represent many home-school families in Victoria. HEN considers the current 'light touch' regime should be maintained.

Following the consultation for this RIS, further targeted consultation may be required in early 2017.

### Appendix 3.1: Home schooling registration and monitoring arrangements, by jurisdiction

#### New South Wales

##### Initial process

- The parent submits a registration form to the Board of Studies, Teaching and Educational Standards NSW (BOSTES) for each child whom they seek to home school.
- BOSTES processes the application and refers the application to an Authorised Person for assessment.
- A BOSTES Authorised Person at a mutually convenient time assesses the application through a home visit when the child is present. Supporting documentation for the registration (including an educational program) is provided and assessed at the home visit.
- The Authorised Person makes a recommendation on registration:
  - If the application is approved, BOSTES submits the Authorised Person's recommendation to the Minister or delegate. Registration is then approved and a certificate is issued specifying the conditions of registration. The initial registration is for three months to two years, to gather evidence that the program being taught is consistent with requirements.
  - If the application is not recommended, the parent is advised of the reasons for refusal. The decision may be reviewed
- It may take up to three months from submitting an application to receiving a certificate of registration.

##### Renewal process/monitoring

- Three months before the home schooling registration expires, BOSTES notifies the parent in writing that they need to apply for renewal of home schooling if they intend to continue home schooling.
- A separate application form must be completed for each child for whom renewal of registration is sought.
- The parent submits the renewal application to BOSTES.
- A BOSTES Authorised Person assesses the renewal application through a home visit to determine whether, based on the evidence available, the applicant has demonstrated compliance with the requirements for registration and would comply with the requirements for registration if renewal was granted.
- The renewal registration may be recommended for a maximum of two years. The Authorised Person outlines to the parent the reasons for their recommended period.
- If the application is approved, a certificate of registration for home schooling is issued to the parent.
- If any conditions change (for example, change of address), the parent must notify BOSTES in writing within 14 days of the change.

##### Appeal rights

- BOSTES advises the parent in writing if an Authorised Person recommends refusal of initial registration or renewal of registration, and gives the reasons for the recommendation. The parent is also informed of their right to seek an internal review of the recommendation within 30 days from the date of the notification.
- If the parent seeks a review, a different Authorised Person is appointed to consider the internal review. The review may involve a second home visit by the new Authorised Person to clarify matters that remain unresolved and to assess the documentation in support of the application.
- If the application is found to satisfy the registration requirements, a revised report and recommendation will be made to the Home Schooling Unit.
- If the new Authorised Person independently arrives at a decision that agrees with the original recommendation, the parent is advised of their right to seek a further review before the Administrative Decisions Tribunal (ADT).
- An appeal to the ADT must be lodged within 28 days of being notified of the outcome of the internal review. Following the ADT's determination of the appeal, a recommendation will be provided for the

consideration of the Minister or delegate. A decision to refuse registration does not preclude a subsequent application and registration if all requirements are met.

## Queensland

### Initial process

- The parent submits a registration form to the Home Education Unit of the Queensland Department of Education and Training for each child whom they seek to home school.
- The registration form includes a copy of the child's educational program or learning philosophy.
- The Manager, Home Education Unit is the delegated authority to approve a parent to home school.
- Once the application form has been submitted, provisional registration is issued.
- Once the program is processed, the child becomes registered for home schooling. Provisional registration ends on the day when the parent is notified of the application decision (which is within 60 days of application submission).

### Renewal process/monitoring

- Once registration is granted, it is ongoing and does not need renewal. However, each year, the parent is required to complete an annual report in the tenth month of registration. If the annual report is not received, then registration may be cancelled.
- A parent is required to advise the Home Education Unit within 28 days of any changes, including change of address or contact details.

## Western Australia

### Initial process

- The parent submits a registration form available from the WA Department of Education (DET) Regional Office.
- The Regional Office assesses the application and provides a certificate of registration.
- The department's Regional Executive Director appoints a moderator who meets the parent at home or another appropriate venue at a mutually convenient time, to discuss the child's education program and the resources/experiences that will be used to support the education program. At this evaluation meeting, the parent must provide evidence of learning achievements. They may provide the moderator with a report (on the learning program and child's progress) before the evaluation meeting.
- Evaluation meetings are required within three months of the first registration date.
- The moderator prepares an evaluation report for the Regional Executive Director about the child's progress and educational program, and provides a copy of that report to the parent.
- The evaluation report will include any concerns about the program or the child's educational progress. The moderator conducts another evaluation to determine whether the concern has been addressed.

### Monitoring

- Registration is ongoing until the child completes their compulsory education period, unless the parent decides to enrol the child at a school or the registration is cancelled.
- Evaluation meetings are required at least once a year.
- As per the initial registration, the moderator prepares an evaluation report for the Regional Executive Director on the child's progress and educational program, and provides a copy of that report to the parent.
- The evaluation report will include any concerns about the program or the child's educational progress. The moderator conducts another evaluation to determine whether the concern has been addressed.

### Appeal rights

- Before the stage at which a concern is formally identified, it is usually possible to address any concerns informally. Moderators provide appropriate advice to home educators to allow them to address any problems. In most instances, this approach is effective and the registration is maintained.

- If the Regional Executive Director has a concern about a child’s program or educational progress, then:
  - the home educator will be given written notice of the concern, including the reasons for the concern and the period within which the home educator should reasonably be expected to address the concern
  - the home educator will be given seven days' notice of an evaluation of whether the concern has been adequately addressed
  - a time and place for the evaluation will be suggested to the home educator.
- Following the evaluation, the moderator provides a report to the Regional Executive Director and a copy to the home educator, advising whether the concern has been adequately addressed.
- A decision to cancel registration may be taken for several reasons, including that the educational progress of the child is not satisfactory.
- The home educator may seek a review of a decision to cancel registration, through a submission to the Minister for Education. The Minister will refer the appeal to a Home Education Advisory Panel to report on the matter.

## Tasmania

### Initial process

- The parent submits an application form and Home Education Summary and Plan (HESP) to the Tasmanian Home Education Advisory Council (THEAC), which manages the registration.
- Once the application form and HESP are reviewed and approved, provisional registration is provided. Home schooling is not legal until provisional registration is provided (which generally occurs within three months of application submission).
- Within two months of the application approval, a THEAC monitoring officer or THEAC member contacts the parent to arrange a time to visit the home or another designated location to view the home education program.
- The HESP and feedback from the monitoring visit are reviewed at a THEAC meeting. If they are satisfactory, THEAC can recommend to the Minister for Education that ‘full’ or ‘conditional’ registration and the length of the registration period (generally three to 12 months initially).
- THEAC advises the Department of Education when a parent is granted full registration status.
- THEAC sends the parent a Ministerial letter confirming the registration and a copy of the monitoring visit report.

### Monitoring

- Registration is ongoing but monitored regularly via home visits. Generally, routine monitoring takes place again within one year and then at intervals of up to two years.

## South Australia

### Initial process

- The parent submits an application form to the Home Education Office in the SA Office of Education.
- As part of the application process, the parent must provide documentation to demonstrate their ability to provide an education program, including strategies to monitor student progress and achievement, adequate resources to support the learning program, a suitable learning environment, and opportunities for social interaction.
- Within four weeks of application submission in metropolitan locations (possibly longer for regional/rural locations), a Home Education Officer arranges a home visit to discuss and assess the application. The student must be present during the home visit.
- While the application is being processed, the parent can seek a four week temporary exemption from the child’s school.
- After the home visit, the Home Education Officer provides a written report and recommendation to the

Director, Systems Improvement for approval.

- Once registration is approved, a 12 month exemption is usually granted.

#### **Monitoring**

- An annual review is required to monitor educational development and renew exemptions. The annual review includes a home visit.

### **ACT**

- The three types of registration are provisional registration, initial registration and renewal of registration.

#### **Initial process**

- The parent contacts the Liaison Unit of the ACT Education Directorate to request an application form for provisional registration.
- The parent sends the completed application form to the Liaison Unit.
- Provisional registration for six months is granted, and a Certificate of Provisional Registration is provided for each child.
- If home education is continuing, a home visit is scheduled with the Liaison Unit one month before the expiry of provisional registration.
- The home educator provides a Home Visit Parent Report to the Liaison Unit at least one week before the scheduled home visit. The Liaison Unit provides the report template.
- An authorised person from the Liaison Unit conducts a home visit.
- A Certificate of Initial Registration is provided for the home educated child for up to two years.
- Once a child receives initial registration, the home educator provides an annual report to the Liaison Unit between 1 December and 31 January.

#### **Ongoing process/monitoring**

- If a parent seeks to renew their home education registration, a home visit is scheduled with the Liaison Unit one month before the expiry of registration.
- The home educator provides a Home Visit Parent Report to the Liaison Unit at least one week before the scheduled home visit. The Liaison Unit provides a template for this report.
- An Authorised Person from the Liaison Unit conducts a home visit.
- A Certificate of Renewed Registration is provided for the home educated child for up to two years.
- Once a child receives renewed registration, the home educator provides an annual report to the Liaison Unit between 1 December and 31 January.

### **Northern Territory**

#### **Initial process**

- The parent completes an application form administered by the NT Department of Education (DET).
- When DET receives an application form, it notifies the parent in writing if interim approval is granted. It then assesses the application to ensure the parent is providing a suitable curriculum, resources and facilities for the child.
- The parent receives a home visit by a principal or delegated departmental officer, who assesses:
  - the learning program
  - the child's needs
  - the method to monitor student progress and achievement
  - examples of the child's work
  - the suitability of the learning environment
  - learning resource quality and availability to support the learning program
  - time allocated to the learning program.
- After the home visit, the parent is notified in writing if final approval has been granted. Approvals apply

for a calendar year.

- If the parent's application is unsuccessful, then they must enrol the child in school. They can appeal the decision.

#### **Renewal/monitoring**

- The parent must complete a new application each year and/or inform DET when the child stops home schooling.

### **Victoria**

#### **Initial process**

- The Victorian Registration and Qualifications Authority (VRQA) is the body responsible for the registration of students for home schooling.
- A parent must complete a registration form and provide evidence of the child's date of birth.
- The registration form does not ask for an education plan or the reasons for choosing home schooling. But, on registration, the parent must commit to meeting the requirements for a home schooling program.
- The VRQA notifies the parent in writing of their decision on the application (within 14 days of application submission).

#### **Monitoring**

- Registration is ongoing, but the parent must notify the VRQA in writing by 30 November each year of their intention to home school for the following calendar year (January to December), and of any change in details (including residential address). They must notify the VRQA within 14 days if the child ceases to be home schooled.
- The VRQA can review a home schooling program if there is concern that the program might not be meeting the requirements.
- The VRQA may cancel the registration of a student for home schooling if:
  - the parent or student fails to comply with the requirements of the registration or the regulations relating to home schooling, or
  - the parent or student refuses the VRQA permission to review the home schooling program to determine compliance with the requirements.

## 4. Regulations for registration of schools and other education and training providers

The primary objective of government intervention in education and training is to ensure all Victorians are able to receive a high quality education, regardless of where they live and their social or economic background. The Victorian community as a whole benefits from quality education provision, particularly from education's role in providing a skilled workforce. It also generates economic activity as Victoria's largest service export (generating \$5.2 billion of exports in 2014).

Part of achieving this objective is having adequate quality assurance in the market for education. For this reason, registration is a key mechanism that the Victorian Government uses to achieve quality education for all. The *Education and Training Reform Act 2006* establishes the legislative framework for registering schools, and senior secondary course (SSC) and vocational education and training (VET) providers. The 2007 Regulations detail the registration requirements to operationalise the Act.

The Act requires all schools, SSC providers and training organisations that operate in Victoria to be registered. This requirement aims to ensure low quality providers do not operate in the market, and to disclose certain information to the market to help students and parents, as consumers, make informed choices. Specifically, the Act:

- establishes the Victorian Registration and Qualifications Authority (VRQA)
- confers on the VRQA the responsibility to register:
  - schools (government and non-government)
  - SSC providers
  - training organisations—known as registered training organisations (RTOs)—that operate only in Victoria, or in Victoria and Western Australia
- provides for offences for unregistered entities carrying on or conducting a school or claiming to be a registered SSC provider or an RTO.

Other legislative frameworks and common law also place requirements on, or provide incentives for, education and training providers to undertake practices to provide a high quality education. The following sections discuss these requirements and incentives for schools, SSC providers and RTOs.

### 4.1 Registration of schools

#### *Background*

In 2016, the VRQA was responsible for regulating 2,243 registered schools in Victoria:

- 207 independent schools, whose compliance is reviewed by the VRQA
- 1,538 government schools, whose compliance is reviewed and attested to by the Department
- 493 Catholic schools, whose compliance is reviewed and attested to by the Catholic Education Commission Victoria (CECV)
- 5 Adventist schools, whose compliance is reviewed and attested to by Adventist Schools Victoria (ASV).

### *Requirements under the Act*

The Act defines a school as a place where children of compulsory school age are provided with an education. It excludes some institutions that are not normally considered to be schools, such as universities and TAFE colleges. The Act also provides for other exemptions in the 2007 Regulations.

Under the Act, it is an offence for a person to carry on or conduct a school unless the school is registered by the VRQA (s. 4.7.1). The VRQA must not register a school unless it is satisfied that the school complies with the minimum standards prescribed by the regulations. The minimum standards for registration of schools include the matters prescribed in the Act in:

- s. 4.3.1(6)(a–d)<sup>1</sup>
- the principles in s. 1.2.1(a)(c)(e), (f)<sup>2</sup>
- s. 2.7.1 (the requirement for schools to be not-for-profit).<sup>3</sup>

Schools must attest to ongoing compliance with the minimum standards and other legal requirements in their annual reports, and they are reviewed regularly.

As a condition of registration, schools must also comply with:

- Ministerial Order 870—managing the risk of child abuse (s. 4.3.1(6)(d))
- Ministerial Order 706—managing the risk of anaphylaxis, if there is a student at the school who is affected (s. 4.3.1(6)(c))
- the *Emergency Management Act 1986* and the *Emergency Management Act 2013*, which includes requirements to have an Emergency Management Plan.

Further, the Act requires all teachers at a school to be registered by the Victorian Institute of Teaching (VIT) (s. 2.6.56).

The Act empowers the VRQA to:

- issue guidelines about the registration requirements (including minimum standards and other legal requirements), and school financial capability assessments (s. 4.3.8A). The Act limits the scope of guidelines to particular matters: student discipline, prescribed minimum standards, anaphylaxis and the Child Safe Standards (s. 4.3.1(6)). The VRQA guidelines (last revised in March 2016) on the minimum standards and other requirements of schools (including SSC providers) accord with the Act (s. 4.3.8A).
- assess the financial capability of registered non-government schools (s. 4.3.1A)

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<sup>1</sup> These matters include: (a) that the school policies relating to student discipline are based on principles of procedural fairness and do not permit corporal punishment; (b) student learning outcomes, enrolment policies and minimum enrolment numbers, student welfare, curriculum programs, governance of the school and the probity of any proprietor or person responsible for managing the school, and processes for the review and evaluation of school performance; (c) anaphylaxis; and (d) managing the risk of child abuse.

<sup>2</sup> These principles include supporting and promoting principles and practice of Australian democracy, and make performance information about the school and the student's achievement available.

<sup>3</sup> A note to s. 2.7.1 states that one of the minimum standards for registration is that a school must be not-for-profit. Added in 2015, this note reflects the intention of Parliament that Victorian schools be not-for-profit.

- satisfy itself of a school’s continuing compliance with the minimum standards for registration (s.4.3.2) by a review and evaluation of the school’s operation, or based on a report from the school or authorised reviewer. The two types of review of school operations are:
  - general reviews, which assess a school’s compliance with the prescribed minimum standards (s. 4.3.3(2))
  - specific reviews, which the VRQA can use when it reasonably considers student safety or the school’s financial viability needs urgent review, or in exceptional circumstances (s. 4.3.3(2A))
- impose conditions on a school’s registration (s. 4.3.1(6A))
- act after a review if it determines that a school is not meeting minimum standards (s. 4.3.4)
- make and keep a record of registered schools on the state register, including the year levels for which they are registered and the type of school (s. 4.3.8).

The Act requires schools to provide the VRQA with information required by the 2007 Regulations (s. 4.3.5(1)) and operate their attendance registers in accordance with the regulations (s. 4.3.7). It also allows the VRQA to satisfy itself in a number of ways that a school complies with the minimum standards and other legal requirements. The VRQA can, for example, approve other bodies to review and attest to compliance (s. 4.3.2)—that is, a co-regulatory approach. Under this provision, the VRQA:

- reviews independent schools’ compliance with the minimum standards
- has approved the State of Victoria (represented by the Department),<sup>4</sup> the CECV and ASV to act as review bodies to review and attest to the compliance of their schools with the standards (VRQA 2012). It has a memorandum of understanding (MOU) with each of these bodies. The MOUs set out the processes for registering schools, and the evidence required from schools to satisfy the review body that they comply with the minimum standards and other legal requirements. They are consistent with the VRQA guidelines.

These arrangements ensure schools undertake operational practices that support information disclosure, and ensure low quality providers do not operate in the market, especially in relation to the Child Safe Standards. The minimum standards and other legal requirements are standard operating practices and procedures that some schools would undertake without compulsion. But evidence from school reviews indicated not all schools do so. For this reason, making registration and operation conditional on a school having effective processes and practices supports the Victorian Government’s objectives.

### *Commonwealth Government requirements*

The Commonwealth Government places requirements on schools to receive school funding, so schools have incentives to put particular processes in place (box 4.1). It conducts an annual census of the number of students in non-government schools, which it uses to determine funding allocations, and may validate the census submissions. The Commonwealth Government relies on school system owners to monitor compliance and to distribute funds to complying schools. Schools have incentives, therefore, to put in place a number of processes and practices that support Commonwealth objectives. VRQA registration is the main mechanism for school system owners to verify schools’

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<sup>4</sup> The Secretary delegated responsibility to the Deputy Secretary of the Department’s Regional Services Group for attesting to the compliance of all government schools to the VRQA.

compliance with Commonwealth funding requirements. It effectively makes compliance with some minimum standards a requirement for Commonwealth funding. These practices would usually be standard operating procedures for schools, but the incentives provided by Commonwealth funding ensure the practices are in place in schools.

#### **Box 4.1** Commonwealth funding arrangements

Some minimum standards in Schedule 2 of the 2007 Regulations align with the requirements for Commonwealth funding. The *Australian Education Act 2013* (Cwlth) and the Australian Education Regulation 2013 require schools to meet the following requirements to receive Commonwealth funding:

- Basic requirements:
  - not-for-profit (s. 75(3); r. 26)
  - financial viability (s. 75(4); r. 27)
  - fit and proper person (s. 75(5); r. 28).
- Ongoing requirements:
  - principal and teacher performance, which involves implementing the Australian Teacher Performance and Development Framework and undertaking professional development consistent with the Australian Charter for the Professional Learning of Teachers and School Leaders (s. 77, r. 41)
  - curriculum recognised by the Australian Curriculum, Assessment and Reporting Authority (ACARA) (s. 77(2)(b), r. 42)
  - participation in NAPLAN (s. 77(2)(c), r. 43)
  - school improvement planning (s. 77(2)(d), rr. 44–45)
  - information about students, including enrolment numbers and student characteristics (such as Aboriginal and Torres Strait Islander and disability status) (r. 48 and r. 50)
  - a statement of philosophy (r. 52(a)(iv))
  - reports to parents on student performance (r. 59)
  - annual reports, including attendance rates (r. 60).

#### *Requirements under other laws and policies*

Schools have common law obligations and a duty of care to protect the safety, health and wellbeing of children in their care. Other Victorian legislation also aims to provide students with a safe school environment, such as the *Occupational Health and Safety Act 2004*, the *Working with Children Act 2005*, local government laws, and building standards and planning laws to ensure the safety of buildings, facilities and grounds. While compliance with these laws is required irrespective of the Act's registration requirements, the minimum registration standards include attestation of a school's compliance with these requirements. Alternatively, the school must provide evidence of processes that give effect to these requirements.

In particular, the minimum standards require schools to have processes that ensure staff are aware of their obligations under the common law duty of care, the Working with Children Act and the Child Safe Standards, and to have policies and procedures that ensure students can learn in a safe environment. From 1 August 2016, schools are also required to comply with Ministerial Order 870 for managing the risk of child abuse, although the 2007 Regulations do not cover this matter.

As the owner of the government school system, the Department also has scope to require government school principals to make effort and maintain capabilities to ensure their school provides a high quality education. The Department's School Policy and Advisory Guidelines (SPAG) provides guidance and advice on operational policy (some of which are legislative requirements) and implementation of the SPAG helps ensure a high quality education. However, the Department has no specific regulatory mechanism to enforce the SPAG and would need to develop a monitoring and enforcement framework to do so. The SPAG is also not compulsorily followed in non-government schools, although the Catholic Education Commission Victoria and Adventist Schools Victoria have their own system-wide requirements.

### *Requirements under 2007 Regulations*

The 2007 Regulations:

- set out the bodies that provide services to children of compulsory school age but are not usually considered to be a school, and are exempt from the requirement to be registered as a school (r. 6)
- provide for minimum standards for registration, and exemptions for these minimum standards (rr. 51–54, Schedule 2)
- set out the information required when registering a school or amending school registration (rr. 55–61)
- set out the conditions of school registration (rr. 62–63).
- specify minimum standards or criteria for registration of SSC providers (r. 74, Schedule 7)
- specify criteria for registration as a training organisation (r. 76, Schedule 9)
- require schools to report to the VRQA about how they comply with the minimum standards and complaints procedures (r. 64).

The regulations do not establish the fundamental framework for provider registration and do not contain the authority to change the fundamental structure of the regulatory regime. Rather, they operationalise the Act by prescribing what should be done to fulfil the Act's requirements. In particular, they set out 21 minimum standards that schools must meet to demonstrate that they comply with the Act and Regulations (Schedule 2) (appendix 4.2).

### *Registration for quality assurance*

The Victorian Government is committed to ensuring all Victorians are able to receive a high quality education. It also wants to maintain its reputation for high quality education and training provision, which, among other things, supports market access to generate export income. A key rationale for regulation is to overcome information asymmetries that undermine the efficacy of an unregulated market system. Information asymmetry occurs where the service provider has more information or knowledge about service quality than the service user or consumer has. Relevant and robust information is crucial for parents, students and employers to make informed choices and decisions.

Government intervention may be necessary to: overcome information asymmetry due to a lack of publicly available information (about schools' performance and educational approach) on which students, parents, government and employers can make decisions about the quality of the education or the qualification. Government intervention may also be necessary to:

- avoid inefficient and ineffective use of public funds invested in education
- minimise the risk of harm to vulnerable people (particularly children of compulsory school age) in a school or training context
- improve child development (including health and wellbeing).

Education and training are experience goods, which means their quality is difficult to assess until after completion. Further, there may be high costs to switching schools if quality concerns arise. This cost applies especially to schools, as children often form strong relationships with the school community and it may be disruptive to change schools, especially if parents have chosen the school because it meets a particular need in their family. The risk of poor quality education is a significant concern, therefore, because it can be difficult and costly to remedy. In particular, following a poor school education, attempts to pursue educational opportunities later in life are likely to be more costly and may not be as effective.

The nature of these risks varies across the different education sectors. For schools, the quality of education may not be sufficient to provide students with senior secondary or tertiary education opportunities, or with the employment outcomes to which they aspire. There are also risks that relate to education environments for young children, for whom a safe learning environment is particularly important for their wellbeing.

The quality of education is determined by, among other things, the capability and effort of the school. Some schools voluntarily provide capability information to attract students. They have incentives to reveal the quality of their education and training by demonstrating that they have capacity (for example, by employing high quality staff) and make effort (for example, by having processes to deliver a high quality education). Schools may also provide information on their graduate outcomes to provide to prospective students and/or parents.

Observable information, such as reputation, can be a proxy for quality measurement. For this reason, education providers have incentives to ensure they have sufficient capabilities and make sufficient effort to maintain their reputation. However, capacity constraints (for example, some schools have zones outside which students must be selected to enrol in the school) and physical distance (not everyone lives near a school that has high demand for enrolments) mitigate this effect to some extent (Jensen et al. 2013). Reputation can also be a poor reflection of practice, which can change over time.

Schools also face consumer expectations that they will operate in certain ways and provide certain information on their practices:

- Students and parents can expect students will be assessed on their learning, and the assessment outcomes will be recorded and provided in a format that verifies that the education or training has been undertaken to a sufficient standard.
- Students and parents have incentives to seek information about education quality, although they may face high costs in searching for, interpreting and monitoring service quality information.
- Parents expect schools to be well governed. Good governance facilitates a number of elements of a high quality education, including the protection of students as consumers. It also allows the use of enforceable undertakings as an effective regulatory tool to ensure schools' compliance with minimum standards and other legal requirements.

- Parents expect school environments to be safe and to facilitate student wellbeing, and may engage with the principal and the school governing body on these and other matters. However, not all parents can influence school principals and boards if they seek changes to operational procedures.
- Students and parents expect schools to communicate their philosophy and education models, to facilitate school choice.
- School system owners, such as the Catholic education system, have expectations about how their schools will operate. They also have incentives for their schools to maintain their reputation.

However, quality factors are not always fully observable to students and their parents for making informed decisions on education. So, schools may not have sufficient incentives to make effort to attain high service quality. In other words, some schools may be of sufficient quality without specific regulation, but this is by no means assured, and students face high costs when markets and existing legislative frameworks fail. For this reason, the Victorian Government considers the education and training system benefits from a reliable, low-cost method to ensure all providers meet minimum requirements for capacity and effort, to ensure students are receiving a high quality education. Regulation can mitigate the information-related market failure, by compelling information disclosure and compliance with minimum quality standards.

The Act confers on the VRQA responsibility to register schools. It also creates offences for unregulated entities operating as a school. However, the Act does not prescribe some operational matters, leaving the 2007 Regulations to address them. That is, the regulations do not set out the regulatory structure applying to schools, but rather prescribe what schools must do to meet the Act's requirements.

### *Evidence of preventable quality issues*

Some schools meet the minimum standards and other legal requirements, and disclose information as part of normal operations. But the VRQA found other schools need support to meet the minimum standards prescribed by the 2007 Regulations, even if they are at risk of losing their registration if they do not, and most applicants for new school registration need significant support to meet minimum standards. For example:

- Almost all applicants for new school registration require guidance from the VRQA to meet the minimum standards, and some are unable to meet the standards. In those cases, the application is rejected or withdrawn.
  - From July 2007 to June 2016, 29 school registration applications were rejected by the VRQA or withdrawn.
  - Over the same period, another 29 applications to amend an existing school's registration were rejected by the VRQA or withdrawn.
- Some registered schools require support to maintain registration. In 2015 and 2016, there were 41 cyclical reviews of schools. Of these schools, all needed to rectify one or more requirements for registration. The requirements usually related to meeting minimum standards.
- In recent years, some schools that closed unexpectedly were found to have not met minimum standards and other legal requirements.

Based on this experience, the Department assumes not all schools or new applicants would meet the minimum standards in an unregulated environment.

### *Base case and its consequences*

The base case is the situation that would exist without the 2007 Regulations. Given the current Regulations are due to sunset in June 2017, the base case would include:

- some incentives for schools to meet parent, student and community expectations to provide a high quality education. Schools would have incentives to provide regular assessment results, keep student records, and have a business plan and strategic direction for school operations.
- incentives for school system owners to implement good operational practices and processes to maintain their reputations as high quality providers. These incentives would be supported by MOUs with the VRQA (although these MOUs are based on the current regulations and VRQA guidelines).
- a common law duty of care to provide a safe school environment
- other legislative frameworks to ensure student safety and wellbeing, including the Working with Children Act, and local and state government building and planning laws
- Commonwealth Government requirements for school funding, which somewhat align with the Victorian registration requirements
- the Act's requirements, which create the legislative framework for registering schools.

In particular, the absence of regulation for school registration would mean:

- the Act defines a school but there are no exemptions for bodies that are not normally considered schools but may have arrangements to allow children of compulsory school age to undertake education or training
- there are no conditions and processes for registering schools
- there are no prescribed minimum standards, and the VRQA and education and training providers would need to rely on the Act or the VRQA Guidelines to determine registration requirements
- a framework for assurance to meet Commonwealth funding requirements would be required (as it is in NSW).

The VRQA could give operational effect to the Act's requirements by creating a registration framework outside the legislation or, in some cases, through Guidelines (as it currently does under s. 4.3.8A on certain matters). However, these alternatives may lead to ambiguity about the source of the authority. Disputes about the requirements can be costly to the government and thus taxpayers, from having to resolve the disputes through negotiation or dispute resolution, or in some cases, litigation.

Without minimum standards prescribed in regulation, some parts of the Act that rely on the VRQA's assessment of whether a school complies with the minimum standards may be inoperable. Further, the VRQA may be limited in what it can do if it is not satisfied about a school's compliance with the Act and regulations. The Act provides, for example, for the VRQA to:

- use the prescribed minimum standards to determine whether a school continues to attain the standards required for registration (s. 4.3.3(2))
- take action if a school no longer complies with the prescribed minimum standards (s. 4.3.4(2)).

Without the 2007 Regulations, the Act's requirements and standard practices and norms would lead some schools to deliver high quality education and to distribute performance information expected by parents. But some schools may not do so. The Government considers this risk is significant, given (i) many applications to register a new school or amend existing registration face difficulties meeting the minimum standards under the 2007 Regulations, and (ii) many schools that were subject to a cyclical review did not meet at least one minimum standard. In a market with substantial information asymmetry and consumers finding it difficult to assess quality, minimum standards and specified registration processes and conditions are effective ways of maintaining quality.

### *Definition of a school*

The Act defines a school and specifies bodies that are not schools, including bodies exempt from the definition by regulation or a Ministerial Order for the purposes of school registration (s. 1.1.3). The current exemption in the 2007 Regulations creates a category of non-school education and training providers that can deliver education to children of compulsory school age but do not need to be registered as a school. This category includes:

- adult education institutions
- non-school senior secondary and VET providers<sup>5</sup>
- employers that are providing workplace experience or training, including apprenticeships
- education providers that have at least 85 per cent of their students above the compulsory school age (r. 6).

These providers, except for employers, must be registered under other parts of the Act. If the 2007 Regulations are not replaced, then these organisations may stop offering services to students of compulsory school age. If the organisations choose to register as a school, then they will face higher costs of registration that they will likely fully or partly pass on to students (although they would also be eligible to receive government funding, which would offset this additional cost). The Department considers that it is more likely that providers would choose to not admit students of compulsory school age, given the relatively high costs of school registration. This outcome would reduce choice and leave students who might be better suited to learning in a non-school environment with fewer or less effective avenues for pursuing their education. It could also raise costs for students. While the base case would not preclude the use of Ministerial Orders to grant these exemptions, it would create uncertainty and lack transparency.

### *Minimum standards for schools*

The Act establishes that schools must meet the minimum standards prescribed in the 2007 Regulations. The VRQA may review whether a school's operations meet the prescribed minimum standards, and it may cancel registration if it determines a school does not meet the minimum standards (Part 4.3). In practice, the VRQA uses graduated responses to non-compliance with the registration requirements and enforcement mechanisms (such as enforceable undertakings) to manage non-compliance with minimum standards and other legal requirements. By being flexible in its responses, the VRQA can target the highest priority risks posed by non-compliance, and ensure

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<sup>5</sup> Post-secondary institutions established under Division 2 of Part 3.2 of the Act.

costs are commensurate with the risks. Flexibility also allows the VRQA to recognise the school's capacity and motivation to return to compliance, and to signal the seriousness of the non-compliance.

The 2007 Regulations detail the minimum standards against which the VRQA assesses schools. If the regulations are not replaced, then the VRQA could assess compliance using the guidelines that it can issue under s. 4.3.8A. However, without the minimum standards prescribed in the regulations, the VRQA would be restricted in the matters about which it could make guidelines. Parliament intended that the Act be operationalised by minimum standards in the regulations, so the Act's operation would be constrained without them.

### *Registration process and conditions*

The Act establishes that schools must apply to be registered with the VRQA in a prescribed manner with the prescribed particulars and information (s. 4.3.1(4)). But it does not describe the processes or information required. The Act also requires the principal of a school to provide the VRQA with reports in accordance with the 2007 Regulations (s. 4.3.5(1)), but does not specify what these reports must contain. Rather, the 2007 Regulations specify the registration process and conditions, and the content of school reports (rr. 55–64). If these regulations are not replaced, then the VRQA would be required to register schools. It could request information relating to applications, impose reasonable conditions on registration, issue guidance on processes and conditions of registration, and conduct reviews. However, the VRQA's decisions would be vulnerable to legal challenge.

Without regulation specifying the registration processes, schools and the VRQA may face higher costs for registration. The detail on registration conditions and processes in the 2007 Regulations provides certainty on the information required and lowers compliance costs for regulated entities and administration costs for the regulator. Such detail also provides some flexibility for the Victorian Government to accommodate an evolving educational environment by changing requirements without changing the Act. This flexibility also reduces costs for both registration applicants and the VRQA:

- Applicants would be less likely to provide inadequate information that would require support to remedy, or unnecessary information, which would reduce compliance costs.
- Timelines would be clear, which would reduce the risk of delays in opening new schools.
- The VRQA would incur lower administration costs in assessing schools' compliance with the Act's requirement.

### *Specifying the objectives*

The primary objective of government intervention in schools is to ensure all Victorians are able to receive a high quality school education, regardless of where they live and their social or economic background. This is achieved through having a quality assurance process underpinned by school registration.

Mandatory information disclosure is one way of achieving this objective. It allows parents to assess whether the school is offering a service that meets their child's needs and will provide the student with the outcomes (employment, tertiary admission, wellbeing) that they seek. The information disclosure requirements usually require information to be available in a particular format that is standardised across schools, making the information accessible to and easily understood by parents.

It also specifies the frequency with which information must be provided. In summary, mandatory information disclosure facilitates choice and incentivises schools to make information provision efficient, and to demonstrate that they meet the expectations of the regulator and the community.

An alternative, and complementary, approach is to ensure low quality providers do not operate in the market. To do so, registration by a qualified authority can verify that schools meet certain criteria, and provide the community with confidence in education and training providers. As a result, students who have a choice (such as students older than compulsory school age) will be more likely enter the market and vulnerable consumers who do not have a choice (such as students of compulsory school age) will be protected.

The secondary objective is to address information failure in an efficient manner. Registration can be operationalised by imposing minimum standards on providers and by specifying registration processes. This approach would provide the regulator and regulated parties with certainty about what needs to be done to meet the requirements of the Act. It would also reduce the cost to the regulator and regulated parties, because costly disputes about standards and registration processes would be less likely when the source of authority is unambiguous. The proposed regulations clearly detail the information to disclose and the standards to follow.

### *Identifying the problem*

The residual problem addressed by the 2007 Regulations relates to registration exemption for some schools, and to the objective of having efficient processes to register schools and assess whether they meet minimum standards and other legal requirements. This objective includes ensuring schools disclose information to parents to support their education choices, and follow registration processes so registration can be done efficiently. A number of documents set out the requirements for the VRQA to assess efficiently whether schools meet the minimum standards and other legal requirements. They also set out the processes for registration, including the VRQA guidelines and VRQA's MOUs with school system owners.

If there were no legal authority to support these documents, the VRQA would be less certain about the evidence that schools need to demonstrate their compliance with the Act and associated regulations. Similarly, schools would be less certain about the evidence that they need to supply. While the VRQA guidelines and MOUs could help mitigate this uncertainty, their authority may be ambiguous, and costs could arise from disputes about the statutory necessity of meeting the guidelines. Disputes about the registration requirements could result in large costs to the government and thus taxpayers, from having to resolve the disputes from through negotiation or dispute resolution, including litigation.

### *Identifying options*

Options for regulatory reform relating to school registration are constrained by the legislative framework of the Act, which requires the VRQA to register schools. The Department considered some broad options, along with some specific options.

Information asymmetries are generally addressed by providing information to the market and ensuring low quality providers do not operate. Information disclosure requirements and registration criteria can be in the form of:

- input- and process-based information — In this approach, the required information is specified, which effectively means schools must operate in a prescribed manner.
- performance information — In this approach, outcomes or objectives are specified, and registered organisations can choose how they operate to meet the specified objectives.

The 2007 Regulations are input based in that they focus on processes and procedures. The relevant referring sections of the Act show Parliament intended the regulations to prescribe minimum standards for schools.

In assessing alternative approaches to school registration, the Department examined approaches in other Australian and overseas jurisdictions (box 4.2). This analysis revealed the alternative approaches examined would require changes to the Act, which is outside the scope of this RIS:

- Some jurisdictions incorporate outcomes-based frameworks in their school registration, specifying desired outcomes or objectives but not the means by which they are met. This information is used to assess risk and guide the regulator's scrutiny of the school. Public reporting of outcomes provides incentives for providers to improve performance, because the quality of education outcomes is visible.
- Some jurisdictions do not register schools, or register only non-government schools. NSW does not require government schools to be registered, but the Board of Studies, Teaching and Educational Standards (BOSTES) imposes a range of other requirements. The department advise the minister on whether a government school should be opened. This advice is based on requirements similar to the minimum standards in the 2007 Regulations, in that they are input and process based. However, this approach would require an amendment to the Act, which establishes the legislative framework for registration.

#### **Box 4.2: Performance-based regulation of education and training providers**

Other jurisdictions are increasingly using performance-based to improve the performance of education and training providers, as an alternative to input-based regulations. This regulatory approach specifies desired outcomes or objectives, but not the means by which they are met. No education and training systems uses only performance-based regulations, but some use a hybrid system that incorporates aspects of both input-based and performance-based regulations. This approach gives education providers an incentive to go further than the minimum to meet the standard. As such, it might lead to greater self-improvement than minimum standards alone.

However, performance-based regulations can create perverse incentives if the performance measures are not carefully chosen and well implemented. So, in practice, a performance-based system requires a thorough process and significant stakeholder consultation to develop appropriate performance measures. In addition, a hybrid approach may have larger administrative and compliance burdens. At this time, the Victorian Government is not considering either a performance-based or hybrid approach.

The regulatory models that apply to school education in New Zealand and England, and early child education and care (ECEC) in Australia, have a stronger focus on performance than the Victorian approach to school regulation. In these jurisdictions, the regulators have a legislative responsibility to monitor, evaluate and improve the performance of providers. These models contain several features that are designed to support school improvement.

A hybrid regulatory approach combines minimum legal requirements performance measures to improve ongoing performance. Each jurisdiction regulates providers against specified outcomes, as well as their compliance with the minimum legal requirements to operate:

- In New Zealand, school performance is evaluated across six dimensions of good practice.
- In England, school effectiveness is assessed against four domains, while schools must also comply with a set of more prescriptive legal requirements.
- In Australia, ECEC providers are rated across seven domains, as well as being required to comply with minimum requirements.

Unlike schools in New Zealand and England, the Victorian minimum standards do not relate to children's learning and development outcomes; rather, these standards reflect the quality of inputs that are known to lead to better outcomes for children.

The public receives comprehensive and independent performance information about providers and the system. In England and New Zealand, independent evaluators publish reports that analyse school performance and identify areas for improvement against a range of domains. In England, schools and ECEC providers are rated using a four-point scale, so parents can compare relative performance. Performance information about the system as a whole is also published in England and New Zealand.

Performance risks determine the level of scrutiny providers undergo. Regulators use performance information to assess risk, and the level of scrutiny may vary, depending on the provider's performance. Regulators vary the length of time between routine reviews based on the outcomes of past performance reviews, for example. Regulators retain the power to review a provider at any time if they identify risks of poor performance or risks to the safety and wellbeing of children.

**Box 4.2: Performance-based regulation of education and training providers (continued)**

In New South Wales, non-government schools must be registered or be granted an exemption from registration on religious grounds. The *Education Act 1990* (NSW) sets out registration requirements (s. 47), including those for initial registration. The minister must consider advice from the Board of Studies, Teaching and Educational Standards before registering a school (s. 51). Initial school registration is provisional for a maximum period of 12 months.

Like in Victoria, the registration requirements in the NSW Education Act are input and process based. In New South Wales, government schools are not required to be formally registered. However, the NSW Education Act provides that the Minister may establish a government school if he or she is satisfied that ‘the school will comply with similar requirements to those required for the registration of non-government schools’ (s. 27). Amendments to this section in 2014 empowered the Board of Studies, Teaching and Educational Standards, with the Department’s assistance, to advise the minister ‘on the compliance by government schools with similar requirements to those required of non-government schools’. The external quality assurance process effectively sets a standard similar to that for non-government schools in New South Wales.

Appendix 4.1 contains more detail on the arrangements for school registration in other jurisdictions.

In Victoria, the current legislative framework does not support a full outcomes-based framework, because removing the Act’s requirements for processes and inputs, or changing them to a more performance-based approach, would require changes to the Act. This RIS considers only regulatory options that can be considered as part of the legislative framework under the Act.

*Alternative approaches within the current legislative frameworks*

The options for change within the Act’s requirements are changes to: (i) the definition of a school; (ii) the minimum standards for registration; and (iii) the processes for registration and amending registration.

Definition of a school

The Act provides for regulations to exempt certain bodies from the definition of a school. Without the 2007 Regulations, the definition in the Act is broad enough to require a number of bodies not usually considered schools (that is, not usually offering services to students of compulsory school age) to either register as a school or cease offering education and training services to compulsory school age students. This requirement would likely lead to fewer and less effective options for students who are better suited to learning in a non-school environment. Some 16 or 17 year olds for whom a school environment is no longer meeting their learning needs may benefit, for example, from studying in settings that usually cater to adults or offer courses that schools do not usually offer.

Another option of broadening the scope of services that are exempt from being schools was examined. However, the Department considers that entities that cater to school-aged children should register as schools to ensure student safety and wellbeing are adequately addressed for this potentially vulnerable group of consumers. The Department also considers that this objective is achieved by schools complying with the minimum standards in the regulations.

The only option considered viable is to replace the 2007 Regulations to exempt specific bodies that are not usually considered schools. The following bodies would thus be exempt from school registration requirements:

- adult education institutions
- non-school senior secondary and VET providers, or employers while they are providing workplace experience or training
- education providers that have at least 85 per cent of their students above the compulsory school age
- bodies that the VRQA is satisfied have been established for the main purpose of providing education or training to students above the compulsory school age.

Exempting these bodies from registering as schools recognises that they provide services that could benefit some compulsory school age students, but that they do not usually provide education to students of compulsory school age. The exemption is narrow because the Victorian Government considers that students of compulsory school age require additional safeguards so they can learn in a safe environment that the regulation of school registration provides. But some exemptions to allow students to receive education from these bodies is worthwhile if in the best interest of the students. For these reasons, the Department considers that it is not appropriate to narrow or broaden the scope of the exemptions for the definition of a school.

#### Minimum standards for schools

To understand the viable options for regulatory reform in school registration, it is important to understand the effect of the 21 minimum standards in Schedule 2 of the 2007 Regulations. Each standard is analysed here to show links with the Act and other legislation, the evidence that the VRQA requires to demonstrate compliance, and the impact of the minimum standard relative to the base case (appendix 4.2). The VRQA works with schools to demonstrate how they meet the minimum standards and other legal requirements.

Each minimum standard under the Regulations is required by the Act or another legislative framework, or supports the operation of the Act:<sup>6</sup>

- Three standards make meeting the requirements of other legislative frameworks a registration requirement that the VRQA can enforce.
- Eleven standards reflect requirements under the Australian Education Regulation 2013 to receive Commonwealth funding.
- Thirteen standards reflect requirements of the Act.
- Five standards support the operation of the Act, but are not explicitly required by it.

The VRQA's guidelines set out the evidence required to demonstrate compliance with the minimum standards and other legal requirements.

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<sup>6</sup> These categories are not mutually exclusive and do not add to 21.

As noted, the minimum standards fall into three broad categories. The options for reform involve removing particular minimum standards (or categories of minimum standards), including allowing the 2007 Regulations that underpin the minimum standards to sunset.

Thirteen minimum standards reflect the requirements of the Act. Without these minimum standards, schools would still need to meet these requirements, but the VRQA would have no legislative basis for assessing compliance and, therefore, for making decisions about registration. In this case, the Act would potentially be inoperable. Therefore, the Department considers it is not appropriate to remove minimum standards 1–4, 6–11, 15, 17 or 18. Many of these requirements are also incentivised because they are a requirement to receive Commonwealth funding. Of these, the curriculum framework, attendance reporting requirements and performance information provision are considered to have moderate costs, and the others were assessed as having low costs.

Three minimum standards relate to other legislative arrangements (minimum standards 5, 12 and 13). These all reflect the high priority that the Government places on ensuring students can learn in a safe environment. Making compliance a matter for registration facilitates high levels of compliance with these important safety issues, because schools are required to attest to compliance annually and ensure staff are aware of their obligations. In particular, the Government places a high priority on ensuring the care, safety and wellbeing of all students (minimum standard 12), which is also part of the response to the Betrayal of Trust inquiry (Family and Community Development Committee 2013). It considers the benefits of a high level of compliance with legislation enacted to protect safety outweigh the costs of the additional regulatory burden of registration.

The Department considers that relying solely on other legislative frameworks to ensure a high level of compliance would not provide sufficient assurance that schools are meeting these legislative obligations to ensure child safety. Further, efficiencies arise from having a single regulator for schools that oversees all or most regulatory obligations and ensures compliance at lowest cost to the community. For these reasons, the Department considers it is not appropriate to remove minimum standard 5, 12 or 13.

Of the remaining standards that support the Act, but are not required by it, the statement of philosophy is also a condition of Commonwealth Government funding. For this reason, schools would likely comply with these standards without the 2007 Regulations.

Standards 19–21 are operational and do not require additional compliance, but they support the VRQA's legislative authority to ensure compliance. The final standard about educational facilities potentially exceeds the requirements of the Act or other legislative frameworks, and it was assessed as having a low impact compared with the base case. The Department considers that removing these minimum standards would create little behaviour change so would generate no savings for schools in being compliant. Further, without these standards, the Commonwealth Government would no longer be able to rely on registration to monitor compliance with its funding requirements.

Also considered as part of the Department's assessment of reform options were the exemptions to the minimum standards in r. 52–54. These exemptions relate to the curriculum framework, enrolment numbers and school governance respectively.

Under these regulations, in 2016:

- fewer than five exemptions were granted in relation to the school governance standards
- 55 exemptions for government schools were granted in relation to the curriculum (all relating to language programs)
- 41 exemptions were granted in relation to the minimum enrolment standards; 35 for government school and six for non-government schools. Most of these exemptions related to small schools located in rural and regional Victoria.

Without the possibility of exemption from the curriculum and minimum enrolment number standards, these schools would likely have had to close or incur high costs to meet the minimum standards. That is, having exemptions (and processes for meeting them) allows schools to continue operating if they do not meet the minimum standards, but also ensure the interests of students. Many small schools in rural and regional Victoria may face difficulties in meeting minimum standards if they cannot attract language teachers, governing body members or students in declining communities. The Department considers this narrow range of exemptions for schools in these situations is appropriate. But a broader range of exemptions would not provide adequate safeguards for schools, and the Department does not propose to broaden the number of exemptions to the minimum standards. In this review, stakeholders have not raised issues with the process for applying for exemptions.

#### Registration process and conditions

The options for reforming registration processes and conditions relate to the information that is required to register a school or amend registration. The processes relate to who may make an amendment (r. 58), what information needs to be in the application or amendment (rr. 56–57, 60), and the timing of the application or amendment (rr. 55, 59). The conditions of registration ensure the school operates according to its registration, in terms of the year levels that it is registered to offer and the place at which it is registered to operate. They also ensure schools notify the VRQA of changes to registration information (rr. 62–63). Schedules 3–5 set out the particulars that the application or amendment needs to include, and they broadly align with the evidence required to demonstrate that the school can meet the minimum standards.

Some options for changes to these 2007 Regulations relate to the type of information collected about school registration, and to the ability to apply for an amendment to registration for more than one year level at a time. Particular information is required to allow the VRQA to assess whether the school can comply with the minimum standards for registration—namely, contact details, year levels, addresses, whether the school is to be primary and/or secondary, and co-educational or single sex, and whether the school has any specific purpose or speciality. The information must be in writing but need not be in a prescribed form. It must also include a business plan for the school.

The Department considers that all this information is necessary for the rigorous assessment of an application for registration. The business plan is likely to impose the greatest cost on an applicant (beyond what is required to demonstrate compliance with the minimum standards). But any applicant would need a business plan to demonstrate sufficient demand for the school to justify its establishment, and that the school would be financially viable. For this reason, the Department considers that there is little scope to reduce the burden on applicants.

Another possible change could involve applications or amendments that cover a range of year levels, rather than specific year levels—for example, providers would register to offer primary years (P–3 and 4–6), secondary years (7–10) or senior secondary years (11–12). This approach would reduce the number of times that a school had to amend its registration if it intends to build up a new school or campus by adding an additional year at a time. The VRQA may be able to use administrative means to streamline such applications, so the Department considers regulatory changes are not yet needed.

### *Preferred option and its effects*

The Department's preferred option is to retain the overall architecture and approach for school registration, and to replace the 2007 Regulations, with only minor changes to the governance standard and the definition of not-for-profit. To be registered, schools would have to:

- be a not-for-profit school (defined in r. 7)
- meet the 21 minimum standards
- comply with Ministerial Order 706 (Anaphylaxis Management in Victorian Schools), Ministerial Order 870 (Child Safe Standards) and the requirements for emergency bushfire management
- undertake prescribed processes for registration and registration amendment.

The proposed regulations would continue to set out the process for initial registration, amendments and review, including reporting in a structure similar to the current Part 5 of the 2007 Regulations. Part 5 applies to government and non-government schools, and includes:

- Division 1: minimum standards for registration of a school, with particular standards contained in Schedule 2 to the regulations and with exemptions from some of the minimum standards
- Division 2: procedures to apply for registration
- Division 3: procedures to apply to amend a registration
- Division 4: conditions of registration (requiring a school to operate on the basis that it was registered—for example, offering only the year levels for which the school is registered)
- Division 5: the information required in reports to the VRQA.

The burden on schools from meeting the registration process and conditions relates to providing the information required in the registration application and preparing a business case to support the application for a new school. Preparing this documentation is a considerable undertaking although only a portion of it relates directly to the proposed regulations. Preparing the policies that are required by the regulations is estimated at 3–5 weeks of work split evenly between school staff and principal time. The average cost is estimated at \$17,000 per new school.

Schools also face a burden in meeting the minimum standards (as set out in appendix 4.2). New schools have compliance and administrative costs to apply to establish a school. And existing schools have compliance and administrative cost to demonstrate that they meet the minimum standards and to amend registration. Yet most of the minimum standards:

- represent standard practice in the provision of school education. They are consistent with parent expectations of quality education that allows children to learn in a safe environment
- are required by the Act, rather than the regulations

- are requirements of other legislation—for example, the Working with Children Act, local government planning requirements and Commonwealth funding requirements.

Further, in this review, stakeholders did not indicate that they consider this burden excessive (chapter 2).

Consultation within the relevant agencies (which includes the VIT, the Victorian Curriculum Accreditation and Authority, and the VRQA) indicated broad school sector acceptance of (i) the importance of regulating school registration and (ii) the use of minimum standards as the mechanism. Likewise, a public call for submissions on the 2007 Regulations earlier this year—supported by targeted emails to key stakeholders, including the CECV and Independent Schools Victoria (ISV)—did not elicit any responses seeking change to the existing approach to school registration. In the submissions to this review, only ISV mentioned the regulatory regime for school registration, noting the flexibility of the regime, while ensuring sufficiently rigorous minimum standards, is one of its strengths. ISV did not consider substantial changes should be made and did not point to an excessive regulatory burden.

In the Department’s consultation with the CECV and ISV, they supported the proposed changes to the definition of a not-for-profit school (outlined below). The proposed changes to the governance standard (outlined below) received a more mixed response, because non-government schools already have to meet relevant Commonwealth Government requirements. For example, there are governance provisions for schools or groups of schools under the *Australian Education Act 2013 (Cwlth)* to receive government funding, the *Corporations Act 2011 (Cwlth)* (if the school is governed by a company), and the *Australian Charities and Not-For-Profit Commission Act 2012 (Cwlth)* (if the school is a charity). However, while the Department considered aligning the ‘fit and proper’ test with these other requirements, it also considers that the VRQA requires a specific Victorian regulation (as provided in the minimum standard for registration) to enable it to act.

Stakeholder feedback to the VRQA’s annual stakeholder survey suggested the majority of its regulated entities think the VRQA’s regulation is proportionate (EY Sweeney 2015).

It is not possible to accurately determine the costs to schools of compliance with the minimum standards in the 2007 Regulations. Many of the minimum standards are also required under the Act or other legislative frameworks. Further, schools usually develop policies and procedures as part of normal school operations to ensure the safety and wellbeing of students in a holistic manner. They may modify these documents to make them useful for demonstrating to the VRQA that they meet the minimum standards and other legal requirements. This RIS identified costings from these marginal effects.

The effect of the minimum standards also varies significantly across schools. Small schools, for example, need to expend significantly more resources (as a proportion of school budget) to meet minimum standards, and generally have fewer resources to draw on. Schools catering to students with special needs also incur higher costs in meeting the Act’s requirements and, therefore, the minimum standards.

This RIS assessed some minimum standards as very low or low impact, so the costs of the additional compliance and administration required by the minimum standards are also likely to be low. For the

minimum standards assessed as moderate or high impact, their costs depend on the support that the school system owner provides to its schools to demonstrate compliance, on the practice in a particular school, or in the case of independent schools, support from other entities such as ISV.

For a broad estimate of the costs, the Department assumed:

- for minimum standards assessed as very low impact, the costs are zero
- for minimum standards assessed as low impact, the costs are about 1 hour of staff time per year per standard
- for minimum standards assessed as moderate impact, the costs involve 4 hours of staff time and 2 hours of principal time
- for minimum standards assessed as moderate to high impact, the costs involve 8 hours of staff time, 4 hours of principal time and 2 hours of governing body time
- there are 2,243 schools registered in Victoria, including 1,538 government schools, 212 independent school and 493 Catholic schools
- staff costs are \$67 per hour
- principal costs are \$116 per hour
- governing body costs are \$67 per hour.

The total cost to schools of meeting the minimum standards is an estimated \$6.8 million per year. It costs the VRQA about \$10,800 to undertake a general school review of a non-government school, which is usually undertaken every five years.

The effect on schools of the regulations' prescribed processes for registration application and amendment are relatively small. The regulations specify the information that must be provided for registration, but do not set the overarching registration framework or the need to produce a business case to consider the merits of establishing a school or changing an existing school registration. Further, the information required of schools is essential for the VRQA to assess whether the applicant will meet the minimum standards.

### *Changes from the 2007 Regulations*

For school registration, the Department proposes to retain the architecture of the 2007 Regulations, with some changes to achieve the policy intent of the minimum standards and to address some issues that have emerged since the 2007 Regulations were made.

The key proposed changes are intended to strengthen the not-for-profit requirement for all schools and the governance arrangements (particularly for non-government schools). Several minor technical changes to the requirements for school registration would assist the regulations to operate as intended. They would also clarify schools' obligations.

### Governance

The good governance of Victorian schools is critical for raising educational standards, improving student outcomes and ensuring accountability to the community about the use of public funds. As such, all members of school governing bodies must be held – by themselves, their school communities and government – to a high standard.

There are strong existing mechanisms to support good governance in government and non-government schools. A range of regulatory and non-regulatory mechanisms are used to ensure high standards in the government school system, which is directly managed by the government.

Government school councils must operate in accordance with the Act, regulations and Ministerial Orders, which cover a range of issues including their establishment or abolition, election processes, eligibility for office and account-keeping processes. In addition to these process rules, the scope for decision-making by government school councils is explicitly limited to control risks. For example, the Act prohibits government school councils from hiring teachers for more than one year, purchasing land or borrowing money. For some decisions government school councils require approval from the Minister, for example, to delegate a power or duty to any person or entity other than the principal.

Individual council members are bound by the *Code of Conduct for Directors of Victorian Public Entities* (VPSC 2016) issued under the *Public Administration Act 2004* (s. 61). This Code of Conduct is based on the Victorian public sector values and sets the standard of behaviour expected of Directors and statutory office holders.

Similarly, government school principals must comply with the Act, which requires that all government school principals are registered with the Victorian Institute of Teaching (VIT) or have the VIT's permission to teach. Ministerial Order 199 also sets out the standards of conduct required by all government school principals and teaching staff, including that the Secretary (or her delegate) must be satisfied that a person is a fit and proper person to be an employee in the Teaching Service. In addition, the Ministerial Order requires that in relation to the collection and payment of public monies, all employees 'must conform strictly with the provisions of the *Financial Management Act 1994*'. Principals are also subject to additional obligations and accountability arrangements associated with their employment arrangements.

As it would not be appropriate to apply these requirements and forms of regulation to non-government schools, a different approach is used to mitigate the greater risk of a governance or financial failure. In non-government schools, there are governance standards imposed by the minimum standards in the 2007 Regulations, which the Department is proposing to replace. The policy principle is to regulate for risk in the most appropriate way, accounting for existing regulatory frameworks. The proposed 'fit and proper' person test for non-government schools includes many criteria that the Commonwealth Government applies to entities that receive and distribute federal school funding under the Australian Education Regulation 2013 'fit and proper' test.

In relation to school governance, the proposed approach would:

- introduce the concept of a 'responsible person' to identify all the people who have significant influence over a non-government school's operations and decision making
- introduce a definition of 'proprietor' to make it unambiguous that this person or entity is responsible for the governance of a school
- replace the 'good character' test with a 'fit and proper' person test to strengthen the requirements for people holding positions of authority in the governance and management of a non-government school.

**Responsible person (standard 15):** The Department proposes to change the Regulations to introduce the concept of, and define, a ‘responsible person’<sup>7</sup> as someone who has influence over decision making in a non-government school. A responsible person would include:

- the principal of the school
- each person who is conferred responsibility in the school governance structure for managing the school or its finances, including members of the school’s governing body
- if the proprietor of the school is an entity, members of the governing body of that entity
- any other person who by their conduct assumes a position of authority over the governance or management of the school.

Under the 2007 Regulations, the proprietor, the principal and members of the governing body of a non-government school must meet certain requirements. The proposed approach would specify that the proprietor and ‘any responsible person’ needs to meet these requirements, including a change to the requirements relating to ‘good character’ (explained below). Under the proposed approach, all responsible persons would be required to declare certain matters, including that they are fit and proper. This approach extends the current requirement for prospective proprietors, principals and members of governing bodies to declare that they are of good character, including that they have not been declared bankrupt. Most ‘responsible persons’ are required by the 2007 Regulations to complete the ‘good character’ test, so the change would not be significant for these people. For a very small number of ‘responsible persons’, this requirement would be new, but making the declaration would not impose a significant cost on the responsible person .

**Proprietor (definitions and standard 15):** The Department proposes to add a definition of a proprietor to the regulations to clarify which individuals and entities may hold positions of authority in the governance and management of one or more registered schools. Under the proposed approach, a proprietor would also have specific responsibilities under the regulations. The aim is to make it unambiguous who is responsible for a school’s governance. The proposed regulations would specify that the proprietor has legal responsibility for structuring the governance of a school to meet the requirements in the regulations (for example, to develop the strategic direction, manage the school’s finance and fulfil legal obligations).

The proposed definition of ‘proprietor’ captures circumstances where the board of an entity, such as a charity, establishes a school without creating a separate legal entity to govern the school. While the establishing entity may delegate responsibility for operating the school, it retains control (through its governing body or board) of delegations and finances, so has legal responsibility for the delegate’s actions. The change would not affect existing responsibilities but would clarify that the ultimate responsibility for governance lies with the establishing entity. The change would not impose additional costs on schools.

**‘Fit and proper’ test (standard 15):** In the 2007 Regulations, the proprietor, members of the governing body and the principal of a non-government school need to be of ‘good character’. Under the proposed approach, the proprietor and any responsible person (including the principal of a non-

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<sup>7</sup> The concept is being introduced for non-government schools only. Non-government schools operate with a wide range of governance and decision-making structures, creating a need for such a definition.

government school) would need to meet a higher test of ‘fit and proper’. Currently, individuals must declare that they:

- can carry out their responsibilities in relation to the operation of the school
- have not been found guilty of an indictable offence
- have not been:
  - declared bankrupt, or
  - if a body corporate, an externally administered body corporate
- are not a represented person
- are not in breach of the Working with Children Act.

The proposed ‘fit and proper’ standard would also require individuals to declare that they have not been associated with an adverse finding or other action by a court, tribunal, commission of inquiry, professional discipline body or regulatory authority on ground(s) involving dishonest, misleading or deceptive conduct, non-compliance with a legal obligation relating to the provision of education, or breach of duty.

A person who had previously been a responsible person (including a proprietor or principal) at a school would be ineligible to be a ‘responsible person’ if, for example, they had been found guilty of professional misconduct or were involved in the management of a school that has been deregistered.

The ‘fit and proper’ test is intended to mitigate the risks of poor governance in a non-government school. Responsibility for the conduct and operation of a non-government school, as well as ultimate decision making, rests with the proprietor, principal and members of any governing body. The strengthening of the test accords with the potential for loss associated with poor governance—for example, non-government schools can buy land, borrow money and employ permanent staff using tuition fees and public funding. As such, the regulatory approach is based around the fitness and propriety of individuals, particularly in relation to financial management.

The new test will affect existing Catholic and independent school principals, proprietors and members of governing bodies (for example, school boards or canonical administrators) and any other person who assumes a position of authority over the governance or management of the school. Members of merely advisory bodies, such as those commonly established in Catholic primary schools, would not be expected to meet the test.

In practice, the ‘fit and proper’ test would require relevant individuals to declare that they satisfy the existing matters contained in the ‘good character’ test and the proposed additional matters (listed above). In practice, individuals would have to tick ‘yes’ or ‘no’ to questions relating to the matters outlined in that clause. Individuals would need to provide evidence of fitness and propriety only if they disclose that they do not meet one of the requirements.

Proprietors would need to ensure existing ‘responsible persons’ comply with the additional requirements and, under the proposed regulations, update that information when their circumstances change or in accordance with their school’s internal governance procedures. The change would take about 15 minutes of board time to explain, and governing body members should then complete a new form. Across about 705 schools with an average 10 governing body members per school, this process would involve a one-off cost of about \$66,500, or \$94 per school.

If an existing member of a governing body does not meet the new fit and proper test and is ineligible for an exemption (r. 54), that person should no longer hold a 'responsible person' role in a non-government school. The number of individuals who may be required to step down is difficult to predict but unlikely to be significant.

**Exemption from the school governance standard (r. 54):** The 'fit and proper' test may result in some existing or prospective 'responsible persons' being ineligible to participate in the governance structure of a non-government school. This outcome could adversely affect schools by excluding people who, but for a technical infringement, would be a competent and valuable contributor to a school.

To allow some flexibility to mitigate the risks of constrained access to governance capabilities, and to support the operation of the 'fit and proper' test, the VRQA will be able to grant exemptions. The 2007 Regulations allow the VRQA to exempt a person from the requirement not to have been convicted of an indictable offence. In determining an exemption, the VRQA must have regard to: the nature and gravity of the offence; the sentence imposed; the time since the offence; whether the offence is still a criminal offence; and the person's conduct since the time of the offence (r. 54(2)).

Under the proposed change, the VRQA could grant a similar exemption from the 'fit and proper' test elements where an adverse a civil finding or ruling may not be relevant to a person's governance role. An adverse finding by a professional regulatory body of a breach of duty, for example, in some circumstances may not be relevant to a person's involvement in the conduct of a school. The proposed regulations would allow the VRQA to account for different types of conduct and consequences, and grant exemptions as appropriate.

**Notification of change of particulars (r. 63):** Under the 2007 Regulations, a principal must notify the VRQA of changes to certain particulars, including changes to school governing body members. To limit the regulatory burden but ensure the VRQA is kept abreast of conduct or proceedings that may affect a proprietor or responsible person's ongoing fitness and propriety, the Department proposes to add a 'notifiable disclosure' requirement. Unlike the existing notifiable changes, which are the responsibility of the principal, the new condition of registration would require the proprietor of a non-government school to notify the VRQA within 30 days of changes to the governing body membership and the occurrence of a 'notifiable disclosure'. A 'notifiable disclosure' occurs if a 'responsible person' (including the proprietor) is the subject of:

- an adverse finding by a court, tribunal, professional discipline or regulatory body (in Victoria or elsewhere) regarding the person's dishonesty, misleading or deceptive conduct, non-compliance with a legal obligation relating to the provision of education, or breach of duty
- the commencement of legal or disciplinary proceedings regarding whether the person engaged in conduct that would not be 'fit and proper' as defined in the regulations.

From a practical perspective, persons required to make a 'notifiable disclosure' would likely be members of the governing body, so the responsibility for ensuring compliance with this provision would more appropriately rest with the proprietor as owner of the school. This change would not likely impose significant costs on schools.

### Definition of a not-for-profit school

The definition of a not-for-profit school in the 2007 Regulations includes the requirement that the proprietor of the school must not be party to a prohibited agreement or arrangement (r. 7(1)(e)). Since the 2007 Regulations commenced, school funds have been used, or allegedly used, to fund non-school operations in several instances. As an example, the school could have paid funds to the proprietor of the school under the cover of a lease or service agreement, even when those agreements did not benefit the school. Under the proposed approach, the regulations would be amended (and a sub-clause would be added to standard 17) to clarify the definition of not-for-profit, to reduce the risk of schools inadvertently failing this test. Schools could maintain their not-for-profit status by using school funds only for school purposes. This change would not likely impose significant costs on schools.

**Definition of not-for-profit school (definition, r. 7):** The Department proposes to amend the regulations to make it unambiguous that schools and proprietors of schools must be not-for-profit. This change would involve creating a requirement that schools and proprietors of schools must not be party to prohibited agreements or arrangements (as defined in r. 7 in the 2007 Regulations) with any person or entity (including the proprietor). The definition of a prohibited agreement would be broadened to include agreements between the proprietor and the school, and to remove the requirement that the entity 'carry on a business for profit'. The proposed regulations would also include examples of prohibited agreements to illustrate the need for a bona fide purpose for school expenditure on services, occupancy and facilities. This change is intended to strengthen the regulations. Schools already complying with the requirement to not operate for profit would not need to make any changes.

**Processes to support schools to maintain not-for-profit status (standard 17):** Under the proposed approach, standard 17 would be amended to require schools to have processes in place to prevent resources from being used for non-school purposes. This change reflects a gap identified in the definition of not-for-profit in the 2007 Regulations when compared to the Australian Taxation Office (ATO) guidelines for not-for-profit organisations. The characteristics broadly align, but the definition in the 2007 Regulations does not require schools to have sufficient controls (processes) in place to ensure members and other private persons do not receive the property or assets of the organisation (ATO 2015, guideline 4). The requirement for 'sufficient controls' introduces a subjective element that is more appropriate in the minimum standards than in the definition of not-for-profit (r. 7).

In practice, schools would be required to have sufficient processes in place to separate school resources from non-school purposes (for example, church operations). Similar issues can also arise for a school run by a charity organisation that might direct funds to charitable (rather than school) operations.

The current requirements to demonstrate that the school is not-for-profit (beyond the usual requirements for record keeping and audit) were assessed as very low (appendix 4.2). Under the proposed change, schools would be required to have additional processes in place. This change would involve a one-off cost for only a small number of schools, so is unlikely to create significant additional costs.

**Compliance with the VRQA guidelines (standard 21):** The Department proposes to require a registered school to have suitable arrangements to comply with VRQA guidelines issued under s. 4.3.8A of the Act. The Act limits the scope of the guidelines to matters relevant to the VRQA's requirements for registering a school. The VRQA must be satisfied that a registered school meets these matters before it is registered. They include discipline policies based on procedural fairness and ensuring the school does not permit corporal punishment, the prescribed minimum standards, procedures for managing anaphylaxis and the risk of child abuse, and processes for monitoring and assessing the financial capabilities of non-government schools.

The Department proposes to add a sub-clause to standard 21 that requires schools to have processes to enable the school to comply with the VRQA guidelines. (The VRQA has a similar function for SSC providers.)<sup>8</sup> The new sub-clause would require each school to take a systematic approach to engaging with new or amended guidelines. For example, a school might be able to show the business manager is responsible for reading any new guidelines and identifying whether the school needs to change anything to ensure compliance. However, actual compliance with the guidelines would not be a condition of registration. And the proposed change would not likely result in additional costs or in any guideline changes that increase the costs of compliance. Rather, it would provide certainty for schools that meeting the guidelines will mean they meet the minimum standards.

### *Implementation and evaluation*

The Department proposes to replace most of the 2007 Regulations relevant to school registration, so no implementation plan is required. For the changes to the 2007 Regulations relating to school governance, school council presidents (and equivalent school office holders) and principals would be notified to ensure governing body members that are included in the new definition of a 'responsible person' complete a form attesting that they are 'fit and proper'.

The VRQA would provide the new form on its website, with guidance material on how to implement the change. Targeted communications to raise awareness of the new requirements would include guidance material, information on the website, e-newsletters, workshops and direct emails. The VRQA would also redesign regulatory tools and business processes, and aspects of the supporting information technology system to support the changes.

In accordance with its Ministers' expectations, the VRQA would continue to improve the effectiveness of its regulatory activities while minimising the burden on education and training providers (Merlino and Herbert 2015). The VRQA already:

- undertakes an annual survey of its stakeholders' satisfaction with the information provided by, and contact with, the VRQA in five key areas. The survey includes perceptions of the VRQA as a regulator
- collects industry intelligence and other data to allow field resources to be concentrated in areas of systematic non-compliance with regulatory requirements
- receives review body reports on compliance.

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<sup>8</sup> In the 2007 Regulations, schedule 7, clause 7(2)(b) requires providers to have in place processes 'to enable the provider to comply with any relevant guidelines issued by the Authority under section 4.3.11(3) of the Act'.

The approach to school registration would continue to be monitored through the VRQA's annual report to its board of activities and school performance, including school annual reports and complaints to the VRQA.

The VRQA reports annually on the number of:

- registered schools by type and sector
- school closures and mergers
- amendments to registration by type (for example, adding a campus or year level)
- school reviews
- online sessions using the State Register to access information about registered schools, including their annual report.

### *Monitoring compliance with minimum standards for registration*

All schools are reviewed at least once every five years. A review can be at any time, and may relate to all minimum standards (a general review) or the prescribed minimum standards (a specific review). Using a risk-based approach, school reviews are conducted on school documents or site visits. The VRQA approved school review bodies manage the registration and compliance monitoring of schools in their system against the minimum standards and other requirements for registration.

The VRQA records how many exemptions it grants to schools from the minimum standards for student enrolment, the curriculum framework and school governance. It would also record its granted exemptions under the proposed regulations.

The VRQA has approved the Regional Services Group of the Department of Education and Training, the CECV and ASV as the review bodies for government schools, Catholic schools and Seventh Day Adventist schools respectively. A review body has direct responsibility for regularly monitoring the performance of schools in its system, and for ensuring those schools' compliance with the minimum standards. It reports annually to the VRQA. The VRQA may also request a review body to investigate an individual school's compliance with the minimum standards. The reports from the review bodies show the extent to which schools are meeting the minimum standards.

Under the division of responsibilities, the VRQA would:

- manage each school's initial registration and any changes to registration. It may conduct a verification review for a new registration or registration amendment.
- appoint appropriate agencies as review bodies for a fixed term, and quality assure each review body
- endorse each review body's proposed annual review schedule
- identify those schools requiring immediate review outside of the established review cycle, either conducting the review or referring to an appropriate review body
- endorse improvement plans that a school and review body develop and submit in response to the school's non-compliance
- publish information on school compliance with the minimum standards (VRQA 2012).

Each review body would:

- ensure on-going compliance with the minimum standards by all schools within its school system
- develop each year a proposed review schedule for the next year, and submit it to the VRQA
- ensure a regular review of all schools within its system, operating on a cycle of at least one review of each school within a five year period
- ensure the investigations of any VRQA referral relating to the performance of a school or schools within its system
- ensure it has complaints handling procedures that aim for the fair and timely resolution of complaints
- ensure non-compliant schools receive advice and assistance, including assistance with the preparation and monitoring of an improvement plan if needed
- promote the importance of minimum standards and associated compliance within its school system or organisation
- provide the VRQA with an annual report detailing the performance of its schools against each of the minimum standards.

Currently, at the system level:

- government schools actively report on their compliance with the minimum standards in their annual reports. The school performance framework supports this compliance. The Department would continue to carry out school reviews to evaluate the practices, strengths and performance outcomes of schools selected for participation in the four-yearly school review cycle. From 2016, the review focuses will be linked to the Department's Framework for Improving Student Outcomes and will involve Senior Education Improvement Leaders (who are senior, regionally-based Departmental staff)
- Catholic school principals attest in their annual reports that they meet the minimum standards
- independent schools are reviewed by the VRQA against the minimum standards and other requirements for school registration. Schools under review undergo an initial assessment by the VRQA. Depending on the outcome, a school may then have a desk audit (documentation review) or a site audit. In some cases, no further action is taken. The VRQA may also conduct a financial capability assessment of independent schools. Registered schools must participate in reviews, and they must provide the VRQA with evidence of compliance.

The VRQA's Compliance and Quality Subcommittee examines this compliance information, identifies issues and makes recommendations to the Board. The Board may agree on areas to action after review. The decision making framework assesses risk in line with the VRQA's published risk framework, and may involve changes to regulatory guidelines and other guidance material, consultation with stakeholders, and outreach to provide information.

## **4.2 Registration of senior secondary course providers and registered training organisations**

### *Background*

Senior Secondary Course (SSC) providers and Registered Training Organisations (RTOs) can include a variety of entities such as schools, VET in Schools (VETiS), government owned and operated TAFE

colleges, private RTOs, community-based Learn Local organisations, adult education institutions, and school-based apprenticeship and traineeship (SBAT) programs. This sector is a mixed market of public, private, for-profit and not-for-profit providers, with many receiving government subsidies for fee-based training services. In 2015, 377,831 students were enrolled in subsidised training in Victoria (DET 2015a). Of these organisations, 271 RTOs were registered with the VRQA and 145 held a contract with the Department (box 4.3).

#### **Box 4.3 Regulation of VET providers in Victoria**

In 2011, the Commonwealth Government established the Australian Skills Quality Authority (ASQA) through a referral of VET regulatory powers from the states and territories. The functions and powers of ASQA largely relate to the registration of RTOs and the accreditation of VET courses.

At the time, Victoria decided not to refer powers to the Commonwealth. All other jurisdictions, except Western Australia, referred their VET regulatory powers to the Commonwealth Government.

In establishing the national regulator, the Commonwealth Government drew on its constitutional powers to provide ASQA with regulatory responsibility for all RTOs that offer courses to international students and operate across state and territory borders. As a result, despite Victoria being a non-referring jurisdiction, as at 30 June 2016, ASQA regulates approximately 74 per cent (or 780) of RTOs that operate in Victoria, including all Victorian TAFE colleges.

The VRQA regulates the remaining 271 Victorian providers. These providers are primarily small private RTOs, community-based adult education providers, and schools registered to deliver VET courses.

The Victorian Government is negotiating with the Commonwealth Government on the terms of this prospective referral, with a view to it being effective in 2017.

Source: DET (2015b).

Schools and non-school providers can register to provide VET or SSCs, or both. The registration requirements for these types of providers have significant overlap, so there is some economy of scope for bodies with multiple registrations, especially schools offering SSCs.

Not all RTOs operating in Victoria are subject to the State's regulatory jurisdiction—only those RTOs that deliver training solely in Victoria, or in Victoria and Western Australia. RTOs that enrol international students or operate in other states and territories are regulated by the Australian Skills Quality Authority (ASQA) under Commonwealth legislation.

#### ***Requirements under the Act***

Under the Act, it is an offence to provide SSCs unless registered by the VRQA. The VRQA must not register an SSC provider unless it is satisfied that the provider complies with the minimum standards prescribed by the 2007 Regulations (s. 4.3.11). The criteria for registration relate to:

- student learning outcomes and welfare services
- student enrolment records and certification
- teaching, learning and assessment

- governance, probity and compliance with statutory requirements
- quality assurance, review and evaluation processes.

The Act also states that the VRQA can register RTOs to provide VET. In approving registration, the VRQA must:

- apply the Australian Quality Training Framework standards
- account for a number of other factors, including whether the RTO complies with criteria prescribed in the regulations (s. 4.3.16(3)(bd)).

### *Commonwealth Government requirements*

SSC providers that are registered as a school are eligible for Commonwealth Government funding if they meet certain requirements, so they have financial incentives to meet these requirements. There are no Commonwealth Government requirements on RTOs that are registered with the VRQA.

### *Requirements under 2007 Regulations*

The 2007 Regulations specify:

- minimum standards or criteria for the registration of SSC providers (r. 74, Schedule 7)
- criteria for registration as an RTO (r. 76, Schedule 9)
- processes for applying for and amending registration for both SSC providers and RTOs (rr. 78–81).

They also detail the minimum standards and criteria against which SSC providers and RTOs are assessed by the VRQA. The registration of SSC providers and RTOs involves:

- requirements to support and promote the principles of Australian democracy
- procedures to maintain and provide:
  - student records and results to the VRQA
  - information about the provider to the public
- arrangements to respond to the VRQA's requests for information.

SSC providers also have some requirements relating to student welfare and learning outcomes, teaching and governance (table 4.1).

**Table 4.1: VRQA requirements for registration of SSC providers and RTOs**

	Minimum standards to provide an accredited SSC (rr. 74, 137, Schedule 7)	Criteria for registration as an RTO or awarding body (r. 76, Schedule 9)
Support and promote the principles and practice of Australian democracy	Y	Y
Student learning outcomes	Y	
Student welfare	Y	
Student records and results	Y	
Teaching and learning	Y	
Governance and probity	Y	
Policies and procedures		Procedures
Provide information requested by the VRQA		Y

### *Information failure in VET markets*

Many of the information failure issues that apply to schools also apply to other education training providers. Government intervention may be necessary to ensure provider information is available to the market, and poor quality providers do not operate in the market. The nature of these risks varies across the different education sectors. For the VET and SSC providers, aimed primarily at adults, the main risk is that the quality of education is not sufficient. In this case, after incurring time and financial costs, a student may find their employment outcomes do not meet their expectations.

Information disclosure can be used to attract students to the sector, and providers have incentives to demonstrate their capacity to deliver high quality education. Providers may also make efforts to obtain information on graduate outcomes, which is done in the VET sector by the National Centre for Vocational Education Research (NCVER) at a system-wide level. Observable information (such as reputation) and consumer expectations also provide providers with incentives to provide high quality education services.

However, this information is not always fully observable to prospective students, and some students have limited capacity to interpret it. For these reasons, the Victorian Government considers the education and training system benefits from having a reliable, low-cost method to ensure all providers meet minimum requirements for capacity and effort to ensure students receive a high quality education. That is, regulation to compel information disclosure and enforce minimum quality standards can mitigate the information-related market failure.

The Act confers on the VRQA responsibility to register SSC providers and RTOs. It creates offences for unregulated entities claiming to be registered. However, the Act does not prescribe some operational matters, leaving the regulations to address them. The regulations do not set out the fundamental regulatory structure applying to SSC providers or RTOs; rather, they operationalise the Act by prescribing what must be undertaken to meet the Act's requirements.

Student and employer confidence in the Victorian training system has suffered in recent years because some training providers failed to deliver quality training. This failure cost students, employers and the community in terms of time, money and lost learning opportunities. The 2015 Review of Quality Assurance in the VET System confirmed patchy training quality in Victoria resulting in

appreciable adverse impacts on students and learners. The training providers regulated by the VRQA generally do not pose the same level of risk as do ASQA regulated providers (which made up most of the providers that failed to deliver quality training), but the risks hold for all training providers. The VRQA also does not regulate providers that deliver services to international students.

There is no systematic collection of data on the levels of VET trainer and assessor experience. However, the 2015 review identified a perception that trainers and assessors did not have sufficient technical skills or practical experience to deliver quality training. This perception was prominent among VET completers who responded to a survey question about the quality of teaching. There was also anecdotal evidence of an inadequate volume of training, and of inappropriate modes of training. Most of these problems arose in ASQA regulated providers and were in response to the incentives created by VET FEE-HELP.

### *Base case and its consequences*

The base case is the situation without the 2007 Regulations. Given the regulations are due to sunset in June 2017, the base case would include:

- some incentives on providers to meet parent, student and community expectations to provide a high quality education. Providers would be expected, for example, to provide regular assessment results and keep student records.
- a common law duty of care to provide a safe environment for students
- other legislation to ensure student safety and wellbeing, including provision for students with special needs
- the requirements of the Act, which create the legislative framework for registering SSC providers and RTOs.

For SSC providers, if the regulations sunset and are not remade, then the VRQA would have to rely on the standards in the Act to determine whether to suspend or cancel a provider's registration if it is not satisfied that the provider meets those standards. SSC providers must be approved by the awarding bodies for any SSC qualification that they offer. But, in practice, the requirements of the awarding bodies focus on the integrity of the qualification being provided, not on ensuring students receive high quality education.

Under the base case, the VRQA could give operational effect to the Act's requirements by specifying how providers can meet the minimum standards outside the legislation—for example, by issuing guidelines under s. 4.3.11(3) of the Act for SSC providers, as it does currently. However, these alternatives may lead to ambiguity about the source of the authority.

For RTOs under the base case, the VRQA would continue to have an extensive regulatory framework as set out in the Act. This responsibility would include accounting for whether an RTO meets the standards in the ATQF. The 2007 Regulations set out only a few criteria for registration, so the base case would not be substantially different from the requirements under the regulations.

### *Identifying the problem*

The 2007 Regulations address the residual problem of aiming to have efficient processes to assess whether RTOs and SSC providers meet minimum standards. This objective includes ensuring that

providers disclose information to consumers to support their education choices, and that they follow efficient processes for registration.

The VRQA sets out the requirements for SSC providers to meet the minimum standards and processes for registration in its *Guidelines for schools offering senior secondary courses* and the *Guidelines for non-school senior secondary education providers* (VRQA 2016a). If there were no legal authority to support these documents, the VRQA would have less certainty about the evidence that SSC providers provide to satisfy the VRQA that they comply with the Act and the regulations. Providers would also face uncertainty about the evidence that they need to supply. While guidelines can help mitigate this uncertainty, their authority may not be clear, and costs could arise from disputes about the statutory necessity of meeting the guidelines. Disputes about the requirements can result in large costs to the government and thus taxpayers, from resolving the disputes through negotiation or dispute resolution, including litigation.

For RTOs, the residual problem relates to only the extent that they are required to support and promote the principles of Australian democracy, and a small number of administrative procedures. Yet, the VRQA regularly identifies provider practices that are acting inconsistently with the requirements in the 2007 Regulations to maintain student records, ensure the public availability of accurate information, and adhere to VRQA guidelines.

### *Identifying options*

Options for reforming the Regulations that relate to SSC provider and RTO registration are constrained by the legislative framework of the Act, which establishes the requirement for the VRQA to register providers. In particular, the Act substantially specifies the regulatory framework for VET provider registration, and the Regulations specify only a few minimum standards relating to the principles and practices of Australian democracy, and procedures in relation to student records, information availability and compliance with VRQA guidelines.

### *Criteria for registration as an RTO*

The regulatory system for VET has been, and will continue to be, shaped by prevailing policy concerns and perceptions of risk. In 2012, the then Labor Opposition made an election commitment to refer Victoria's powers of RTO registration and regulation to the Commonwealth Government. The Victorian Government is in advanced negotiations with the Commonwealth Government on the terms of this prospective referral, aiming for it to become effective in 2017.

For the VET system, the proposed referral of legislative powers relating to VRQA regulated RTOs to the Commonwealth would mean changing the arrangements for VET provider registration is not viable. Stakeholders are expecting the referral, which could occur in 2017 before the 2007 Regulations sunset. For this reasons, proposing changes to the current arrangements, or allowing the Regulations to sunset during the transition to referral, may cause confusion and uncertainty. The Department thus proposes that the Regulations for VET provider registration be remade unchanged pending referral to the Commonwealth Government. The regulations may be repealed if VET regulation is referred to the Commonwealth Government.

### Minimum standards for SSC providers

One option would be to make minimum standards for RTOs equivalent to those for schools, so all SSC providers would be required to meet the minimum standards for schools. However, most SSC providers are registered schools and, therefore, already meet these standards. Only non-school SSC providers (49 providers) would be additionally covered. But these providers tend to cater for adult learners, who do not require the same degree of assurance of a safe learning environment as children. Further, requiring non-school SSC providers to meet the same standards that apply to registered schools would likely result in many non-school SSC providers closing, thus reducing the opportunities for students.

The Department does not consider this to be a desirable result for several reasons. Many non-school SSC providers currently offer vocational experiences/qualifications that schools are not well placed to deliver. They also support students who may not have had an opportunity to complete their education as children, and so help improve social equity. Reducing SSC options for Victorian students would also have negative implications for the broader economy.

Another option would be allowing the regulations to sunset. However, the VRQA would have no basis for assessing compliance with the minimum standards, so the Department does not consider this to be a viable option.

Alternatively, the number of minimum standards could be reduced, to a minimum set necessary to operationalise the Act. However, each minimum standard supports a standard in the Act about which the VRQA must be satisfied as a condition of registration (table 4.2). The number of minimum standards cannot be reduced without creating the situation where the VRQA does not have a minimum standard against which it can assess compliance.

**Table 4.2: Minimum standards for SSC provider registration**

Standard	Description	Intention and application	Other existing requirements
Clause 2— principles and practice of Australian democracy	Teaching needs to promote principles and practice of Australian democracy (including rights, freedoms and rule of law).	All providers of education and training, both government and non-government, must ensure that their programs and teaching are delivered in a manner that supports and promotes the principles and practice of Australian democracy.	Mirrors s.1.2.1(a) of the Act
Clause 3— student learning outcomes	Provider must deliver courses to the standards of the course awarding body and ensure students who meet course requirements are entitled to be awarded the qualification.  Provider must have policies and procedures in place to ensure the care, safety and welfare of students and to provide opportunities for students with special needs to access courses and to satisfy legal responsibilities to students travelling between providers or undertaking an excursion.	Section 4.3.11 of the Act requires providers to comply with minimum standards, including standards relating to 'student learning outcomes and welfare services'.  The intent is to ensure a SSC provider understands the awarding body's requirements and course outlines and has policies and procedures to provide students with a safe environment and opportunities for students with special needs to access courses.	ss. 1.2.1(b) and 4.3.11(1)(a) of the Act  Requirements of owner of the accredited SSC  Child Safe Standards  <i>Children, Youth and Families Act 2005</i>
Clause 4— student welfare	Policies and procedures in place to ensure the care, safety and wellbeing of students, including those with special needs.	The VRQA must not register unless it is satisfied the body meets the prescribed minimum standards for student welfare.	s. 4.3.11(a)

**Table 4.2: Minimum standards for SSC provider registration (continued)**

Standard	Description	Intention and application	Other existing requirements
Clause 5— student records and results	<p>Provider must have policies and procedures in place to:</p> <ul style="list-style-type: none"> <li>a) maintain accurate student records</li> <li>b) ensure the integrity of student assessments</li> <li>c) allow for production of copies of student records</li> <li>d) monitor and analyse student participation, completion rates, and outcomes</li> <li>e) allow students to check personal details while protecting them from unauthorised access</li> <li>f) comply with requirements of awarding the course.</li> </ul>	<p>Section 4.3.11 of the Act requires providers to comply with minimum standards, including standards relating to ‘student enrolment records and certification’ and ‘quality assurance, review and evaluation processes’.</p> <p>The intent is to ensure the SSC provider has policies and procedures for senior secondary assessment, administration of records and monitoring and analysis of results.</p>	<p>ss. 4.3.11(1)(b) and 4.3.11(1)(e) of the Act</p> <p>Requirements of owner of the accredited SSC</p>
Clause 6— teaching and learning	<p>Provider must have:</p> <ul style="list-style-type: none"> <li>a) qualified and competent staff to teach and assess the course</li> <li>b) suitable teaching resources and physical facilities to provide the course</li> <li>c) processes to ensure the consistent application of assessment criteria and practices</li> <li>d) processes to oversee the conduct of assessments of the course, including processes to conduct investigations and hearings and, if necessary, amend or cancel assessments.</li> </ul>	<p>Section 4.3.11 of the Act requires providers to comply with minimum standards, including standards relating to ‘teaching, learning and assessment’.</p> <p>The intent is to ensure the SSC provider has competent and qualified staff to teach and assess the course and to ensure there are suitable teaching resources and physical facilities to provide the course.</p>	<p>s. 4.3.11(1)(c) of the Act</p>
Clause 7— governance and probity	<p>Provider governance must be structured to enable the provider to effectively manage:</p> <ul style="list-style-type: none"> <li>a) the finances of the provider</li> <li>b) the physical environment of each place where the course is offered by the provider</li> <li>c) the staff of the provider</li> <li>d) the students enrolled in the course offered by the provider.</li> </ul> <p>Provider must ensure suitable arrangements are in place:</p> <ul style="list-style-type: none"> <li>a) to supply requested information to the VRQA</li> <li>b) to comply with guidelines issued by the VRQA</li> <li>c) to enable the VRQA to conduct an audit on the operation of the provider.</li> </ul> <p>Provider must be authorised by the owner of the accredited SSC to provide that course and must comply with the conditions relating to that authorisation.</p> <p>Provider must not provide instruction in an accredited senior secondary course at a school unless it is a registered school.</p>	<p>Section 4.3.11 of the Act requires providers to comply with minimum standards, including standards relating to ‘governance, probity and compliance with statutory requirements’.</p> <p>The intent is to ensure that a school's governing structure manages its responsibilities well in relation to senior secondary provision.</p>	<p>ss. 4.3.11(1)(d), 4.3.11(2) and 4.3.11(3) of the Act</p>

### **Implementation and evaluation**

For SSC providers and RTOs, the Department proposes no changes to the 2007 Regulations, so no implementation plan is required.

For RTOs, the prospective referral of VET regulatory powers to the Commonwealth Government would involve using the ASQA evaluation framework to evaluate the effectiveness of the regulatory approach. For SSC providers, the VRQA will continue its approach to improve the effectiveness of its regulatory activities while minimising the burden on education and training providers in line with the expectations of the Ministers. Information that can support this process for SSC providers includes the number of schools and non-schools that provide SSCs, the outcomes of reviews of providers, stakeholder feedback on their experience of the VRQA as a regulator, and field intelligence that can inform regulatory areas that may need to be addressed.

## Appendix 4.1

## Registration of schools in other states and territories

State	Legislation	Is registration required?	Application to register a school	Minimum requirements for school registration	Powers of relevant authority/delegations	Senior Secondary Qualification award minimum requirements
NSW	<p><b>Primary:</b></p> <p><i>Education Act 1990</i> (NSW)</p> <p><i>Education Amendment (Government Schools) Act 2014</i></p> <p><b>Other relevant legislation includes:</b></p> <p><i>Board of Studies, Teaching and Educational Standards Act 2013</i> (NSW)</p> <p><i>Teacher Accreditation Act 2004</i> (NSW)</p>	<p><b>Government schools</b> are not required to be formally registered in NSW.<sup>9</sup> The Minister may establish a government school where the Minister is satisfied that:</p> <ul style="list-style-type: none"> <li>sufficient children will regularly attend the school, and</li> <li>the school will comply with similar requirements to those required for the registration of non-government schools.</li> </ul> <p><b>Non-government schools</b> must be registered with the Board of Studies, Teaching and Educational Standards (BOSTES) to be able to award a Record of School Achievement (RSA) and submit students for Higher School Certificate (HSC).<sup>10</sup> The Education Act sets out minimum requirements for registration for <b>non-government schools</b>.<sup>11</sup></p>	<p>To be registered, a <b>non-government school</b> must contact the School Registration and Accreditation Directorate at BOSTES to clarify registration requirements/process. The Directorate will then provide a user ID and password for an online registration facility. The application must demonstrate the new proposed school can meet the minimum requirements for initial registration (described in the next column).</p> <p>Section 52 of the Act requires that the initial registration of a <b>non-government school</b> can be provisional for a maximum period of 12 months.</p>	<p>The relevant legislation provides BOSTES with the power to make rules and guidelines for registering <b>non-government schools</b>.<sup>12</sup> The current requirements are:<sup>13</sup></p> <ul style="list-style-type: none"> <li>The <b>proprietor</b> of an individual registered non-government school must be a corporation or other form of legal entity approved by the Minister.</li> <li><b>Teaching staff</b> of a registered non-government school must have attained the standard of competence determined by the Minister, or be working towards that standard.</li> <li>The <b>curriculum</b> provided by the non-government school must comply with requirements set out in Part 3 of the Act (including accreditation of HSC requirements where relevant).</li> <li>The non-government school's <b>premises, buildings and facilities</b> must be</li> </ul>	<p>BOSTES performs a legislative function to register and accredit schools.<sup>14</sup> BOSTES may delegate this function to a number of agents, including members of a non-government school authority.<sup>15</sup></p> <p><b>Non-government schools</b> are obliged to report to BOSTES.</p>	<p>The curriculum for the HSC provided by a registered and accredited non-government school must meet the requirements of the Act. To award a student a RSA and HSC, a school must be accredited with BOSTES.</p> <p>This process is managed through the initial registration form submitted to BOSTES and requires a prospective school to select the 'accreditation' tick box. Once indicated on the form the school must provide the following evidence:</p> <ul style="list-style-type: none"> <li>The curriculum for the RSA and HSC provided by a registered and accredited non-government school meets requirements of the Act –policies and processes must be in place to monitor compliance (requirements set out on BOSTES website).</li> <li>The quality of the educational program, including: documented processes to record the achievement of students; documented processes to demonstrate the standard of teaching of the courses at the school; and processes to identify the range of educational facilities required to meet all of the mandatory requirements for each course of study offered for the RSA and HSC.</li> </ul> <p>A school can be registered without being</p>

<sup>9</sup> *Education Act 1990* (NSW), s. 27.

<sup>10</sup> *Education Act 1990* (NSW), *ibid.*, ss. 65 and 95A.

<sup>11</sup> *Board of Studies, Teaching and Educational Standards Act 2013* (NSW), s. 47.

<sup>12</sup> *Board of Studies, Teaching and Educational Standards Act 2013* (NSW), Parts 7 and 8.

<sup>13</sup> *Board of Studies, Teaching and Educational Standards Act 2013* (NSW), ss. 40–51. *Ibid.*, 40-51

<sup>14</sup> *Board of Studies, Teaching and Educational Standards Act 2013* (NSW), s. 6(3)(f.)

		<p>Under the Education Act, the Minister for Education has the authority to:</p> <ul style="list-style-type: none"> <li>• approve the registration of an individual non-government school or proposed individual non-government school</li> <li>• approve the formation of a system of non-government schools or proposed non-government schools</li> <li>• approve the registration of non-government schools within an approved registration system provided that, in each case, the relevant requirements of the Education Act are met, and</li> <li>• approve the registration of a non-government school for specific years of schooling for a specific period of time.</li> </ul>		<p>satisfactory as determined by the <i>Building Code of Australia</i>.</p> <ul style="list-style-type: none"> <li>• A non-government school has a number of requirements to provide a <b>safe and supportive</b> environment for students.</li> <li>• The <b>discipline requirements</b> relate to policies on procedural fairness and prohibition of corporal punishment.</li> <li>• The principal of a registered school must keep a <b>register of enrolments and daily attendances</b> of all children at the school.</li> <li>• <b>Management and operations</b> requirements relate to the good character and actions of 'responsible persons' and notifications and disclosures.</li> <li>• A non-government school must have policies and procedures to ensure: participation in <b>annual reporting the public</b>.</li> </ul> <p>The <b>BOSTES website</b> has more detail on registration guidelines.</p>		<p>accredited. However, to provide a Senior Secondary Qualification the school must meet the higher standard for accreditation.</p> <p>More information is available <a href="#">here</a>. The guidelines provide a checklist for minimum standards.</p>
<b>Qld</b>	<b>Primary:</b>  <i>Education (General Provisions) Act 2006</i> (Qld)	Part 2 of the Act sets out the requirements for establishing a <b>government school</b> . <sup>16</sup> Section 13 of the Act provides that the Minister may establish	To be registered, a <b>non-government school</b> must submit an <a href="#">application</a> for registration to the Board. The application outlines compliance with the minimum accreditation requirements contained in the	Part 2, Division 1 of the Education (Accreditation of Non-State Schools) Regulations 2001 (Qld) (the Regulations) prescribes 10 required criteria and two special criteria that	The Act provides for the establishment of the Board. The Board is an independent statutory authority that regulates non-state schooling and is responsible for making	Schools (government and non-government) must provide a course that is recognised by the Queensland Curriculum and Assessment Authority (QCAA) to be eligible to recommend students for the Queensland Certificate of Education (QCE). To gain

<sup>15</sup> *Board of Studies, Teaching and Education Standards Act 2013* (NSW), s. 12 and *Board of Studies, Teaching and Education Standards Regulations 2013* (NSW), r. 4(e).

<sup>16</sup> *Education (General Provisions) Act 2006* (Qld), Part 2.

	<p><i>Education (Accreditation of Non-State Schools) Act 2001</i> (Qld)</p> <p><b>Other relevant legislation:</b></p> <p>Education (Accreditation of Non-State Schools) Regulations 2001 (Qld)</p>	<p>schools at which the State provides primary, secondary or special education.<sup>17</sup></p> <p>A <b>non-government school</b> must be accredited by the Non-State Schools Accreditation Board (the Board) (or provisionally accredited) to operate in Qld.<sup>18</sup></p>	<p>Regulations, and requires supporting documentation to be attached.</p> <p>Section 16 of the Regulations provides that an application for the accreditation of a non-state school must be:</p> <ul style="list-style-type: none"> <li>• made to the board, and</li> <li>• in the approved form, and</li> <li>• accompanied by the fee and copies of current positive notices for all directors.<sup>19</sup></li> </ul>	<p>must be satisfied for a non-government school to be accredited,:</p> <ul style="list-style-type: none"> <li>• A school must have access to <b>adequate financial resources</b> for its viable operation.<sup>20</sup></li> <li>• A school must have a written <b>statement of philosophy</b> and aims, adopted by its governing body.<sup>21</sup></li> <li>• A school must have a <b>written educational program</b> consistent with the Australian curriculum, the Australian Qualifications Framework, the International Baccalaureate Organisation, interstate syllabus and Queensland standards of learning.<sup>22</sup></li> <li>• A school must have a written <b>disability process</b>.<sup>23</sup></li> <li>• A school delivering <b>distance education</b> must have a written standard of service.<sup>24</sup></li> <li>• A school must have <b>Health, safety and conduct of staff</b></li> </ul>	<p>decisions on accrediting non-state schools.</p>	<p>recognition, an owner of a course of study must apply to the QCAA. The application must meet QCAA standards and provide the following evidence:</p> <ul style="list-style-type: none"> <li>• describe learning opportunities that, in the opinion of the QCAA, are of senior secondary standard and enhance further learning, employment or community engagement</li> <li>• include details about: what learning experiences the learner will undertake; what evidence of achievement is required; the processes and principles used to make reasonable, accountable and transparent decisions about achievement; and the time component for completing the course, and</li> <li>• comply with legislative requirements.</li> </ul> <p>An 'owner of a course of study' includes:</p> <ul style="list-style-type: none"> <li>• non-profit organisation</li> <li>• registered training organisation</li> <li>• research institution</li> <li>• school (state or non-state)</li> <li>• indigenous council</li> <li>• local government</li> <li>• registered charity/charitable organisation.</li> </ul> <p>The application form to have a course of study recognised can be found <a href="#">here</a>.</p>
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<sup>17</sup> *Education (General Provisions) Act 2006* (Qld), s. 13.

<sup>18</sup> *Education (Accreditation of Non-State Schools) Act 2001* (Qld), s. 10.

<sup>19</sup> *Education (Accreditation of Non-State Schools) Regulations 2001* (Qld), r. 16.

<sup>20</sup> *Education (Accreditation of Non-State Schools) Regulations 2001* (Qld), r. 5.

<sup>21</sup> *Education (Accreditation of Non-State Schools) Regulations 2001* (Qld), r. 6. Ibid r 6

<sup>22</sup> *Education (Accreditation of Non-State Schools) Regulations 2001* (Qld), r. 7. Ibid r 7

<sup>23</sup> *Education (Accreditation of Non-State Schools) Regulations 2001* (Qld), r. 8. Ibid r 8

<sup>24</sup> *Education (Accreditation of Non-State Schools) Regulations 2001* (Qld), r. 9. Ibid r 9

				<p><b>and students</b> written processes.<sup>25</sup></p> <ul style="list-style-type: none"> <li>• A school must have sufficient number, and appropriate types of <b>staff</b> necessary to deliver the schools educational program.<sup>26</sup></li> <li>• A school must also: comply with land use and building legislation, have the relevant educational facilities and materials available, and have a demonstrable approach about improving school processes.<sup>27</sup></li> </ul>		
ACT	<p><b>Primary:</b> <i>Education Act 2004 (ACT)</i></p> <p><b>Other legislation:</b> <i>Board of Secondary Studies Act 1997 (ACT)</i></p>	<p>Section 20 of the Act provides that the Minister may establish <b>government</b> schools and decide the kinds of government schools and the levels for the schools.<sup>28</sup></p> <p>A <b>non-government school</b> must be registered with the ACT Education and Training Directorate (the Directorate) to operate legally.</p> <p>Section 82 of the Act provides that a person must not conduct a school unless</p>	<p>Registration of a <b>non-government school</b> requires, at least, the following applications to be lodged:</p> <ul style="list-style-type: none"> <li>• in-principle approval 12 months before the first day (s. 83);</li> <li>• provisional registration – for a period of 12 months and at least 6 months before the first day of school year (s. 82), and</li> <li>• registration of a provisionally registered school –once the school has been provisionally registered for 12 months.</li> </ul> <p>Relevant applications can be accessed by contacting the Directorate using its online portal/form. The application manual can be accessed <a href="#">here</a>.</p>	<p>For <b>in-principle approval</b> applications, the following information with supporting documentation is required:</p> <ul style="list-style-type: none"> <li>• information on the proposed location of the campus (including information on its availability and suitability)</li> <li>• evidence of consultation with Territory and Municipal Services ACT and other statutory authorities</li> <li>• the date the site will be available for construction or development</li> <li>• educational (year) levels of the proposal</li> </ul>	The ACT Education and Training Directorate is the responsible for registering and accrediting schools.	<p>Section 9C of the Act provides that a child completes Year 12 if the child is awarded or has completed the requirements for being awarded: a Year 12 certificate (however described) by the Board of Senior Secondary Studies (the Board); or a certificate equivalent to a Year 12 certificate that shows completion of a higher education pre-entry course; or a certificate equivalent to a Year 12 certificate issued under the AQF; or a certificate (however described) approved by the director-general.</p> <p>Section 5 of the <i>Board of Secondary Studies Act 1997</i> (the Board Act) provides that the Board has functions to accredit or register courses taught by recognised educational institutions; and to provide people who</p>

<sup>25</sup> Education (Accreditation of Non-State Schools) Regulations 2001 (Qld), r. 10. Ibid r 10

<sup>26</sup> Education (Accreditation of Non-State Schools) Regulations 2001 (Qld), r. 11. Ibid r 11

<sup>27</sup> Education (Accreditation of Non-State Schools) Regulations 2001 (Qld), rr. 12–14. Ibid, r 12-14

<sup>28</sup> *Education Act 2004 (ACT)*, s. 20.

		<p>it is registered or provisionally registered under this part. For a non-government school to be registered, it must first be provisionally registered for a period of 12 months.<sup>29</sup></p>		<ul style="list-style-type: none"> <li>• a description of the contribution that the proposal will make to the broader ACT community</li> <li>• a description of how the proposal provides an education option additional to those already existing</li> <li>• the size of the student cohort, and</li> <li>• special characteristics of the school.</li> </ul> <p>Additional sections of the application allow applicants to include supporting documentation for:</p> <ul style="list-style-type: none"> <li>• interest shown by ACT community for the proposal</li> <li>• enrolment projections and trends</li> <li>• supporting statements from representatives</li> <li>• growth patterns at the school's main campus or in other schools operating within the proposed market place</li> <li>• other information that might be relevant to community interest in the proposal.</li> </ul> <p>For <b>registration applications (including for provisional registration)</b> the following information and supporting documentation is required:</p> <ul style="list-style-type: none"> <li>• the proprietor of the</li> </ul>		<p>have undertaken courses certificates of their attainment.</p> <p>Still require work to identify the application process for schools looking to run accredited courses.</p>
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<sup>29</sup> Education Act 2004 (ACT), s. 87(1).)

				<p>school is incorporated</p> <ul style="list-style-type: none"> <li>the school has appropriate facilities, policies and equipment for the curriculum offered by the school and the safety and welfare of its students</li> <li>the school's curriculum meets the curriculum requirements for students attending government schools in the ACT</li> <li>the nature and content of the education offered at the school is appropriate for the education levels for which the school is registered</li> <li>teaching staff are appropriately qualified</li> <li>processes for monitoring educational outcomes, and</li> <li>evidence that the school is financially viable (insurance documents, business plans, and audited financial statements).</li> </ul>		
WA	<p><b>Primary:</b></p> <p><i>School Education Act 1999 (WA)</i></p>	<p>Section 55 of the Act provides that the Minister may establish such <b>government schools</b> as the Minister considers necessary to provide public education.</p> <p><b>Non-government schools</b> must be registered by the Director General of the Department of Education Services.</p>	<p>Section 158 of the Act requires a <b>non-government school</b> to do the following for registration:</p> <ul style="list-style-type: none"> <li>make an application to the Director General of the Department of Education Services (application available by contacting the Department)</li> <li>make the application 6 months before the date that registration is sought</li> <li>follow the requirements of the Application for Registration of an establishment as a non-government school</li> <li>ensure the application is</li> </ul>	<p>The application for advance determination must be submitted to the Department and include supporting information/ documentation on the following:</p> <ul style="list-style-type: none"> <li>general information (proposed start date, governing body details, primary contact person's details)</li> <li>summary of proposal – including proposed school details, proposed year levels, a mission statement</li> <li>a brief overview of the</li> </ul>	<p>Director General of the Department of Education.</p> <p>The School Curriculum and Standards Authority.</p>	<p>A school proposing to provide the Western Australian Certificate of Education (WACE) will submit, as part of the registration process (Form 17), information on the school curriculum to the Department. This information includes:</p> <ul style="list-style-type: none"> <li>a school curriculum plan</li> <li>a curriculum evaluation policy</li> <li>an assessment and reporting policy, and</li> <li>evidence to demonstrate that the governing body is regularly provided with information regarding curriculum implementation and evaluation of the quality of programs provided.</li> </ul>

			<p>accompanied by a current Advance Determination approved by the Minister for Education</p> <ul style="list-style-type: none"> <li>ensure the application is accompanied by a statement that there has been no material change to the information provided in the application for Advance Determination, and</li> <li>make an application to the governing body.</li> </ul> <p>Before submitting an application for registration, a <b>non-government school</b> must submit an application for advanced determination to establish a new non-government school (s. 157A). The application is to be made:</p> <ul style="list-style-type: none"> <li>18 months before it is intended to implement the school planning proposal</li> <li>in a form approved by the Minister.</li> </ul>	<p>educational program and philosophy</p> <ul style="list-style-type: none"> <li>provide an overview of how the educational program is intended to be delivered</li> <li>projected enrolments (first five years, maximum anticipated enrolment, anticipated number of boarders (if applicable))</li> <li>proposed catchment area (including maps, information to support projected enrolments such as expressions of interest, and findings of rigorous market research).</li> </ul> <p>The <b>application for advance determination</b> also requests the following documentation:</p> <ul style="list-style-type: none"> <li>information on how the proposal will contribute to the diversity of schools in the proposed catchment area</li> <li>documentation regarding any research/consultation done to test if there will be adverse impacts on schools already in catchment area</li> <li>additional documentation regarding the sustainability of the existing market for schools</li> <li>documentation relating to any consultation undertaken with the community both in support or opposition to the proposal</li> <li>documentation or a description of the likely impact of the proposal on</li> </ul>		<p>Once the Department receives the application for registration, they forward information relating to the curriculum to the School Curriculum and Standards Authority (the Authority) for assessment.</p> <p>The Authority then confirms whether the curriculum complies with requirements to award a Senior School Qualification and undertakes ongoing monitoring of the curriculum with the individual school.</p>
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				<p>state and local government infrastructure, services and resources</p> <ul style="list-style-type: none"> <li>• compliance with relevant laws (including curriculum requirements of WA, other relevant legislation and regulations)</li> <li>• documentation regarding the governing body's actual or prospective financial resources.</li> </ul> <p>The <b>application for registration</b> must be submitted to the Department. The form relies on similar information contained in the <b>application for advance determination</b>, and is based on 12 considerations, including:</p> <ul style="list-style-type: none"> <li>• <b>Governance and accountability</b> documentation (including certificate registering legal entity, register of governing body members, financial accountability documentation)</li> <li>• <b>Student learning</b> documentation (including policy to review student learning, school improvement plan and annual report)</li> <li>• <b>Curriculum</b> documentation (including a school curriculum plan, curriculum evaluation policy, and assessment and reporting policy)</li> <li>• <b>Levels of care</b> documentation (including strategies to develop a positive learning environment, student</li> </ul>	
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				<p>welfare policies, student safety policies and procedures)</p> <ul style="list-style-type: none"> <li>• <b>Financial viability and management</b> documentation (including: audited financial statements, school year operating financials, schedule of loan agreements, current school business plan)</li> <li>• <b>Staff and management</b> documentation (including: staff handbook, staff declaration, school organisation chart, etc.)</li> <li>• <b>Physical environment</b> documentation (including: OHS and risk management procedures, documents showing compliance with zoning and building regulations)</li> <li>• <b>Enrolment and attendance</b> documentation (including: enrolment polies and procedures, attendance records, policies and procedures)</li> <li>• <b>Other matters</b> (including: student numbers, time for instruction, complaints management policies and procedures, policies and procedures for behaviour management), and</li> <li>• <b>Any additional standards identified by the Minister under s. 159 of the Act.</b></li> </ul> <p>Further information on the requirements and application can be found <a href="#">here</a>.</p>	
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SA	<p><b>Primary:</b></p> <p><i>Education and Early Childhood Services (Registration and Standards) Act 2011 (SA)</i><sup>30</sup></p>	<p>Both <b>government</b> and <b>non-government schools</b> must be registered in SA. Section 43(1) of the Act provides that a school is eligible for registration on the schools register if the Board is satisfied that:</p> <ul style="list-style-type: none"> <li>the nature of the content of the instruction offered, or to be offered, at the school is satisfactory, and</li> <li>the school provides adequate protection for the safety, health and welfare of its students.</li> </ul> <p>Section 21 of the Act establishes the Education and Early Childhood Services Registration and Standards Board of South Australia (the Board) to perform a range of functions including managing the registration of government and non-government schools.</p>	<p>Section 29 of the Act outlines a number of functions of the Board, including: regulating the provision of education services<sup>31</sup> and approving the requirements to endorse registration.<sup>32</sup></p> <p>Unlike in Victoria, where school systems such as the Catholic Education Commission of Victoria, might manage the registration process for Catholic schools and then submit a list to VQRA, it appears the Board manages and assesses applications for both government and non-government school registrations through a form the individual schools submit to the Board.</p> <p>The form requires applicant schools to demonstrate compliance with the minimum requirements outlined in s. 43(1), by providing information on how the school proposes to manage the curriculum, facilities, and welfare considerations, among other information. The form can be accessed <a href="#">on the Board website</a>.</p>	<p>Subject to this Act, a school is eligible for registration on the schools register if the Board, on application made in accordance with this Act, is satisfied that:</p> <ul style="list-style-type: none"> <li>the nature and content of the instruction offered, or to be offered, at the school is satisfactory, and</li> <li>the school provides adequate protection for the safety, health and welfare of its students, and</li> <li>the school satisfies any other requirements set out in the regulations for the purposes of this subsection.</li> </ul>	<p>Section 29 of the Act provides that the functions of the Board include:</p> <ul style="list-style-type: none"> <li>regulate the provision of education services and early childhood services</li> <li>approve the requirements for endorsing registration.</li> </ul> <p>Section 41 requires the Board to keep a register comprising two parts:</p> <ul style="list-style-type: none"> <li>government schools</li> <li>non-government schools.</li> </ul> <p>Section 42 of the Act provides that 'A school at which education services are provided, or students enrolled, must be registered...'</p>	<p>For <b>Reception to Year 10</b>, both government and non-government schools must include the following for each key area of learning:</p> <ul style="list-style-type: none"> <li>the curriculum frameworks to be adopted</li> <li>the pedagogy underlying delivery of curriculums</li> <li>an indication of the types of resources available to students, and</li> <li>an overview of the assessment and reporting processes to be adopted.</li> </ul> <p>To be eligible to register as a school providing education for <b>Years 11 and 12</b>, applicant schools must include details about how they will offer the opportunity for students to complete the South Australian Certificate of Education/International Baccalaureate/ other range of subject choices at each year level.<sup>33</sup></p>
Tas	Primary:	Section 18 of the Act	To register a <b>non-government school</b> ,	Section 53(1) outlines the	Schools Registration Board	The initial registration application of a

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[https://www.legislation.sa.gov.au/LZ/C/A/EDUCATION%20AND%20EARLY%20CHILDHOOD%20SERVICES%20\(REGISTRATION%20AND%20STANDARDS\)%20ACT%202011.aspx](https://www.legislation.sa.gov.au/LZ/C/A/EDUCATION%20AND%20EARLY%20CHILDHOOD%20SERVICES%20(REGISTRATION%20AND%20STANDARDS)%20ACT%202011.aspx).

<sup>31</sup> *Education and Early Childhood Services (Registration and Standards) Act 2011 (SA)*, s. 29(1)(a). S 29(1)(a)

<sup>32</sup> *Education and Early Childhood Services (Registration and Standards) Act 2011 (SA)*, s. 29(1)(b). S 29(1)(b)

<sup>33</sup> <https://ablis.business.gov.au/SA/pages/81de0f88-f81f-41f9-9b00-42079466492f.aspx>.

	<p><i>Education Act 1994 (Tas)</i></p>	<p>provides that the Minister may establish any school necessary for the purposes of this Act. The terms school in this context is understood to mean ‘state school’.</p> <p><b>Non-government schools</b> are required to be registered with the School Registration Board of Tasmania.</p>	<p>the application must:</p> <ul style="list-style-type: none"> <li>• be consistent with s. 53(1) requirements of the Act (outlined in next column), and</li> <li>• be made at least nine months before the proposed opening of the school, unless a shorter period is approved.</li> </ul> <p>Once an application is lodged with the Schools Registration Board (the Board), the Board will review the submission and request additional information to demonstrate that it meets s, 53(1) requirements, if necessary.</p> <p>Once approved the school will receive a Certificate of Registration from the Board.</p>	<p>elements that are considered in determining whether to approve an application to register a non-government school. The Board will require documentation and evidence of the following:</p> <ul style="list-style-type: none"> <li>• <b>proposed curriculum</b> of that school—school required to document assessment and reporting strategies demonstrating how it will assist students to achieve desired learning outcomes</li> <li>• <b>qualifications required of teachers</b> at that school—evidence that teachers hold a certificate of registration, provisional registration or limited authority to teach</li> <li>• <b>facilities</b> to be provided at that school—description outlining schools facilities and a compliance form available on the Board website</li> <li>• <b>minimum number</b> of students to attend that school</li> <li>• <b>kinds</b> of students to attend that school</li> <li>• <b>enrolment and attendance</b> procedures of that school</li> <li>• <b>financial viability</b> of the school—documentation includes: profit and loss statement, balance sheet, signed auditor’s opinion, school’s budget, etc.</li> <li>• proposed <b>governance and administration arrangements</b>—governance statement and</li> </ul>	<p>The Department of Education Tasmania</p>	<p>secondary school requires that the curriculum submitted as part of the application offers:</p> <ul style="list-style-type: none"> <li>• Tasmanian Assessment, Standards and Certification (TASC) accredited courses or recognised courses (list available on the TASC website)</li> <li>• the International Baccalaureate</li> <li>• other Australian Curriculum, Assessment and Reporting Authority (ACARA) recognised curriculum frameworks, and/or</li> <li>• nationally recognised vocational education and training.</li> </ul> <p>These standards are sufficient to award the Senior Secondary Qualification in Tasmania. The Board will review the documentation submitted as part of the curriculum requirement and, where it fails to meet the requisite standard to recommend a student for a Senior Secondary Qualification, reject or seek further information regarding the matter.</p>
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				<p>evidence of roles and responsibilities of principal and governing body</p> <ul style="list-style-type: none"><li>• likely <b>impact of the registration</b> of the school on existing schools in the same geographical area—standard form available on Board website outlining likely impact of new school on geographical area</li><li>• proposed <b>grievance process</b></li><li>• any other prescribed matter.</li></ul> <p>Further information available <a href="#">here</a>.</p>		
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## Appendix 4.2: Minimum standards for school registration—2007 Regulations

Minimum standard	Description	Intention and application	Relationship with the Act and other legislative requirements	Evidence required, and the effect of regulation on regulated entities
<b>Required by other legislative frameworks</b>				
5 Compliance with <i>Working with Children Act 2005</i>	Requires compliance for the employment of all staff at a school.	Ensures all school staff comply with the requirements of the Working with Children Act, which applies to people who are in defined categories of child-related employment and/or have regular, direct contact with children who are not directly supervised.	Required by the operation of the Working with Children Act and the Child Safe Standards.	Annual attestation that the school meets the requirements of the Working with Children Act and the Child Safe Standards. <i>Effect:</i> very low impact. The main effect is from the requirement to comply with the Working with Children Act and the Child Safe Standards and Ministerial Order 870.
12 Care, safety and welfare of students	Requires schools to ensure the care, safety and welfare of all students in accordance with applicable laws, and that staff know their obligations under those laws.	Requires schools to comply with prescribed minimum standards relating to student welfare (s. 4.3.1(6)(b)(iii)). The VRQA must not register a school unless it is satisfied that the school has developed policies in accordance with the Ministerial Order for managing the risk of child abuse (s. 4.3.1(6)(d)).	ss. 4.3.1(6)(a), 4.3.1(6)(b)(iii), 4.3.1(6)(d) common law duty of care <i>Children, Youth and Families Act 2005</i> Child Safe Standards Ministerial Order 870—managing the risk of child abuse in schools Ministerial Order 706—anaphylaxis management in schools <i>Emergency Management Act 1986</i> and the <i>Emergency Management Act 2013</i> r. 13—schools must develop and implement a student behaviour policy r. 15—staff in government schools may restrain a student from acts or behaviour that is dangerous	Policies and procedures about student welfare, including duty of care, safety, measures for students with disabilities or young students, supervision, external providers, student care (illness, medical), incidents and emergencies. Also, policies for ensuring staff understand their obligations relating to the Children, Youth and Families Act, the Child Safe Standards and the Ministerial Order 870 <i>Effect:</i> moderate to high impact. Many of the requirements relate to compliance with the Child, Youth and Families Act, the Child Safe Standards and the Ministerial Order 870. These legislative instruments give effect to the Government’s response to the recommendations of the Betrayal of Trust Inquiry (Family and Community Development Committee 2013). Mandatory reporting for school staff is a key plank for ensuring high compliance with these requirements. It creates some regulatory burden for schools to put in place policies, and to ensure staff, volunteers and contractors are aware of their obligations. But this burden is mostly attributable to other legislation. The additional requirements created by the minimum standards involves developing the policies and procedures for ensuring high rates of compliance.
13 Buildings, facilities and grounds	Requires school facilities to comply with any laws (local laws and planning, building and occupational health and safety laws)	Requires schools to maintain their buildings, facilities and grounds in accordance with external legislative requirements for registration. These requirements exist independently of the Act or the 2007 Regulations.	Required by various building standards, and local government, planning and occupational health and safety laws	Annual attestation that the school meets the requirements of other laws. <i>Effect:</i> very low impact. The main effect is from the requirement to comply with the other laws.

<b>Required by the Act</b>				
1 Programs and teaching to promote principles underlying the Act	Requires school teaching to promote the principles and practice of Australian democracy (including rights, freedoms and rule of law)	Requires providers of education and training, both government and non-government, to ensure their programs and teaching are delivered in a manner that supports and promotes the principles and practice of Australian democracy	Mirrors s. 1.2.1(a) of the Act	Statement affirming adherence to the principles in school policy. <i>Effect:</i> very low impact. The statement needs to be developed at initial registration and updated periodically. It is a requirement of the Act.
2* Student learning outcomes	Requires schools to have processes in place to achieve improvement in learning outcomes	Requires schools to have processes in place to improve learning outcomes of students as intended by s. 1.2.1(b) of the Act. The Act requires schools to comply with prescribed minimum standards relating to 'student learning outcomes' (ss. 4.3.1(6)(b)(i), 4.3.1(6)(b)(ii)).	s. 1.2.1(b)—student's right to realise their learning potential s. 4.3.1(6)(b)(i) —school must comply with prescribed minimum standards in relation to learning outcomes VIT registration and AER 2013, r. 41—requires teachers to plan for and implement effective teaching and learning AER 2013, r. 43—incentivises schools to participate in NAPLAN AER 2013, r. 44—schools must have a school improvement plan to receive Commonwealth funding	A documented strategy to plan for and improve student learning outcomes for each student <i>Effect:</i> low to high impact. Plans need to be developed at initial registration, and updated periodically. They are a requirement of the Act. Some schools experience a higher impact from this process—for example, schools catering for students with special needs.
3* Monitoring and reporting on students' performance	Requires schools to assess, monitor and record student performance, and to make this information accessible to parents and students, including via two written reports per year to parents	Prescribes the form and frequency of monitoring, assessing and recording of student performance to support schools to improve the learning outcomes of students (s. 1.2.1(e) and (f))	s. 1.2.1(e) and (f) AER 2013, r. 42—curriculum must be recognised by ACARA to receive Commonwealth funding s. 4.3.1(6)(b)(v) —school must comply with prescribed minimum standards relating to curriculum programs	Assessment and reporting policies, including policies for Commonwealth student reporting requirements. <i>Effect:</i> moderate to high impact. Policies need to be developed at initial registration and updated periodically. They are a requirement of the Act and the AER. Some schools experience a higher impact from this process—for example, schools catering for students with special needs.
4 Teachers' requirements	Teachers must be registered or permitted to teach under Part 2 of the Act.	Ensures only teachers registered with the Victorian Institute of Teaching (VIT), or who have permission to teach, are employed to teach at a school. The Act empowers the VIT to grant registration or permission to teach in Victorian schools (s. 2.6.3 (1)(e)).	The Act requires all teachers to be registered or granted permission to teach by the VIT, and includes offences for unregistered teachers (s. 2.6.56).	A school register of teachers. <i>Effect:</i> very low impact. A register of teachers is essential for operation, and this requirement does not go beyond standard operational practice.
6* Curriculum framework for school	Requires schools to have a curriculum framework to implement the school's curriculum and teaching practices, and ensure learning areas are addressed	Requires schools to ensure they provide all students with a planned and structured curriculum to equip them with the knowledge, skills and attitudes needed to complete their schooling and to make a successful transition from school to work, training or further education. Regulation 52 allows the VRQA to exempt a school from addressing one or more of the learning areas.	Schedule 1 of the Act (learning areas)—instruction in these learning areas is to be provided free of charge in government schools to year 12 r. 52—allows exemptions in special circumstances (for example, if a school is registered for a specific purpose, such as a school for students with a disability)	Evidence of how time is allocated across learning areas, how and when teaching practice will be reviewed, how the school will deliver its curriculum, and how the school will organise its curriculum. <i>Effect:</i> moderate to high impact. Schools catering for students with special needs are likely to experience higher costs to meeting this standard.

			AER 2013, r. 42—curriculum must be recognised by ACARA to receive Commonwealth funding	
7* Student enrolment numbers	Requires schools to have a minimum of 20 students and secondary schools to have an average of 10 students for each year level for which the school is registered. For primary schools outside greater Melbourne, or in a town with a population of less than 20,000, the requirement is 11 students.	Ensures a school has sufficient students to be able to provide a range of curriculum programs and learning experiences that will support the academic and social development of students	The Act requires schools to comply with the prescribed minimum standards relating to minimum enrolment numbers (s. 4.3.1(b)(ii)). Regulation 53 also allows the VRQA to approve a lower enrolment number than the standard when the cost of closing the school and requiring students to travel further for schooling outweighs the benefits. It also allows the VRQA to approve a lower enrolment number when schools are established for special purposes, such as alternative settings for students disengaged from mainstream schooling. Under AER 2013, rr. 48 and 50 incentivise schools to undertake an annual census on the number of students, to receive Commonwealth funding.	For a new registration, evidence of planned enrolments, which would be needed to establish a business case for a new school. For registered schools, an enrolment register. <i>Effect:</i> very low impact. Enrolment registers are essential for school operation and to meet Commonwealth funding requirements.
8 Enrolment policy	Requires schools to have a defined enrolment policy that complies with all relevant laws. Schools of a particular religious denomination may give preference to adherents of the religion.	Requires schools to comply with prescribed minimum standards relating to enrolment policies (s. 4.3.1(6)(b)(ii))	s. 4.3.1(6)(b)(ii)—enrolment policies	An enrolment policy that includes how it is or will be implemented. <i>Effect:</i> very low impact. Enrolment policies are required to facilitate information for parents of eligibility, procedures and significant dates.
9* Register of enrolments	Requires schools to maintain a register including the student's name, age and address, the details of any parent or guardian, the date on which the student enrolls and/or the date on which the student ceases to be enrolled	Requires a school to maintain an enrolment register that includes, at a minimum, the information required in the standard. This standard supports the school enrolment and attendance provisions of part 2.1 of the Act, particularly the requirement for parents to enrol the child at a registered school. It also provides for penalties for non-enrolment (s. 2.1.1).	Part 2.1, s. 2.1.1—children must be enrolled in school or registered for home schooling s. 5.3A.7—the Secretary must establish a student register AER 2013, rr. 48 and 50—schools must report student numbers in the school census	An enrolment register and procedures to keep it up to date. This information supports the Secretary to establish a student register. <i>Effect:</i> very low impact. Enrolment registers are required as standard operating practice and to meet Commonwealth funding requirements.
10* Monitoring of attendance	Requires schools to monitor the daily attendance of each	Supports obligations under the Act for parents of children of school age to ensure their children attend school unless they have	s. 2.1.1—students enrolled in a school must attend when the school is open unless they have a reasonable excuse	An attendance register that records daily attendance, and processes to ensure absences and reasons are recorded <i>Effect:</i> moderate impact. Attendance rates are required to be published

	enrolled student, identify unexplained absences from the school or classes, notify a parent or guardian about a student's unsatisfactory school or class attendance, and record this information on the student's file	a reasonable excuse (s. 2.1.1)	s. 4.3.7—attendance must be recorded AER 2013, r. 60—attendance rates must be reported annually to receive Commonwealth funding. Supports child safety objectives and duty of care	to meet Commonwealth funding requirements. Recording attendance twice a day and reasons for absences creates a moderate impact above other requirements.
11* Attendance register	Requires schools to maintain a register of student attendance that records attendance at least twice per day and notes reason for any absence	Requires schools to record the attendance of children of compulsory school age in an attendance register in accordance with the Regulations (s. 4.3.7). Non-compliance with the Act is 5 penalty units. The minimum standard sets out the process.		
15* School governance	Requires all schools to have governance structures that enable effective development of the school's strategic direction; effective management of the school's finances; and fulfilment of its legal obligations. For non-government schools: the proprietor, principal and members of the governing body must meet governance standards.	Requires schools to comply with prescribed minimum standards relating to governance (s. 4.3.1(6)(b)(v)). These standards ensure a school's governing structure enables the school to properly manage its responsibilities.  Many non-government schools have requirements under the <i>Australian Charities and Not-for-profits Commission Act 2012</i> .  r. 54 allows the VRQA to exempt a person from the requirement.	s. 4.3.1(6)(b)(v)—governance of a school and probity for owners and managers r. 54—allows exemptions <i>Australian Charities and Not-for-profits Commission Act 2012</i> <i>Australian Education Act 2013</i> , s. 75(2) School system owners' requirements for governance arrangements	An outline of the school's governance structure, constitution or rules of association, financial statements, charter, strategic plan, business plan. The principal and members of the governing body must sign a declaration that they are of good character. This declaration must be kept by the governing body and updated as circumstances change. <i>Effect</i> : moderate impact. The requirement represents good operational practice and most documents would be prepared under other requirements. Creating and maintaining good governance practices allows the regulator to focus on the needs of students and to use the appropriate regulatory tools to achieve compliance (for example, enforceable undertakings).
17* School must be not-for-profit	Requires schools to be not-for-profit	Stipulates that schools are to be registered under Part 4.3 and must meet the prescribed minimum standards for registration. Section 2.7.1 references the minimum standard that a school must be not-for-profit. This standard requires schools to operate on a not-for-profit basis.	s. 2.7.1—non-government schools must be not-for-profit AER 2013, r. 26—schools must be not-for-profit to receive Commonwealth funding	A school constitution and an attestation that the school is not-for-profit <i>Effect</i> : very low impact. attestation of not-for-profit status is low cost.
18* Information on school's performance to be available	Requires schools to report performance information to their school community at least once per year, including: analysis of student learning outcomes	Requires schools to provide the VRQA with a report containing the information required by the Regulations (s. 4.3.5(1))	s. 1.2.1(c)—publicly available information s. 4.3.5(1) report to the VRQA AER 2013, r. 60—public reporting on performance is required to receive Commonwealth funding	Annual report on school performance, including outcomes of statewide tests, attendance rates, financial activities, requirements under funding agreements. <i>Effect</i> : low impact. Financial statements are required for funding agreements and are essential for operations. An analysis of attendance rates and test outcomes may create a burden for schools.

	in state-wide tests for the current and previous two years; rates of student attendance; a financial report; and other reports required by funding agreements with the State or Commonwealth		The VRQA publishes searchable school reports that the community can use to facilitate consumer choice.	
<b>Supports the Act</b>				
14 Educational facilities	Requires educational facilities to be suitable for the educational programs offered by the school and the age of students	Requires a school's facilities to be appropriate to the educational programs offered. This is a basic requirement of day-to-day school operation. To offer year 12 Chemistry, for example, a school must have a chemistry lab. To offer Prep, a school must have an outdoor play area.	s. 1.2.1(b)—all Victorians should have access to a high quality education	Plans showing the location of facilities available for each program offered by the school <i>Effect:</i> very low impact. Plans are required under planning and building laws. Little additional effort is needed to show educational facilities on the plans.
16* School's philosophy	Requires schools to have a clear statement of their philosophy and to demonstrate how it is enacted	Requires a school to articulate its philosophy so parents have information about the intent or purpose of the school's approach to education	Facilitates the parental right to choose an appropriate education for their child under s. 1.2.1(d) AER 2013 r. 52(a)(iv)	A statement of the school's philosophy <i>Effect:</i> low impact. Articulating the school's philosophy is likely to be part of marketing for schools and facilitates parental choice of school.
19 Schools must comply with Act and regulations	Requires schools to comply with the requirements of the Act and the 2007 Regulations	Clarifies that the VRQA can act to address issues of non-compliance with school registration	General	No additional evidence required beyond the other standards. <i>Effect:</i> very low impact.
20 Schools must comply with conditions of registration	Requires schools to comply with any condition imposed on its registration under the Act or the 2007 Regulations	Empowers the VRQA to impose conditions on the registration of a school and act against the school for not complying with the minimum standards	Part 4.3—for example, ss. 4.3.1(6A), 4.3.3(2) and 4.3.4(2)	No additional evidence required beyond the other standards. <i>Effect:</i> very low impact.
21 Schools must have policies, procedures and suitable arrangements in place	Requires schools to have processes in place to comply with the minimum standards and to enable compliance with any guidelines on matters in schedule 2	Requires the VRQA to be satisfied that a school complies with the minimum standards before it registers that school	s. 4.3.1(6)(b)—the VRQA must not register a school unless it is satisfied that it meets the minimum standards	No additional evidence required beyond the other standards. <i>Effect:</i> very low impact.

\* Standards are similar to or the same as requirements set by the Commonwealth for funding under the *Australian Education Act 2013* (Cwlth) and related regulations.

## 5. Regulations for government school education

This chapter covers three areas that the Act provides for in relation to regulating government schools:

- admission and age requirements
- student behaviour
- student school terms and temporary closures.

### 5.1 Admission and age requirements

#### *Background*

In 2016, approximately 53,000 students started in Prep and a further 55,000 students changed school to attend a different government school than in 2015. These 108,000 students enrolled in a new government school, which means they needed an enrolment form and evidence of date of birth (DOB).

Across states and territories, different age ranges are set for compulsory school attendance, and different minimum and maximum ages are set for school enrolment. Most jurisdictions require children to attend school between the ages of 6 and 17. Typically, students commence schooling when they turn five by a particular time of the year, with the possibility for parents to apply for exemption. These age rules allow flexibility to meet the development needs of all students in a low-cost way while providing clarity and certainty on attendance and enrolment criteria across schools.

School attendance is compulsory in all states and territories. The lower compulsory school age ranges from five (in Tasmania and Western Australia) to six and a half (in Queensland) (table 5.1). The upper compulsory school age ranges from 16 (in Queensland and Tasmania) to 17 (in all other states and territories). The date in a year by which a child must reach a specified age to start school in that year or the preceding year varies across jurisdictions. It ranges from 1 January in Tasmania to 31 July in NSW, subject to exemption under certain circumstances.

Some states and territories set a maximum age for attendance at a government school beyond the compulsory schooling age. In Tasmania, for example, a person older than the upper compulsory school age (16 years of age) and not finishing school is entitled to only two further years of study unless special permission is granted to continue schooling.

#### *Base case and its consequences*

The Act entitles a child of compulsory school age to be admitted to their designated neighbourhood government school (s. 2.2.13). Compulsory school age is not less than 6 nor more than 17 (s. 1.1.3, s. 2.1.1). The Act also allows the principal of a government school to refuse to enrol a student if they are under or over an age specified in the regulations (s. 2.2.18).

All schools also have common law obligations relating to health and safety, and need to meet other legal, regulatory and policy requirements such as the *Family Law Act 1975 (Cwlth)*, the Child Safe Standards and Family Court rulings relating to parental responsibility. They must also meet the Commonwealth Government's requirements relating to collecting data for the Index of Community Socio-educational Advantage; parents are asked to provide data on their education, employment

status and occupation for use in national performance reporting (including National Assessment Program—Literacy and Numeracy, known as NAPLAN).

**Table 5.1: School age requirements in other jurisdictions**

State/Territory	Legislation	Compulsory school age	Minimum and maximum age
ACT	<i>Education Act 2004</i>	6–17 Compulsory school age starts the year when the child turns six by 30 April. Compulsory school age ends at 17 or on completion of Year 12, whichever comes first.	Children enrolling in an ACT public primary school must be five years of age on or before 30 April of the year of commencement.
NSW	<i>Education Act 1990</i>	6–17 Compulsory school age starts the year when the child turns six by 31 July.	A child can start school when they turn five on or before 31 July of that year.
NT	<i>Education Act 2015</i>	6–17 Compulsory school age starts the year when the child turns six by 30 June. Compulsory school age ends at completion of Year 10 of secondary education and the child participates on a full-time basis in one of the following options: <ul style="list-style-type: none"> <li>• approved education or training</li> <li>• paid employment, if the child is 15 years of age or above</li> <li>• a combination of approved education or training and paid employment</li> <li>• an exemption or if the child is 17 years of age or above.</li> </ul>	NIL
Qld	<i>Education (General Provisions) Act 2006</i> <i>Education (General provisions) Regulation 2006</i>	6.5–16 A child is of compulsory school age if the child is at least six and a half years old, and less than 16 years. However, a child is no longer of compulsory school age if the child has completed Year 10.	A principal of a school may enrol a child in a year of schooling from Years 1 to 6 at the school, regardless of the child’s age, if the principal is satisfied the child is ready to be enrolled in the year of schooling, having regard to the child’s attributes (r. 16(3)). The maximum age is 18 years. Students over 18 years of age may enrol in ‘Mature age state schools’ (there are 10 schools across Queensland), subject to eligibility requirements.
SA	<i>Education Act 1972</i>	6–17 It is compulsory for children to be enrolled in a school by their sixth birthday.	Public primary schools have one intake date and students must be aged five years or older. This means: <ul style="list-style-type: none"> <li>• if a child turns five years by 1 May, they can start school the first day of term 1 of that year</li> <li>• if a child turns five after 1 May, they can start school the first day of term 1 of the following year.</li> </ul>

**Table 5.1: School age requirements in other jurisdictions (continued)**

State/Territory	Legislation	Compulsory school age	Minimum and maximum age
<b>Tas</b>	<i>Education Act 1994</i>	5–16 Unless exempted or excused, a child who is at least five years of age at 1 January must be enrolled at a school or be provided with home education for that year and subsequent years until the child completes the school year during which he or she attains the age of 16 years.	The Secretary may allow a child who has not attained the age of four, or a class of children who have not attained the age of four, to be enrolled at, and attend, a state school if the Secretary believes that it is in the best interests of the child or children (s. 46.1A). No maximum age: If a person is not a school aged child and has not completed the equivalent of two years of full-time study of post-Year 10 secondary education and training, that person is entitled, subject to s. 47D, to attend the Academy or TasTAFE for a period not exceeding the equivalent of two years of full-time study (s. 47.B(2)).
<b>Vic</b>	<i>Education and Training Reform Act 2006</i>	6–17	There are exceptions for children who are at least 5 years of age by 30 April of the year of enrolment, and are enrolling in a course of primary education, including attending a transition program for pre-schoolers or an Early Education Program at a Special Developmental School. There are exceptions to certain categories of students aged 18 or over who are enrolling in or completing an accredited senior secondary course. A person who does not fall within an exception may be eligible to apply for an exemption.
<b>WA</b>	<i>School Education Act 1999</i>	5-17	The pre-compulsory education period for a child is from the beginning of the year in which the child reaches the age of four years and six months until the end of that year (s. 5).

The base case is defined as the situation in the absence of the proposed regulations. Because the current regulations are due to sunset in June 2017, the base case will be the situation where schools would have a legally enforceable mechanism to collect information for Commonwealth Government purposes (NAPLAN and the Family Law Act). The majority of parents would provide schools with requested information to complete an enrolment form, and provide evidence of DOB, to ensure the safety and wellbeing of their children, and to ensure they were placed in a grade appropriate to their development. But schools would have no legally enforceable mechanism to collect information on DOB. This may result in disputes about the need to complete enrolment forms and provide evidence of DOB, which impose costs on schools. The expected number of disputes that may arise is likely to be small, given there are no known past incidents of disputes.

The base case also specifies that no minimum and maximum ages for government school enrolment are prescribed, making the Act inoperable in relation to a principal’s power to refuse enrolment based on age. For example:

- Parents with children outside the compulsory school age range may seek to enrol their children. The notable growth in enrolments at private pre-school tutoring facilities suggests many parents are seeking opportunities for their children to engage in formal learning before starting school (Marshall 2014).
- Older students might seek to enrol in schools to complete their education.

The Department considers there are risks associated with not specifying minimum and maximum ages for student enrolment in government schools. Schools would have no basis for refusing these applications for enrolment, and may face increased costs in accommodating these students.

### *Identifying the problem*

#### *Admission requirements*

The 2007 Regulations require the parents of a student to complete and sign an admission form, and provide evidence of the student's DOB (r. 9). Schools require a minimum set of information about students to:

- ensure the health, safety and wellbeing of the student while they attend school
- provide an appropriate education
- ensure efficient communication channels between school and home.

Such necessary information includes the student's age, legal name, place of residence, medical and health information (including health conditions and risk factors, and immunisation status as well as signed medical treatment consent), past educational experience, living arrangements, and parent and emergency contact details. A student's address is also required to determine whether a student is entitled to be enrolled at a particular school that is their designated neighbourhood government school (to comply with s. 2.2.13) or the student lives in the school's zone. Schools also use this information to communicate with families, and meet the ongoing needs of students such as responding to emergency situations as part of the school's common law obligations.

Schools also collect data on students' gender, language, parental education and occupation, and other demographic information to comply with the Commonwealth NAPLAN-related requirements. Access or activity restriction information is also collected in compliance with the Family Law Act.

Schools collect map reference numbers and data on usual mode of transport to school to assist with the Government's student transport planning. But in practice, this information may not always be accurate and up to date, as circumstances change as students get older and families change transport habits. Secondary schools may also collect additional information from students to support their transition from primary to secondary school.

An enrolment form is an efficient means for collecting this type of information and evidence of DOB. In Victoria, government schools use a standard enrolment form to collect student information when the student first enrolls at the school. The data collection is not repeated in subsequent school years, although parents are requested to update the information if their circumstances change. The enrolment form is available in CASES21, the Department's information management system. The Department monitors the information collected at schools to ensure that the standard form collects

only necessary information and that the privacy implications of any information collection are considered.

Schools can adapt this form to include their school branding. Beyond this modification, collecting other information about students is subject to the Victorian privacy laws that apply to the due diligence process of gathering, keeping and using personal and sensitive information. Schools have no express authority to collect additional information unless consent is provided by the person the information is collected from. Non-government schools use forms that collect similar information and are also subject to Victorian privacy laws.

At enrolment, parents must also present original birth and immunisation certificates, or provide certified copies of these documents. Managing this information collection and storage imposes a small burden on schools.

As part of the consultations for this review, and more generally, stakeholders did not raise any issues about using a standard enrolment form to collect student information or the need to provide evidence of DOB. Similarly, the Department did not identify any issues arising from parents and schools about the enrolment process. Most parents willingly comply with the enrolment form and DOB evidence requirements. In a few cases where parents disputed these requirements, principals have negotiated to obtain sufficient information to meet obligations under the Act and other laws to admit students to their school. However, resolving disputes such as these has been time consuming for principals. A legally enforceable process for collecting information and evidence of DOB provides a low-cost way of reducing the incidence of disputes about the enrolment criteria and requirements.

### *Age requirements*

Evidence suggests children benefit from structured learning environments that align with their development stages. Placing a child in an educational environment not suited to their level of development is detrimental to their learning outcomes:

- Children can struggle if they attend school before they are socially and emotionally ready (Walker 2011).
- In school settings, older students may not receive education that most suits their greater levels of maturity. Research suggests they would be more appropriately educated in adult learning environments, adopting a teaching approach based on adult learning principles that are different from traditional schooling (Victoria Learning and Employment Skills Commission 2006).

Determining each new student's stage of developmental readiness without referring to their age is possible but costly. In practice, age is used as a proxy for maturity and development, and most Australian jurisdictions require that children attend school between the ages of six and 17. Having a threshold age inevitably creates boundary issues, especially because it is not practical for children to start school on the day they turn six. And not all children will leave school on the day they turn 17, but it may not be in students' interest to have older students in school settings. The boundary issues are managed by setting minimum and maximum ages for enrolment and attendance in government schools in regulations. The 2007 Regulations specify exceptions and the conditions under which the Minister may grant an exemption.

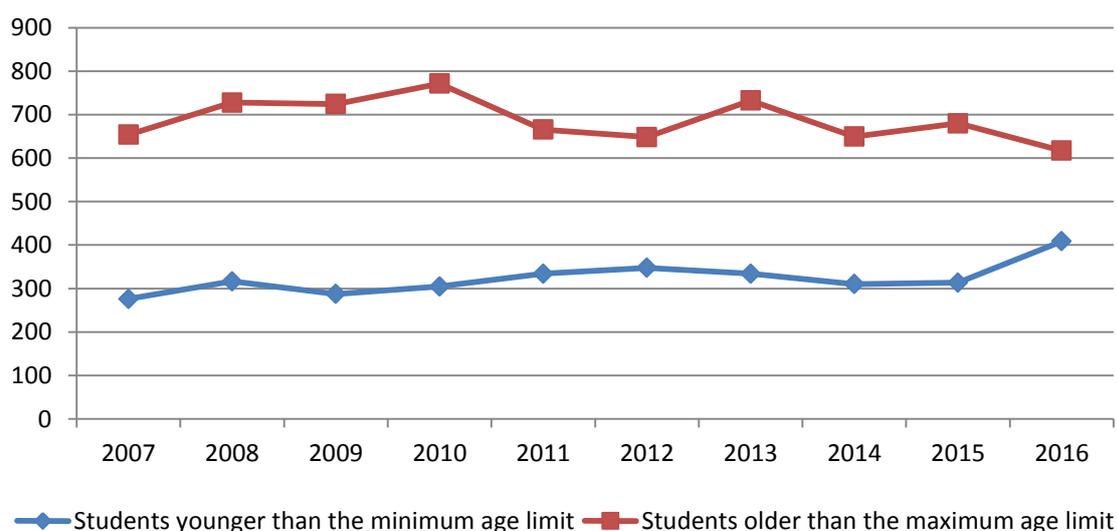
Principals must know a student’s age with certainty to refuse to admit a child who does not meet the age requirements specified in the regulations (s. 2.2.18), or to place a student in the correct year level. Generally, parents prefer the most developmentally appropriate educational environment for their child. And they usually send their child to school in accordance with standard practices in the community and standard pathways from early childhood education to school. For older students, who have alternatives to school to continue their senior secondary education, students and parents can make choices that suit their needs.

Division 1A of the 2007 Regulations makes s. 2.2.18 of the Act operable, by prescribing the minimum and maximum ages for enrolment and attendance, the exceptions to the age restrictions, and the conditions under which the Minister can grant exemptions from these age restrictions. Over the past 10 years, the Minister has usually delegated this power to the Department’s Regional Directors, although the delegation was not in effect at the time of writing this RIS.

The residual problem is about requiring an efficient mechanism to collect information from parents about students, and to provide certainty about the child’s DOB. It also relates to specifying the minimum and maximum ages as referenced in the Act, the exceptions, and the process to seek Ministerial exemptions.

Figure 5.1 highlights the extent of the age requirement residual problem in terms of the number of students enrolled in government schools who are outside the minimum and maximum age limits. However, the Department does not currently record the number of students enrolled who have received an exemption from, or meet an exception to, the age requirements. Over the past 10 years, the number of younger students enrolled has gradually increased, whereas the number of older students enrolled has remained relatively stable. On average, 323 younger and 690 older students were enrolled each year between 2007 and 2016. The Minister (if the authority for granting exemptions is not delegated) and the parents share the cost of the exemption. The Department incurs the cost of administering the process and parents incur the cost of obtaining assessments.

**Figure 5.1: Number of students outside the minimum and maximum age limits, 2007 to 2016**



Source: School census data 2007–16.

The residual problem also involves enforcing an efficient mechanism to collect information, which is currently to require parents to complete an enrolment form and provide evidence of DOB. There are no instances of parents refusing to complete an enrolment form or provide evidence of DOB. However, a legally enforceable mechanism to collect this information mitigates the risk that parents will not comply, which may result in costly disputes.

### *Specifying the objectives*

The primary objective of specifying government school admission and age requirements is to provide students with a safe environment and a high quality education. The secondary objective is to have an admission/enrolment process that ensures:

- students attending schools are at an appropriate development stage for a school environment
- parents provide and confirm complete and accurate information about students
- disputes about information requests are resolved efficiently if parents do not comply.

### *Identifying options*

The Department took the Act's existing provisions on age and school admission as the starting point for this RIS, and acknowledged the expectation that regulations will specify age requirements.

### *Age requirements*

The Act indicates the legislative intent to specify age requirements in regulations. The options discussed below refine the regulations by, for example, removing the ministerial discretion to grant exemptions.

The age requirements specified in the 2007 Regulations align with the Department's policy objectives, and support the Victorian Early Years Learning and Development Framework to enable effective transition to school. Victoria's school age requirements are broadly consistent with those in other jurisdictions.

#### Base case—no regulation

Under this option, there would be no age requirements specified in the regulations, and the principal would have general discretion regarding entry to the school of a child who is not of compulsory school age.

#### Option 1—replace the 2007 Regulations with age requirements and exceptions, but remove the ability for the Minister to grant exemptions from the age requirements

Under this option, the proposed regulations would specify minimum and maximum age requirements with some exceptions, but the Minister could not grant exemptions.

#### Option 2—replace the 2007 Regulations with age requirements and exceptions, and allow the Minister to grant exemptions

Under this option, the proposed regulations specify minimum and maximum age requirements, the exceptions, and the exemptions that the Minister may grant. This option takes the same approach as the 2007 Regulations, with some minor changes to introduce an upper age limit for school enrolment,

adjust the travel time constituting reasonable access to a TAFE or registered training organisation (RTO) offering senior secondary courses, and remove one of the ministerial powers of exemption.

### *Assessment of options*

The Department used three criteria to compare the options in a multi-criteria analysis:

- Criterion 1—students attending schools at an appropriate stage of development
- Criterion 2—compliance burden on parents
- Criterion 3—administration costs on school and the Department.

These criteria were weighted to ensure neutrality between benefit-related and cost-related criteria. The second and third criteria both directly reflect a negative outcome. The Department considered it appropriate to weight these criteria equally.

The Department rated each option relative to the base case against each criteria, using a symmetric scoring scale between +10 and –10, with the base case benchmark set at zero. The ratings reflect a qualitative assessment of the merits and disadvantages of the options. Table 5.2 shows the multi-criteria analysis used to determine the preferred approach.

**Table 5.2: Multi-criteria analysis of options to set age requirements for government schools**

Criterion	Weight	Base case	Option 1		Option 2	
		Score	Assigned score	Weighted score	Assigned score	Weighted score
Appropriate stage of development for students	0.50	0	1	0.50	4	2.00
Compliance burden on parents	0.25	0	0	0.00	–1	–0.25
Administrative burden on schools and the Department	0.25	0	3	0.75	2	0.50
<b>Overall</b>	<b>1</b>	<b>0</b>		<b>1.25</b>		<b>2.25</b>

Criterion 1—Compared with the base case, options 1 and 2 both provide schools with the ability to refuse entry to a school based on age. Since age is a reasonable proxy for developmental readiness, these options provide greater assurance that students attending school are in an appropriate educational environment. Option 2 provides a process for granting exemptions to the age requirements when the Minister is satisfied there are reasonable grounds, and therefore provides greater benefits under this criterion than option 1.

Criterion 2—Compared with the base case, option 2 creates a compliance burden on parents or the student, who must prove reasonable grounds for an exemption from the age requirements. Option 1 does not create an additional compliance burden on parents or students compared with the base case.

Criterion 3—Compared with the base case, options 1 and 2 reduce the administrative burden on schools, by allowing principals to refuse to enrol a student if they are outside the age requirements. Without the regulations, schools would need to manage instances of parents seeking to enrol their child in school before they were developmentally ready, and instances of older students or their parents seeking to enrol in schools when they not at an appropriate age. Option 2 imposes an

administrative burden on the Department, because it must establish a process for considering requests for exemptions. Therefore, option 2 provides a lower benefit for this criterion.

### *Admission requirements*

All states and territories require parents to complete an enrolment form before their child is admitted to a government school. Most other jurisdictions require similar information to Victoria (box 5.1).

#### **Box 5.1 Approaches to enrolment in other jurisdictions**

Other jurisdictions collect similar information to Victoria on school enrolment forms. Similarly, some information is collected under Commonwealth Government requirements.

In South Australia, parents must provide the child's full name, DOB, place of residence and any other particulars as required on the enrolment form (South Australia, Education Regulations 2012, r. 62(1)). (Other particulars include country of birth, date of arrival in Australia, education, employment status and occupation of the parent/s, and cultural background, court orders, mode of transport to school, details of siblings and medical conditions of the student). This is similar to the information collected by Victorian government schools.

In NSW, principals can require proof of a child's eligibility to attend or entitlement to be enrolled at government schools, including the child's identity, date of birth and home address, and to produce any document or to provide a statutory declaration, or both. The *Education Act 1990* (NSW) also provides that the child is not entitled to be enrolled at the school unless and until the requirement is complied with (unless the requirement cannot reasonably be complied with in the circumstances). The Secretary may terminate the enrolment of a child at a government school who is not entitled to be enrolled at the school if the child was enrolled as a result of false information or a false document provided to the principal (s. 34A).

In Tasmania, an application for enrolment of a school-aged child is to include any information the Department Secretary may determine relating to:

- the child's identity
- the parent's identity
- the child's place of residence
- any other matter in respect of enrolment the Secretary requires.

If requested by the school principal, a parent wishing to enrol a school-aged child must provide evidence of:

- the child's age
- the child's family name
- the parent's guardianship, care or control of the child (*Education Act 1994*, s. 4).

The Department initially also considered making the regulations more prescriptive by specifying particular information requirements in the enrolment form, including other information required to assure students' health and wellbeing, such as emergency contact information and medical information. However, the Department did not pursue this option because it had few net benefits.

Specifically, this requirement would reduce the flexibility of deciding what additional information must be collected, for example, in response to an emerging health or safety issue.

Government schools have processes for managing incomplete enrolment forms as set out in the departmental policy. In practice, parents usually provide this requested information and there have been only a small number of disputes about enrolment, which typically relate to family law issues rather than providing evidence of age or completing the form. Given that student information, including age, must be determined on enrolment, the key issue is whether evidence of DOB should be required in all cases. The Department considered three main options:

#### Base case—no regulations

There would be no requirements for parents to provide information to school on enrolment other than the Commonwealth Government's requirements. Principals would have no authority to request evidence of age.

#### Option 1—introduce regulations that require parents to provide information on students and evidence of their age on request

Regulations would be introduced to require parents to complete an enrolment form, including attesting to their child's DOB. Principals would be legally empowered to verify the child's DOB. Principals could seek evidence of age if they suspect that a student is not between the minimum and maximum ages, for example, for students who were not enrolled in the Victorian Government system (school or kindergarten) in the previous year.

#### Option 2—introduce regulations that require all parents to complete and sign an enrolment form and provide evidence of age as part of enrolment

Regulations would be introduced to require all parents to complete an enrolment form and provide evidence of DOB as part of admission. In cases where a parent does not have a child's birth certificate or passport, unofficial evidence such as a doctor's note attesting to a child's age would be sufficient.

#### *Assessment of options*

The Department used three criteria to compare the options in a multi-criteria analysis:

- Criterion 1—students attending schools at an appropriate stage of development
- Criterion 2—compliance burden on parents
- Criterion 3—administration costs on school and the Department

These criteria were weighted to ensure neutrality between benefit-related and cost-related criteria. The second and third criterion directly reflects a negative outcome. The Department considered it appropriate to weight these criteria equally.

The Department rated each option relative to the base case against each criterion using a symmetric scoring scale between +10 and -10, with the base case benchmark set at zero. The ratings reflect a qualitative assessment of the merits and disadvantages of the options.

Criterion 1—Compared with the base case, options 1 and 2 both provide greater certainty of a child’s age and greater assurance that they are in the appropriate educational environment. Option 2 provides the greatest certainty, because parents must produce evidence of DOB.

Criterion 2—Compared with the base case, option 1 and 2 both impose a compliance burden on parents, who must prove their child’s DOB. Option 2 has the greatest compliance burden because all parents must provide evidence of DOB. Option 1 has a lower compliance burden, because as parents would provide evidence only on request, although they must provide evidence at some stage in the enrolment process.

Criterion 3—Compared with the base case, options 1 and 2 impose a greater administration burden on schools, which must establish processes to verify evidence of DOB, determine which parents they will request evidence of DOB from (for example, by developing an enrolment policy and criteria for requests for evidence of DOB) and resolve disputes about providing evidence. Option 1 imposes a higher administrative burden than option 2, because schools must decide which students must prove DOB and schools must resolve disputes if parents refuse to supply evidence.

Table 5.3 shows the multi-criteria analysis used to determine the preferred approach.

**Table 5.3: Multi-criteria analysis of options on evidence of DOB**

Criterion	Weight	Base case	Option 1		Option 2	
		Score	Assigned score	Weighted score	Assigned score	Weighted score
Appropriate stage of development for students	0.50	0	3.0	1.500	4	2.00
Compliance burden on parents	0.25	0	-1.5	-0.375	-5	-1.25
Administrative burden on schools and the Department	0.25	0	-3.0	-0.750	-1	-0.25
<b>Overall</b>	<b>1</b>	<b>0</b>		<b>0.375</b>		<b>0.50</b>

*Preferred option and its effect*

*Effect of the age requirements*

The preferred option is option 2—that is, the proposed regulations specify minimum and maximum ages for school enrolment, some exceptions, and the circumstances for seeking a ministerial exemption. The age requirements will affect current processes that allow the Minister to exempt applicants from the minimum and maximum age requirements.

In practice, the Minister has delegated authorisation to grant exemptions to Regional Directors, and a delegation has been in place throughout most of the period covered by the 2007 Regulations. But at the time this RIS was written, a delegation was not in place. The Department anticipates a new delegation from the Minister to Regional Directors, so the effect of the preferred options includes delegated responsibility. The Minister can make or revoke the delegation at any time.

### Minimum age requirements

Under the proposed regulations, a child must be five years of age by 30 April in the year that they start school to enrol in a government school, unless they fall within an exception or receive an exemption that permits them to start school early. Exceptions include:

- a Prep transition program at a primary school designed to prepare pre-schoolers for primary school
- an Early Education Program at a Special Developmental School specifically designed for pre--school children with severe to profound or multiple disabilities aged between two years eight months and 4 years 8 months at 1 January of the year of school entry.

The Minister would retain the power to grant an exemption if he or she is satisfied the child possesses suitable academic ability, and it is in the child's best interests to be enrolled in a government school (or a course or program provided by that school).

There may be some costs of this restriction for families of children who are developmentally ready to start school but are below the minimum age and do not fit within the exceptions. These families may apply for an exemption. The Department estimated the administrative costs of applying for an exemption from the proposed minimum age requirements, based on the following assumptions:

- The number of applications for exemptions will be about the same as the number of students enrolled in government schools who are below the minimum age.
- The authority to grant exemptions is delegated to Regional Directors.
- Before applying for an exemption, the relevant parent will identify a potential school and approach the principal to discuss the proposed enrolment for up to one hour.
- Parents seeking an exemption will need supporting professional opinion from a kindergarten teacher or an independent professional. The most costly option would be purchasing an independent professional assessment, which is estimated to cost as much as \$1,000. A conservative estimate might place half of exemptions as seeking professional assessment at an average rate of \$500 per exemption.
- Acquiring the professional assessment and making a written request for an exemption to the relevant Regional Director, together with relevant supporting documentation, is estimated to take up to three hours.
- A suitably qualified departmental regional officer must process the exemption application, and then draft a recommendation and reply (which may take up to 1.5 hours).
- A Regional Director must review the recommendation and sign the application and response, where appropriate. This process may take approximately 15 minutes.

The total cost of applications for an exemption from the minimum age requirements is around \$374,000 per year (table 5.4).

**Table 5.4: Administrative cost of applying for an exemption from minimum age requirements**

Item	Assumption and calculation
Parents wishing to seek an exemption from minimum age	409 exemptions
Time for parents to prepare exemption	4 hours
All-inclusive opportunity cost of parents time	\$35 per hour
Cost of independent professional assessment	\$500 per assessment
Principal time in consultation	1 hour
Cost of principal time	\$116 per hour
VPS 5 officer processing time	1.5 hours
Cost of VPS 5 regional officers time	\$78 per hour
DET executive processing time	0.25 hours
Cost of EO2 Regional Director time	\$170 per hour
Estimated cost per exemption	$(4 \text{ hours} \times \$35) + \$500 + (1 \text{ hour} \times \$116) + (1.5 \text{ hours} \times \$78) + (0.25 \text{ hours} \times 170) = \$914.80 \text{ per exemption}$
Estimated administrative cost of applying for an exemption from minimum age requirements	$409 \text{ exemptions} \times \$914.80 = \$374,152 \text{ per year}$

### Maximum age requirements

Under the proposed regulations, a student cannot enrol or attend a government school once over the age of 18, unless they are less than 19 years of age and enrolled in a senior secondary course, such as the Victorian Certificate of Education (VCE) or the Victorian Certificate of Applied Learning (VCAL). If aged over 19 and under 20 years of age, they must be completing a senior secondary course in that year. If they are over 20 years of age and under 21 years of age, they are only allowed to enrol at or attend school if they are enrolled in a senior secondary course, situated outside a metropolitan area, and there is no other setting, such as a TAFE or other registered education or training organisation, offering a senior secondary course within 50 kilometres of that school. The proposed approach also includes adding exemption categories for special consideration/temporarily interrupted schooling to allow school completion and for transfer from English language school to mainstream school.

This restriction may impose some costs on individuals who are not eligible to enrol or attend a government school but for whom there are no other suitable educational settings to complete their education, such as students from outside metropolitan areas. These students may apply for an exemption. The Department estimated the administrative costs of applying for an exemption from proposed maximum age requirements, based on the following assumptions:

- The number of applications for exemptions will be about the same as the number of students enrolled in government schools who are above the maximum age.
- The authority to grant exemptions is delegated to Regional Directors.
- Before applying for an exemption, the relevant parent or individual will identify a potential school and approach the principal, or approach the principal of their existing school, to discuss the proposed enrolment for up to one hour.
- Parents or the individual must submit a written request for an exemption to the relevant Regional Director, together with relevant supporting documentation, which may take up to one hour.
- An application for exemption would need to be processed by a suitably qualified departmental regional officer, who would then draft a recommendation and reply (up to an hour and a half).

- A Regional Director must review the recommendation and sign the application and response, where appropriate. This process may take approximately 15 minutes.

The total cost of applications for an exemption from the maximum age requirements is around \$213,000 per year (table 5.5).

**Table 5.5: Administrative cost of applying for an exemption from maximum age requirements**

Item	Assumption and calculation
Parents wishing to seek an exemption from maximum age	617 exemptions
Time for parents to prepare exemption	2 hours
All-inclusive opportunity cost of parents time	\$35 per hour
Principal time in consultation	1 hour
Cost of principal time	\$116 per hour
DET VPS 5 processing time	1.5 hours
Cost of VPS 5 regional officers time	\$78 per hour
DET executive processing time	0.25 hours
Cost of EO2 Regional Director time	\$170 per hour
Estimated cost per exemption	$(2 \text{ hours} \times \$35) + (1 \text{ hour} \times \$116 + (1.5 \text{ hours} \times \$78) + (0.25 \text{ hours} \times \$170) = \$345.16 \text{ per exemption}$
Estimated administrative cost of minimum age regulation	$617 \text{ exemptions} \times \$345.16 = \$212,961 \text{ per year}$

### *Effect of admission requirements*

The preferred option is option 2, which involves remaking the regulations to require all parents to provide evidence of DOB and to complete an enrolment form on enrolment.

This option imposes some burden on parents in proving DOB, especially if evidence is not readily available.

- The parents of approximately 108,000 newly enrolled students will need to locate and present evidence of DOB to schools, which in turn, must record they sighted the evidence. This process is expected to take about 10 minutes per enrolment, or around about 18,000 hours per year. The total cost is therefore about \$627,000, based on a time cost of about \$35 per hour.
- A replacement birth certificate costs about \$32. Less than one per cent of the 108,000 new enrolments will incur this cost, with a total cost of about \$34,560 per year (Victorian Registry of Births Deaths and Marriages). Some parents may need to obtain doctor's evidence of age if the birth certificate is unavailable, at a time cost of about \$30 (half hour doctor appointment at about \$60 per hour). It is not known how many families will be affected, but the Department expects the number of families to be small.

Parents also incur a time cost to complete the enrolment form. However, some of the information required on the enrolment form must be provided under Commonwealth Government requirements, and other information is needed to ensure student safety under common law. The regulations, by themselves, do not require extra information and therefore do not impose regulatory burden.

### *Changes from the 2007 Regulations*

The proposed regulations include no changes from the 2007 regulations for admission requirements.

For age requirements, the proposed regulations differ from the 2007 Regulations in three ways:

- They introduce an upper age limit of 21 years on the current exception for school enrolment for students in rural or remote areas where currently none exists. The rationale for the change is to ensure students over 21 years attend an appropriate educational environment.
- They change the exception due to living outside the metropolitan area and lacking reasonable access to a TAFE or RTO that offers senior secondary courses within a distance from school. The exception now relates to travel distance (50 kilometres), rather than travel time (45 minutes). The rationale for this change is to provide a clearer and more objective basis for determining reasonable access. While the precise number of students affected by this change is not known, the Department expects the impact to be small because 50 kilometres is comparable to 45 minutes travel time in uninhibited traffic conditions.
- They remove the ministerial power to exempt a child from the minimum age requirement on the grounds that the child 'requires extra support or assistance'. The rationale for the change is that children below the minimum age with additional needs should be referred to age-appropriate early childhood services (such as child care, kindergarten or an Early Education Program in a specialist school), rather than enrolled early in school to access extra support or provide respite for families.

The proposed regulations also differ in a number of minor and technical ways:

- The proposed regulations will incorporate some exceptions from age requirements currently in the Instruments of Exemption. These exceptions include for: programs to prepare pre-schoolers for primary school, Early Education Programs in specialist schools, and persons who have had their schooling interrupted the year previous due to circumstances of a temporary nature beyond that person's control.
- Minor changes in the definitions and language of the exemptions from age requirements will direct children to age-appropriate settings and help with students who are transferring from another jurisdiction and have already demonstrated that they are 'school ready'.
- The proposed regulations will include an exemption for special consideration/temporarily interrupted schooling, to allow school completion and an exemption for students transferring from an English language school to a mainstream school.
- Students completing English language school or centre programs may transfer into Year 10 at a mainstream school when already 18 years of age, if Year 11 would not be appropriate.
- The proposed regulations will include a maximum exemption period of 12 months, to improve consistency and review, and to address instances of students continuing in school above the maximum age without regular review of options or a transition plan.

### ***Implementation and evaluation***

The proposed regulations involve only small changes to the 2007 Regulations. To implement the proposed regulations, the Department will communicate with principals. This may include advising of changes to the regulations through a Schools Update and targeted communication to particular stakeholders. The Department will also review and update relevant policy and advice in the Department's *School policy and advisory Guide (SPAG)*.

The proposed evaluation framework will ensure the Department understands the administrative burden on schools and parents in applying for exemption to the age requirements and providing evidence of DOB. The Department considers that it should collect data on the number of exemptions to age requirements applied for, the outcomes of exemption applications, and number of appeals made. The Department will retain copies of all applications and outcomes for 10 years. The proposed indicators are:

- number of exemptions applied for
- number of exemptions approved
- number of appeals
- number of disputes about providing evidence of DOB and the Department's time commitment in resolving them.

## **5.2 Student behaviour**

### *Background*

The Department considers that students and staff in Victorian government schools should be able to learn and work in safe, supportive environments. Parents should be able to expect that their children will be educated in a setting where the principles of care, courtesy and respect for the rights of others are displayed and valued. Staff and students can be placed in danger as a result of dangerous behaviour or acts by themselves or others. School staff may need to take action in the face of danger in order to ensure the safety of others.

The Victorian Equal Opportunity and Human Rights Commission (2012) surveyed parents on the use of restraint on their child in special schools. Of the 283 parents surveyed, 34 parents responded that restraint was used on their child and 128 parents responded that their child had been placed in a special room as a behaviour management technique. It should be noted that these survey results were based on a relatively small sample of students in special schools and would not be representative of the overall student experiences. For government schools as a whole, the prevalence of restraint use would be lower than indicated in this survey. The Department has revised its data collection processes and is building data capacity with a view to improving the reporting of all incidents of restraint or seclusion in government schools (discussed below as part of its evaluation approach).

The Department provides all government schools with the SPAG to support schools with a wide range of policies. The SPAG includes guidance on responding to student behaviours and supports schools to uphold their legal obligations and address wellbeing and behavioural concerns. It also includes advice, resources and strategies for schools on developing a student engagement policy, promoting positive student behaviour and responding to challenging behaviour. The SPAG specifies that physical interventions should only be used where immediately required to protect the safety of the student or any other person.

As part of the Special Needs Plan for Victorian Schools, in October 2015, a dedicated professional, known as a Principal Practice Leader (PPL), has been appointed to work with schools and the Department to improve management of violent and dangerous student behaviours of concern in government schools. The PPL reports to the Senior Practitioner (Disability) in the Department of

Health and Human Services. The PPL is working with schools and the Department to improve schools' culture and practices, and to oversee the use of restraint and seclusion in Victorian Government schools. The PPL receives reports on the use of restraint or seclusion in schools and will provide reports summarising data and advice, including recommendations for how the Department and schools could improve approaches to challenging behaviours.

Since October 2015, all incidents of student restraint and seclusion are required to be reported to the Department. This includes incidents being reported to the Security Services Unit through the Incident Reporting Information System (IRIS). Schools are also required to make a written report on the incident and add this record to the student's CASES21 file (the Department's system for recording student information). If the incident inflicts harm or risk to a staff member, the incident must also be recorded on the Department's online system for managing employee incidents, injuries and hazards (EduSafe).

Legislation across all Australian States and Territories on the use of corporal punishment has recently been the subject of substantive review, particularly in relation to the lawfulness of corporal punishment in school settings. There is considerable uniformity across Australian jurisdictions in either explicitly banning the use of corporal punishment in schools or removing provisions in education legislation that provide a defence to the use of reasonable chastisement by people (such as teachers) acting in the place of a parent (Child Family Community Australia 2014). The approach taken in Victoria of banning corporal punishment in all registered schools is consistent with the practice in NSW, Tasmania and the ACT. The ban on corporal punishment reflects community expectations about acceptable ways of disciplining children in schools.

### *Base case and its consequences*

The base case is defined as the situation in the absence of the proposed regulations.

In relation to student behaviour, the Act:

- authorises a principal to suspend or expel a student from a government school in accordance with any Ministerial Order (s. 2.2.19)
  - Ministerial Order 870 (Child Safe Standards—Managing the Risk of Child Abuse in Schools) requires schools to have strategies to deliver appropriate education about standards of behaviour for students attending the school, healthy and respectful relationships, resilience and child abuse awareness and prevention.
  - Ministerial Order 625 (Procedures for Suspension and Expulsion) sets out the only grounds and procedures for suspension and expulsion of a student from a government school.
- specifies that action can be taken against teaching staff that contravene the ban on corporal punishment (s. 2.4.60(f))
  - Corporal punishment is banned in r. 14 of the 2007 Regulations, and also in s. 166 of the *Education and Care Services National Law Act 2010*.
- specifies that the VRQA must not register a school unless it is satisfied that the school policies relating to the discipline of students are based on principles of procedural fairness and do not permit corporal punishment (s. 4.3.1(6)(a))(see chapter 4 on school registration)
- provides for regulations to be made relating to safeguarding student health and maintaining order and discipline in government schools (Schedule 5).

The Victorian *Occupational Health and Safety Act 2004* (OHSA) and subordinate Regulations require schools to recognise their legal and social responsibility to prevent work-related injury and illness and to provide a healthy, safe and supportive workplace. Principals and teachers have a duty of care to take reasonable steps to prevent foreseeable injury to their students. This includes provision of suitable and safe school premises and equipment, an adequate system of supervision, and implementation of strategies to prevent bullying and other harmful behaviours.

Under the base case, there is no guidance for school staff in legislation on the action they can take in the face of dangerous behaviour by students. Unenforceable rights and responsibilities puts staff and student safety at risk, and staff may hesitate to take actions to protect themselves, the student and others.

The SPAG includes a requirement that all government schools develop a student engagement policy that articulates the school community's shared expectations about student engagement, attendance and behaviour. The SPAG also states that every government school must have a student engagement policy to articulate the expectations and aspirations of the school community in relation to student engagement, including strategies to address bullying, school attendance and behaviour. It specifies that a school's student engagement policy must be developed in consultation with the wider school community including school leaders, teachers, students and parents. The role of the PPL has also been established to foster best practice approaches and oversee the use of restraint and seclusion in Victorian Government schools. Some schools would undertake these practices voluntarily.

### *Identifying the problem*

Incidents of inappropriate behaviour in schools are not widespread. However, notwithstanding the measures to manage and mitigate student behaviour described in the base case, there are reported incidents of school staff needing to seclude or physically restrain a student's behaviour because it was dangerous to themselves or another person.

These issues have ranged from relatively minor issues such as preventing a student from running onto a road to serious issues such as restraining or secluding a student who is using an object as a weapon. Examples of violent or dangerous behaviours of concern include:

- self-injuring behaviour, such as hitting/kicking walls, head-banging
- attacking other students or staff, including hitting, biting, kicking, hair pulling, throwing furniture or other objects at students and staff
- running onto a road or near some other hazard.

There is limited data on the number of each type of incidents, and the Department is working on improving data collection in this area through the PPL.

Incidents involving violent or dangerous behaviour can cause distress for the students involved or witnessing the incident, their parents and staff members. The Department considers that dangerous student behaviour in schools is a risk to the safety and wellbeing of students and school staff.

The problems associated with dangerous behaviour can be mitigated and managed by being clear about expectations of behaviour and how to respond to incidence of dangerous behaviour or action by students. Expectations about student behaviour and appropriate responses in the event of

dangerous behaviour can be clarified through policies and guidance materials. These materials should be developed with expert input, and communicated and socialised in schools to become operational. They also should be adapted to specific community needs. Where there are clear expectations about student behaviour, and consequences for inappropriate behaviour, it is more likely that students will behave appropriately and incidents of dangerous behaviour will be reduced. While some schools may voluntarily develop student engagement policies, the Department considers that some schools will need support to develop them, and that making it a requirement for registration by including it in the regulations ensures that all schools develop and implement one.

### *Specifying the objectives*

The primary objective of intervention in student behaviour policy is to support schools to provide a safe, supportive learning environment that is consistent with the expectations of the local community by requiring all schools develop a student engagement policy to articulate a range of universal (school-wide), targeted (population-specific) and individual (student-specific) strategies needed to positively engage students in learning and in the school community. The student engagement policy supports schools to develop a staged response to inappropriate behaviour, and ensure the use of fair and consistent responses. Overall, the aim of the policy is to support schools to create a positive and engaging school culture, in which students feel valued and respected, and supported to reach their potential.

The 2007 Regulations state that:

- school councils must develop a student behaviour policy that has regard to rights and responsibilities of stakeholders, and is consistent with the Act, regulations and any guidelines issued by the Minister (r. 13)
- the school principal is responsible for implementing the student behaviour policy, determining consequences for failing to comply, including consequences for not wearing the correct school uniform, and may impose detention periods or additional work as part of the student behaviour policy (r. 16)
- corporal punishment is not permitted in government schools to give effect to s. 2.4.60 that allows the Department to take action against an employee who contravenes the requirement by or under any Act that corporal punishment not be used on any government school student (r. 14)
- staff may take reasonable action to restrain students behaving dangerously (r. 15).

The student engagement policy operationalises the regulatory requirements in r. 13 and r. 16.

As the current regulations are due to sunset in June 2017, the base case will involve:

- no legally enforceable requirement for schools to develop a student behaviour policy and implement it
- ambiguity about the consequences for a student who does not wear correct school uniform
- ambiguity about whether staff can legally take action to restrain students and there would be no legal support for school staff who restrained a student, and there may be reluctance to take physical action to protect the student and others from danger
- relying on the offence for using corporal punishment in education services in s. 166 of the *Education and Care Services National Law Act 2010* (including penalties of \$10,000 for individuals)

and the requirement for the VRQA to be satisfied that school policies relating to discipline of students do not permit corporal punishment as a condition of registration (see chapter 4) to discourage use of corporal punishment. This may not allow the Department to take action under s. 2.4.60 against staff members who contravene the requirement not to administer corporal punishment to students, which weakens the disincentive to use corporal punishment.

Under the base case, the Department would still be able to support schools to develop student behaviour policy and provide guidance material, but would not be able to require them to have a student behaviour policy or implement it, unless it decided to change the enforcement of the SPAG.

### *Identifying options*

In relation to the ban on corporal punishment (r. 14), alternative options were not considered because removing the requirement not to administer corporal punishment to students in the regulations would make the Act inoperable in terms of the Department's ability to take action against an employee who contravened this requirement. It would also be out of step with community expectations and practices about corporal punishment in other jurisdictions.

In relation to student restraint, the option of allowing r. 15 to sunset was considered but it was determined that it would not provide school staff with sufficient rights to respond to student dangerous behaviour.

The options for intervening in relation to student behaviour involve the locus of decisions about what constitutes acceptable student behaviour and the consequences when students do not behave in an acceptable manner. Under both options, schools would need to have policies and procedures in place about student behaviour to satisfy the VRQA that the school met the requirements for registration. The circumstances under which a student could be suspended or expelled would continue to be determined in accordance with the Ministerial Order 625 that sets out the grounds and procedures for suspension and expulsion of students. The suspension or expulsion of a student would be a decision of the principal in accordance with the Ministerial Order.

Two options for the locus of decisions were considered:

#### Option 1—central decision making about acceptable student behaviour and consequences

Under this option, expectations about student behaviour and responses would be made centrally. Acceptable student behaviour and consequences for unacceptable behaviour would be prescribed in regulations. The regulations would be consistent with Ministerial Order 625.

#### Option 2—remaking regulations that require schools to develop and implement a student behaviour policy

Under this option, regulations would require school principals to develop and implement a student behaviour policy in consultation with the school community and the school council. Expectations about student behaviour and consequences for inappropriate behaviour would be made locally, subject to meeting the requirements in Ministerial Order 625. Student behaviour policies would be developed with the support of the Department, which would continue to develop guidelines for student behaviour in the SPAG to support schools to develop their student behaviour policies.

## *Assessing options*

Three criteria were used to compare the options in a multi-criteria analysis, namely:

- Criterion 1—providing a safe learning environment, which allows students to reach their full potential and not be discouraged from learning because of the behaviour of others
- Criterion 2—local decision making to meet community needs, whereby the community will be best placed to inform policies on student behaviour as it will have the best information about the local issues and appropriate responses
- Criterion 3—compliance costs.

Across these criteria, weights were allocated in a manner that underlines neutrality between benefit-related and cost-related criteria. The first two criteria directly reflect a positive outcome. The Department considered it appropriate to weight the objective of a safe learning environment and local decision making equally because, while a safe learning environment is the primary objective, local communities will usually have more information about the student behaviour issues they face and what the best responses will be.

The options were rated relative to the base case for each of the criteria using a symmetric scoring scale between +10 and –10 with the base case benchmark set at zero. The ratings reflect a qualitative assessment of the merits and disadvantages of the options.

Criterion 1—Both options improve on the base case in relation to student safety by ensuring that expectations of student behaviour and consequences for unacceptable behaviour are specified and communicated to the school community. Awareness of appropriate behaviour, and consequences of inappropriate behaviour, increases the likelihood that students will behave in a manner that allows all students to learn in a safe environment. Option 1 provides an enforceable basis for specifying inappropriate behaviour and consequences for inappropriate behaviour. This means that principals will have greater ability to respond in the event of inappropriate student behaviour. And where the requirements are effectively socialised, students will have greater awareness of behaviour requirements and consequences. Option 2 provides many of the same benefits for student safety. Option 2 may have better implementation as schools develop their own policies in line with the guidance in the SPAG. However, this flexibility is unlikely to generate large benefits over option 1.

Criterion 2—Option 1 scores lower than the base case and option 2 for this criterion because it provides no basis to take into account local needs in specifying student behaviour and consequences for unacceptable behaviour. Under the base case, while there are no requirements for student behaviour policy, schools could voluntarily develop student behaviour policy if the community decided there was a particular problem that needed to be addressed, and could specify expectations about behaviour and consequences for unacceptable behaviour. However, the Department could not require schools to develop a student behaviour policy. Option 2 improves on the base case by ensuring that the requirement for a student behaviour policy is enforceable. It ensures that:

- local knowledge is taken into account in developing expectations about student behaviour and consequences for unacceptable behaviour
- the policy is suited to the needs of the individual school and that the school community will have ownership of it, making it easier to implement and socialise

- emerging behavioural issues can be quickly incorporated into student behaviour policies to meet the needs of local communities.

Criterion 3—Options 1 and 2 both impose costs on schools compared to the base case of no requirements to have a student behaviour policy because schools will need to put processes in place to ensure they comply with regulations and regularly review compliance. In practice, the costs will be mostly incurred by new schools, as schools currently must have student behaviour policies in place and will only need to review them on an on-going basis. Under the base case, they only need to ensure they put in place processes to ensure they meet their obligations under the OHSA and the minimum standards for registration. Option 2 has higher costs than option 1 under this criterion as schools would need to develop student behaviour policy in consultation with the school community.

Table 5.6 summarises the multi-criteria analysis conducted to compare the costs and benefits of the alternative options relative to the base case. The preferred approach is option 2, remaking regulations to require schools to develop student behaviour policies in consultation with the school community. Prescribing student behaviour was considered a feasible alternative but would not allow the information held by the community about the particular issues they might be facing to input into the solutions to behaviour problems.

**Table 5.6: Multi-criteria analysis for regulating student behaviour at government schools**

Criterion	Weight	Base case	Option 1		Option 2	
		Score	Assigned score	Weighted score	Assigned score	Weighted score
Student safety	0.25	0	6.0	1.50	6.0	1.50
Allowing local decision making	0.25	0	-2.0	-0.50	3.0	0.75
Compliance costs	0.50	0	-0.2	-0.10	-0.5	-0.25
<b>Overall</b>	<b>1</b>	<b>0</b>		<b>0.90</b>		<b>2.00</b>

### *Preferred option and its effect*

The preferred option would have impacts on stakeholders as summarised in table 5.7.

The proposed regulations require government schools to have student behaviour policies in place. The Department provides guidance for these policies in the SPAG. In combination, this arrangement gives schools a clear framework for developing student behaviour policies. Student behaviour policies set expectations around student behaviour and the consequences for unacceptable behaviour and ensure that these are applied fairly and consistently.

The regulations also clarify that school staff may take reasonable action to restrain students from behaviour that is dangerous to staff, students or anyone else. They help reduce the risk that students will come to harm or that schools could be legally challenged when staff restrain students.

The proposed regulations:

- require government schools to develop a student behaviour policy and assign responsibilities for developing the policy and implementing it, including that the school community must be consulted

- specify that corporal punishment is not permitted
- clarify that a government school staff member may take any reasonable action to restrain a student from dangerous acts or behaviour.

**Table 5.7: Advantages and disadvantages of regulations for student behaviour**

	Stakeholder	
	Schools	Students and parents
Advantages	<p>Ensures that government schools articulate shared expectations around student behaviour and the consequences for inappropriate behaviour</p> <p>Provides clarity about what actions can be taken to protect others</p> <p>Gives operational effect to the ability of the Department to take action against staff who contravene the ban on corporal punishment</p>	<p>Clarifies expectations about student behaviour and the consequences for unacceptable behaviour</p> <p>Allows local knowledge to inform expectations about acceptable behaviour and consequences for unacceptable behaviour</p> <p>Ensures students are not subject to corporal punishment in line with community expectations</p> <p>Maintains awareness and understanding in relation to the maintenance of ban on corporal punishment</p> <p>Removes ambiguity about the consequences of students not wearing the correct uniform</p>
Disadvantages	<p>Higher costs of developing a student engagement policy compared to relying on centrally determined behaviour policy</p>	

### *Changes from 2007 Regulations*

While the proposed regulations follow the current regulatory approach, opportunities were taken to refine it. The proposed regulations differ from the 2007 Regulations in three ways.

First, they would change responsibility for developing a student behaviour policy from the school council to the principal, with the school community, including the school council, to be consulted. The power to develop a student behaviour policy under r. 13 currently sits with the school council, while the power to implement the policy under r. 16 sits with the principal. The Department does not have the ability to issue directions to a school council but has the power to issue directions to the principal of a government school (via the Secretary's rights, powers and duties as their employer). In practice, under the current arrangements, a school council will generally act on the advice of the school principal, who is an executive member of the school council and provides advice to council about the performance of its functions. However, where a school council is unwilling to adopt the school principal's advice (for example, where pressure is applied by parents or other sections of the school community), the Department cannot challenge this situation in the absence of ministerial intervention.

The current regulations leave open the possibility that in certain circumstances student behaviour policies may be developed without supporting positive and inclusive approaches to managing student behaviour. An amendment to r. 13 to transfer this power to the principal, with a requirement that the school community be consulted, would ensure that government schools give effect to the

Department's policy objectives. That is, a student engagement policy is best developed with input from representatives from all areas of the school community.

Second, the proposed regulations explicitly refer to student engagement policies as well as a student behaviour policy, to reflect the contemporary policy shift to a focus on student engagement. Developing such a policy with meaningful contributions from across the school community would underpin the sharing of responsibility for student engagement and can be a powerful way to build shared commitment to the student engagement policy.

Third, the proposed regulations clarify that a student can only be suspended or expelled in accordance with the relevant Ministerial Order. The Department considers that the current regulatory framework does not provide sufficient clarity on this matter, and that the consequences for a student who does not wear correct school uniform are ambiguous. Expulsion is the most extreme disciplinary measure available to a principal, and should only be used after other forms of behaviour management have been exhausted and the school can demonstrate evidence that this has occurred. The Department considers that the regulations should be amended to clarify that the student cannot be suspended or expelled unless it is in accordance with the Ministerial Order for discipline of students which specifies the grounds on which a student can be suspended or expelled. Any amendments to suspension or expulsion processes require Ministerial approval.

### *Implementation and evaluation*

The proposed regulations involve only small changes to the 2007 Regulations. To implement the proposed regulations, the Department will notify schools of the change in responsibility for developing a student behaviour policy and associated timelines. This may include advising of the changes to the regulations through a Schools Update and targeted communications to particular stakeholders. The Department will also review and update relevant policy and advice, including in the Department's School Policy and Advisory Guide.

The proposed evaluation framework will ensure the Department understands the extent of compliance with the requirements in relation to the student behaviour policy and the extent of student behaviour issues in government schools. The proposed indicators are:

- proportion of schools that have implemented a student engagement policy
- the number of student restraint incidents in government schools.

These measures will indicate whether schools are complying with the requirement to have a student engagement policy, and how widespread incidents of dangerous behaviour in schools are, and how this changes over time, to assess whether the current arrangements are being effective. The Principal Practice Leader (PPL) will:

- visit and work with government schools to gain an understanding of current processes and staff knowledge and provide advice related to best practice approaches and processes for supporting and responding to students with challenging behaviours
- work with schools to build understanding and expertise in protecting the safety of students and all those who work in our schools
- improve the incident reporting system.

Part of the PPL's role is to assess how the Department collects and reports on data, and to identify trends and opportunities to reduce the use of restraint and seclusion by using the Department's data. The PPL will provide the Department with reports that summarise the data and provide advice, including recommendations for how the Department and schools can improve approaches to challenging behaviours.

### **5.3 School terms and temporary closures**

#### *Background*

A term dates working party—comprising peak bodies that represents parents, teachers, school councils, government and non-government school principals, and early childhood organisations—meets every five years to recommend school term dates to the Minister five years in advance. This process considers the whole sector's views about term dates and provides certainty for stakeholders and the community. The working party met most recently in November 2015 and did not raise any issues relating to term dates. The current determination of school dates includes four school terms and, as far as practicable, a school year of 200 days.

In addition, schools typically organise student-free days so teachers and other school staff can undertake professional development and whole-of-school planning, and prepare student reports. Currently, schools can arrange four student-free days each year for professional learning, curriculum development, and student assessment and reporting. The Department's school dates policy requires the first day of term one each year to be a student-free day. School councils have the flexibility to schedule the remaining three student-free days to meet local needs.

Beyond these four days, a school may close to minimise risks to student and staff wellbeing in an emergency. If, for example, a school is evacuated during a fire, it may need to close for a period so safety and fire inspectors can verify the safety of the school and undertake 'make safe' or reinstatement works.

#### *Base case and its consequences*

The *Education and Training Reform Act 2006* requires parents to ensure their child of compulsory school age attends school at all times when the school is open, unless they are home schooled (s. 2.1.1). The Act does not state when a school should be open or may close or who should decide when a school should open or close.

Under the *Occupational Health and Safety Act 2004* (OHSA) and subordinate regulations, school principals are expected to enact their emergency management plan in an immediate emergency (for example, approaching bushfire) and can close their school. It is also departmental policy for principals of schools on the Bushfire At-Risk Register (BARR) to close their schools on days their Bureau of Meteorology district has a Code Red forecast. BARR schools may also relocate or apply to the Regional Directors to close on days that extreme weather is forecast in their Bureau of Meteorology district.

According to the SPAG, schools that call 000 must then notify the Department's Security Services Unit (SSU) via its 24 hour line of the emergency incident. But the guidelines do not specify whether the principal must advise the Department of plans to close the school, although the principal would probably do so. SSU reports are distributed as an Incident Reporting Information System (IRIS) alert to

key regional and central staff. Regional emergency management staff and senior education improvement leaders (SEILs) receiving these notifications follow up directly with the school. Depending on the nature and scale of the emergency, regional staff may contact the school.

The base case is the situation without the 2007 Regulations. That is, when the 2007 Regulations sunset in June 2017, schools would be able to set their own term dates, but there would be no indication of who can decide the term dates. Further, schools would have no authority to close for student-free days for staff professional development or in response to an emergency.

### *Identifying the problem*

#### *Temporary school closure in an emergency*

School staff do not always have the expertise to assess the need for school closure in emergency situations, and they can benefit from expert support in making this decision. In the base case, the school would rely on the *Occupational Health and Safety Act 2004* (OHSA) requirement to keep the school closed after an emergency situation while health and safety risks are assessed.

The residual problem is that the school would not be required to notify the Department, as the school system owner, that it has closed. The principal might do so anyway, as good practice. But if the Department is not advised of a school closure, it is less able to provide expertise and advice on health and safety issues, and to coordinate state- or region-wide responses to the emergency. Schools would need to arrange their own expert advice to stay safe, as required under the OHSA.

#### *Student-free days*

The base case does not provide for the school to close for student-free days. The residual problem is that the authority to set the number of student free days—and when they should be—would be unspecified. Having the number of student-free days specified centrally provides certainty to school staff in planning how to use student-free days effectively. Further, it limits the number of days that a school may close for this purpose, to ensure schools are open for student instruction on a sufficient number of days each year.

Under the 2007 Regulations, school councils can choose the timing of student-free days to fit local needs, consistent with the objectives and functions of school councils. However, this approach can be a barrier to whole-of-system change efforts, such as running training for all government school teachers at the same time, or having a conference or convention.

#### *Term dates*

There are benefits from aligning term dates across schools and clarifying who is responsible for setting those dates. But the base case would be ambiguous about who is responsible for setting term dates. The residual problem relates to who should have the authority to set term dates.

Making term dates certain and consistent across the State, or at least within communities, allows families with children in different schools (including non-government schools) or kindergarten services to plan vacation care and activities. Consistent term dates also allow businesses to plan staffing and coordinate other needs around the school terms and holidays. Certainty of school terms, therefore, is likely to improve community wellbeing and business efficiency. Other benefits are the

coordination of services (such as bus schedules), the consistency of school speed zones, the easier provision of outside school hours care, and the organisation of the state-wide year 7 orientation day for government school students.

Clarifying who is responsible for setting term dates resolves possible tensions between school staff and parents, (as represented on the school council,) about how long, and when, terms should be. However, without rules about who can set term dates and when terms should start and finish, government schools could choose to align term dates with those of other Victorian schools. Further, they could set term length according to the current guide of 200 days per year, and in line with the term dates working party's recommendations.

Non-government schools generally align their term dates with those of government schools without being compelled to do so, to reduce the costs on families that have children in different schools. However, non-government schools tend to have shorter terms (with later term starting days and earlier term closing) and additional days off (for example, the day before Melbourne Cup day). Without central decision making on term dates, there may be pressure on government schools to shorten the school year.

Without enforceable requirements for school term dates, some schools may choose term dates different from those of other schools, to suit the needs of their communities and school staff. The Department considers that educational outcomes may be affected if school terms are set to be shorter than currently required, and if students are given less time for instruction, (or more time for instruction, thus reducing students' time for rest and recreation.). The base case may also impose a burden on stakeholders if they would have to plan holidays and vacation care around different term dates for different schools.

### *Specifying the objectives*

For the Department, as owner and operator of government schools, the objective of managing school opening and closing is to ensure students can attend school for a sufficient time to receive a high quality education, and to minimise health and safety risks to students, staff and the community in an emergency. The 2007 Regulations provide certainty and predictability for schools, parents and the community about when schools open and close, and specifying about who can about set school opening and closure.

The arrangements for decision making should aim to:

- ensure decisions on school opening and closure are made by those who suitably understand the impact of the decision. The decision maker needs to consider the recommendations of:
  - the term dates working party, which brings the views of key government and non-government stakeholders to decisions about term dates
  - school councils, which bring an understanding of the school community's needs to decisions about student-free days
- boost the quality of student education by providing schools and teachers with the time to undertake professional development and whole-of-school planning, and prepare student reports. Student-free days should be allowed, but limited in number per year.

- ensure the safety of students and staff by providing for schools to close for a temporary period after an emergency, with the approval of the Secretary and departmental experts in emergency management.

These experts can advise schools about health and safety issues following an emergency and ensure state- and region-wide responses. The Department is thus kept informed about what is happening at schools and can support schools with resources for re-opening (for example, safety inspection officers to certify that the school is safe to re-open).

Under the 2007 Regulations, if a school is to remain closed after an immediate emergency (so the damage can be assessed, for example), then it must seek approval from the Secretary to close (r. 11(b)). The Secretary must also give approval for a school to close without an immediate emergency. The Secretary currently delegates this responsibility to Regional Directors.

Under the 2007 Regulations, the Secretary specifies the number of allowed student-free days (r. 11(a)). The 2007 Regulations also provide authority for the Minister to establish consistent term dates in government schools (r. 10).

### *Identifying options*

For the above objectives, the Department considered three options that are based on the subsidiarity principle, which recognises that decisions with a local impact should be made at the local level. These options are differentiated by the extent to which closure decisions are made at a local or central level.

#### Base case—schools choose when they open and close

Individual schools would be allowed to set term dates and decide when to close in an emergency, in accordance with the needs or circumstances of their school community. There would be no authority for schools to close for student-free days.

#### Option 1—school opening and closing are determined and managed centrally

The Secretary or the Minister would have regulatory authority to set term dates and student-free days, and the Secretary would have regulatory authority to approve school closures in an emergency.

#### Option 2—school opening and closing are managed according to the subsidiarity principle (status quo)

Regulatory provisions would be introduced to specify that:

- decisions to facilitate planning would be made centrally. Specifically, the Minister would determine term dates, and the Secretary would determine the number of student-free days.
- decisions that affect the community would be made locally. Specifically, the school council would determine when to hold student-free days, and the principal would decide when to close schools in an emergency. In the latter case, the principal would seek approval from the Secretary (delegating to the Regional Directors) to ensure decisions are based on: (i) on the Department's expert advice on emergency closures; and (ii) any need for regional coordination.

## Assessing options

The Department used the following four criteria to compare the options:

- Criterion 1—providing a safe and accessible learning environment, which relates to risks to student health, safety and wellbeing, and the length of time that the school is open for instruction
- Criterion 2—allowing for teacher professional development and support effective planning, which relates to the ability of schools to have student-free days
- Criterion 3—allowing local decision making to meet community needs, which relates to whether decisions about school opening and closure are made locally or centrally
- Criterion 4—not creating a compliance burden on schools and the community, which relates to the costs of meeting the requirements.

These criteria were weighted to reflect a neutrality between the benefit-related and cost-related criteria. The first, second and third criteria all directly reflect a positive outcome, and the Department considered it appropriate to weight these criteria equally.

The options were rated relative to the base case for each of the criteria using a symmetric scoring scale between +10 and –10, with the base case benchmark set at zero. The ratings reflect a qualitative assessment of the merits and disadvantages of the options.

*Criterion 1*—in relation to student safety, options 1 and 2 improve on the base case by requiring schools to consult with the Department about closing after an emergency. These options would mean resources are provided to the school to ensure it is safe for students and staff before it reopens, and that responses can be coordinated at a regional level. They allow the Department to be aware of emergency situations in schools, to support schools with resources and expertise, and to coordinate emergency responses state-wide. Under the base case, schools would not be required to notify the Department, which may result in reduced access to expertise in risk assessment.

*Criterion 2*—options 1 and 2 would allow the school to close so teachers can undertake professional development, which the base case would not permit. Option 2 was rated higher under this criterion because schools could choose the dates for some student-free days to meet local needs.

*Criterion 3*—options 1 and 2 would constrain local decision making because some or all decisions would be made centrally, while the base case would allow all decision to be made locally. Option 1 was rated lowest on this criterion because it would mean all decisions are made centrally, while option 2 was rated higher (less negative) because it would mean the timing of student-free days is decided locally.

*Criterion 4*—the base case would allow all decisions to be made locally, but would not specify the party who is authorised to make decisions. As a result, disputes could occur at a school about when to open and close the school, creating costs for that school. In contrast, both options 1 and 2 would lower the cost of compliance for schools and the community, because some or all aspects of school closure would be decided centrally and schools would not need to decide when to open and close, and would not face the costs of aligning term dates with other schools, and coordinating and deciding term dates. Option 2 would have a higher cost because schools would need to decide when to hold student-free days.

Table 5.8 summarises the multi-criteria analysis of the costs and benefits of the different options relative to the base case. Remaking the 2007 Regulations allows for central decision making for term dates and the number of student-free days, local decision making for the timing of student-free days, and requirements to consult the Department on school closure in an emergency. The Department prefers this option, which scores highest overall in the multi-criteria analysis.

**Table 5.8: Multi-criteria analysis for regulating school terms and temporary school closures**

Criterion	Weight	Base case	Option 1		Option 2	
		Score	Assigned score	Weighted score	Assigned score	Weighted score
Provide a safe learning environment	0.17	0	5.0	0.83	5	0.83
Allow for teacher professional development	0.17	0	3.0	0.50	4	0.67
Allow local decision making to meet community needs	0.17	0	-3.0	-0.50	-1	-0.17
Not create a compliance burden	0.50	0	-0.5	-0.25	-1	-0.50
<b>Overall</b>	<b>1</b>	<b>0</b>		<b>0.58</b>		<b>0.83</b>

### *Preferred option and its effects*

The Department prefers option 2, and the proposed regulations reflect the subsidiarity principle by specifying that:

- term dates and the number of student-free days would be determined centrally (by the Minister and the Secretary respectively)
- the school council would ratify when student-free days will occur, within the number of student-free days set by the Secretary
- the principal may close the school with the approval of the Secretary (or delegate) in an emergency. .

### *Changes from the 2007 Regulations*

The proposed regulations make a small change from the 2007 Regulations to move responsibility for notifying the Secretary of school closure due to an emergency from the school council to the principal. This practice already occurs, because the principal is the executive officer of the school council and the occupational health and safety site manager of the school.

### *Implementation and evaluation*

The proposed regulations involve only a small change to the 2007 Regulations. To implement the proposed regulations, the Department would:

- communicate with principals and school council presidents. through, for example, a Schools Update. It would target communications to particular stakeholders to advise them of the new responsibility to temporarily close the school in an emergency.
- review and update relevant policy and advice, including those in the SPAG.

The Department will continue its broad consultation on the setting of term dates. The term dates working party is also an opportunity for stakeholder discussion: the feedback from the working party's meeting is used to brief the Minister on term date issues and to provide input into the policy process. The feedback can also be used to evaluate the effectiveness of the proposed regulations. The term dates working party will likely be established in 2020 to set the next block of term dates (2026–30).

The Department's Emergency Management Division and regional offices collect data on the number of temporary school closures due to emergencies. This information is used to keep communities and the media informed about emergency events. It is also useful for regional offices and schools to inform their emergency planning at regional and local levels.

The Department proposes to adapt its complaints system to collect complaint data about temporary school closures (including emergency closures), term dates and student-free days. The Department will advise the term dates working party on the complaints received about term dates, and use the other information to inform policy on temporary school closure.

The proposed evaluation framework will ensure the Department understands the extent of compliance with the requirements in relation to school terms and temporary school closure, and the administrative burden on schools seeking approval for temporary school closure in an emergency. The Department will also seek to understand key stakeholders' views and needs relating to school terms.

## 6. Regulations for government school councils and parents' clubs

Parent and community involvement in schools helps children achieve the best possible learning outcomes. Victorian Government schools promote parent and community participation through, amongst other things, school councils and parents' clubs. This chapter examines the case for regulating these two types of entity, both of which form an important part of the school community.

### 6.1 Government school councils

#### *Background*

In Victoria, school councils operate under a legislative framework within the government school system. Government school councils are legal entities with powers to set directions for and decide on aspects of school management. They have a legislated responsibility to make decisions that meet the best interests of the schools and enhance educational opportunities for the students.

The Act prescribes the objectives and functions of a school council. Under the overarching objective of assisting the efficient governance of the school (s. 2.3.4), a school council has broad functions. These functions include setting the vision and direction of the school, maintaining school grounds and facilities, supporting school programs, raising funds for school-related purposes, contributing to school engagement with the community, and overseeing school finances (s. 2.3.5).

The Act empowers the Minister to constitute a school council as a body corporate through a Ministerial Order (s. 2.3.2 (2)(a)). The constituting Order delineates the council's functions and powers to perform those functions. It sets out the council's composition and the terms of office. Council members are elected for a two year term, with half of the membership available for change every year. School council membership may also include an optional co-opted community member category. Community members are co-opted for a two year term.

School councils usually comprise 6–15 members in three membership categories:

- parent members, who must be more than one third of the school council's total membership
- department employee members, who must not be more than one third of the school council's total membership, and must include the school principal as an *ex officio* member and other staff as elected or co-opted members
- community members, who may be co-opted on an optional basis to provide a school council with expert skills, interests, experiences or perspectives from the wider community.

The prescribed composition facilitates adequate representation of the school community on the school council. Further, the prescribed membership structure enables school councils to include members with an appropriate mix of skills, expertise and perspectives for building collective capability in decision making and governance. Parents, teachers and other community members can work together to ensure decision making for their school is equitable and inclusive. And, as a council member, the school principal can strengthen the decision making with their inside perspective on all aspects of the school—its operations, community needs, programs and strategic focus.

Part 3 of the 2007 Regulations sets out the requirements for the conduct of council meetings, the keeping of financial and other records, the payment and collection of money, and the custody and use of the council's common seal (rr. 17–41). As public entities, school councils are also subject to some whole-of-Victorian-Government legislation—for example:

- They are obliged to comply with the framework for public sector governance under the *Public Administration Act 2004*. This legislation underscores the Directors' Code of Conduct that applies to school councillors.
- They must abide by the *Financial Management Act 1994*, in their use of school funds and their oversight of financial accountability at the school.
- They need to meet the Victorian Auditor-General's requirements for audits and reviews, set in accordance with the *Audit Act 1994*.

In Victoria, government school councils perform roles and functions not unlike those of the governing board of a company or organisation. This governance model devolves decision making to the school level. The public entity status of school councils means they are formed to operate at arm's length from the Victorian Government, and to function with some autonomy from the Minister and the Department (VPSC 2013).

School councils contribute to and monitor school strategic planning (including reporting annually to the school community and the Department), maintain the grounds and facilities, approve the annual budget and monitor expenditure, enter into contracts and facilitate community engagement. Yet, company boards and school governing bodies in other school systems and jurisdictions perform functions that are not the explicit responsibility of school councils in Victorian Government schools. These functions include recruiting and dismissing principals, employing teachers for terms longer than a year, and maintaining the school's solvency.

#### *Base case and its consequences*

In the base case scenario, school councils operate as public entities subject to the Public Administration Act without regulation that prescribes the way and manner of conducting council meetings and related matters. The Act and the constituting Order would provide for councils' objectives, functions and powers in governing schools, and the whole-of-government legislative framework would stipulate councils' public entity governance obligations.

In this scenario, school councils would continue to receive support from the Department, including access to training programs and materials to develop governance knowledge and capability. The Department could also offer technical and policy guidance on legislative requirements for school council governance.

However, without the 2007 Regulations, Victoria would have no mechanism for setting out requirements for the operation of government school councils. As a result, not all school councils would necessarily comply with principles and expectations of good governance, as prescribed in the 2007 Regulations. Now, the 2007 Regulations require school councils to keep appropriate records, make decisions only with the support of a quorum, manage conflicts of interest appropriately and fulfil public reporting requirements. But, in the base case, these important governance matters would be left to individual school councils to pursue without the compulsion of any regulatory instrument.

## Identifying the problem

Good governance in government schools is significant because it has implications for the learning and development outcomes of nearly 580,000 students in over 1,500 government schools. The school councils—and the 18,890 members who serve on them—share the responsibility for overseeing school budgets (excluding payroll expenses). Those budgets amounted to \$1.5 billion (or 23 per cent of the total Victorian Government school revenue) in 2015.

The governance framework for school councils is based on their enabling legislation (the Act) and the umbrella requirements under legislation such as the Public Administration Act and the Financial Management Act. First, the Act intends for school councils to support the efficient governance of their schools. This objective depends on the capability of a school council in performing its governing duties. Second, being public entities under the Public Administration Act, school councils must abide by the common regulatory framework for governance processes and accountability mechanisms in the Victorian public sector (State Services Authority 2009). A council is allowed to pursue and enter legally enforceable contracts, for example. Conversely, it can be sued and possibly prosecuted for negligence or wrongdoings.

Good governance is about the processes for assessing, making, implementing and monitoring decisions. It is characterised by decisions that are accountable, transparent, responsive, equitable, inclusive and compliant with the relevant legislation. It is not about making ‘correct’ decisions. However, having the best possible process for decision making provides assurance of a decision’s efficacy. As the Victorian Public Sector Commission (2013) concluded, where governance is working well, it provides:

*‘...the foundation for high performance. It strengthens community confidence in a public entity, and helps ensure the reputations of entities are maintained and enhanced. Good governance enables entities to perform efficiently and effectively, and to respond strategically to changing demands.’ (p. 3)*

A school council’s decisions are made in meetings where councillors vote on motions and, as one body, pass resolutions. Good decision making processes, therefore, are based on sound meeting practices, procedures and protocols. Governance structures, roles and responsibilities need to be clear enough to guide councillors’ conduct in meetings and committees.

Part 5 of the Public Administration Act requires a school council’s office bearers to ensure:

- adequate procedures are in place for the conduct of meetings and decision making at meetings, including appropriate arrangements for acting directors (s. 5.81.1(h))
- processes are in place to deal with directors’ conflicts of interest (s. 5.81.1(f))
- appropriate financial records are kept (s. 5.81.1(i))
- adequate controls are in place to prevent fraudulent behaviour (s. 5.81.1(j))
- the council’s financial statements or accounts are audited by the Auditor-General (s. 5.81.1(k)).

These requirements set out expected behaviours of a school council. But they do not specify how these behaviours, in practice, comply with the legislation. The Public Administration Act requires school councils to keep ‘appropriate financial records’, for example, but does not prescribe how

councils should do so. The aim of explicit regulation for school councils, therefore, is to clarify and support their legislative obligations.

The 2007 Regulations provide for procedural matters of school council meetings and decision making. Such clauses codify decision making responsibilities and governance standards to enable school councils to fulfil their duties under the Public Administration Act. Other pieces of the legislative framework spell out councils' legal form and structure, roles, obligations, functions and powers.

Under the current governance model, school councils have members from different educational and occupational backgrounds. So, their ability to effectively discharge governance responsibilities tends to vary. Skill gaps with school councillors were evident from a 2009 survey commissioned by the Department. Around 80 per cent of councillor respondents to the survey expressed a need for training to understand the school council's function and their role in council operation, school accountability and strategic planning (Cole 2013). The 2007 Regulations provide operational protocols to support consistent governance practices across the system, irrespective of the skill variation among councils.

The Department runs quality assurance initiatives to support school governance. Training materials, for example, are available to guide the assessment and development of governance knowledge and expertise. Training programs too are organised for school councillors (although councillors' participation is optional). Further, through the School Council Financial Audit Program, the Department conducts annual financial audits and topic reviews to identify areas and schools that need better management of school finances and operations.

In its 2009 report on the management of school funds, the Victorian Auditor-General observed the Department had a largely effective quality assurance regime for supporting and monitoring the financial performance of government schools in Victoria (VAGO 2009). With minor exceptions, most school councils were found able to manage their funds in accordance with the applicable legislation, policies and guidelines. Most were also found to have sound investment management practices.

Recent reported incidents of school mismanagement across comparable jurisdictions highlight a common risk in weak governance oversight. Cases of non-compliance and mismanagement in non-government schools have been reported in Victoria and other jurisdictions (Crawford 2015; School Governance 2016). For these schools, governance failures resulted in severe consequences, such as withdrawal or suspension of government funding, lawsuits, and school liquidation and closure. Students and their families experienced significant adverse impacts, including disrupted learning and the distress of uncertainty, media attention and the need to change school (box 6.1).

### *Specifying the objectives*

Regulation of school council operations is aimed at supporting councillors to decide on matters of shared responsibility in a manner consistent with the relevant legislation. Achieving this aim would assist efficient school governance, and help the council fulfil procedural governance duties under the Public Administration Act.

### **Box 6.1 School mismanagement**

Mowbray College was one of the three non-government schools in Victoria that closed in 2012 due to financial mismanagement. It had accumulated \$28 million in debt when it collapsed. The Victorian Government had to provide emergency funding to allow senior students to stay at the school and complete their mid-year exams. But all other students were left without a school.

Court evidence revealed the school board had mismanaged the allocation, investment and expenditure of school funds. The board failed to act to address ongoing financial problems, allowing the school to operate in a touch-and-go manner. It had planned to build a residential development on the Melton campus but could not secure banking support for the venture. In addition, its plans to open education franchises in Asia either did not eventuate or caused financial losses. The school community was unaware that the school had been facing financial difficulties, and many parents were unable to recover paid fees after the school closed.

The governance failure at Mowbray College significantly affected parents and students, raising concerns about the need for improved governance in non-government schools. It prompted the Victorian Government to enhance the oversight powers of the VRQA relating to the financial management of non-government schools.

Such cases highlight the importance of discipline in school governance. Without appropriate checks and balances, school governing bodies may act improperly to the detriment of students, their parents and the broader school community.

Source: Preiss 2013.

In terms of public sector management, intervention design must consider how to most effectively manage a school council—specifically, the process and procedure that the council uses to make decisions (State Services Authority 2009). Further, it must consider how to enable a school council to act as an informed and responsible decision maker in the interests of the school community. For these reasons, the pertinent objectives of the proposed regulations are to:

- instil procedural fairness, transparency and accountability in school councils' decision making, in a cost-effective manner
- uphold the formality of decision making in schools at a level commensurate with the nature and scope of responsibilities exercised in council meetings
- give the community and school councillors confidence in the deliberations at school council meetings.

### ***Identifying options***

For achieving the above objectives, the Department considered the following two intervention options, in contrast to the base case (in which the 2007 Regulations for school council operations lapse and are not replaced):

- make regulations that allow councils to make their own rules for internal governance management
- maintain the status quo.

### *Option 1—make regulations that allow school councils to make their own governance rules*

Under this option, the Act would provide for the objectives, functions and powers of school councils. New regulations would be written to require school councils to make Standing Orders on matters covered in Part 5 of the Public Administration Act. Individual school councils would develop and apply their own rules to maintain governance discipline, in lieu of explicit regulations on meeting procedures and operations.

The Department could still guide school councils in making Standing Orders that apply to their council meetings and committees. Its policy would specify that these Orders need to refer to the constituting Order, an outline of office bearer positions and committees, a description of meeting procedures, voting methods and other related rules, and a schedule of powers on school matters. Standing Order templates are available from online sources and are adaptable to school council operations.

This option would give school councils the flexibility to set rules for the conduct of meetings and decision making. It would also allow school councils to tailor governance practices for their school's circumstances and needs. The Department would issue guidelines on minimum standards and allow councils to adopt these guidelines with variations in, for example, the convening of meetings, the determination of quorum, or the procedure to deal with councillors' conflicts of interest.

### *Option 2—maintain the status quo*

Under this option, the Act would operate with the 2007 Regulations remade to provide system-wide requirements for the conduct of school council meetings and operations. Although the Act provides ample scope for prescriptions on any issues of school council operations, the proposed regulations would be confined to procedural matters. They would establish mandatory practices to help a school council's internal management.

The proposed regulations would largely replicate the 2007 Regulations for school councils, with minor changes. The changes would cover meetings and membership, decisions and voting, the election and removal of office bearers, subcommittees, delegations, recruitment restrictions, and custody of common seal. They would also cover who is to preside at a meeting (r. 18), and the co-option of community members (r. 22). These minor changes seek to clarify existing departmental policy rather than introduce new procedures.

### *Assessing options*

The Department used the following four criteria to compare the options:

- Criterion 1—procedural compliance, which is mandated for all school councils due to their legal status as public entities under the Public Administration Act
- Criterion 2—consistency in governance practices and structures across school councils. This criterion follows the system design principle that consistent legal and governance arrangements should apply to entities that perform similar functions or require similar degrees of ministerial control and departmental direction (VPSC 2013). System-wide consistency is advantageous because it promotes a clear and uniform understanding of legislative compliance responsibilities. Conversely, a proliferation of differing governance practices makes governance assessment and

monitoring more complex in the school system, and makes the implications of governance arrangements harder to understand and manage.

- Criterion 3—the compliance burden, which captures the resource implications for school councils in following a particular set of meeting rules
- Criterion 4—implementation complexity, which considers the overhead impost of introducing a new intervention or retaining the 2007 Regulations.

These criteria support the Department’s objectives (as stated above) for assuring the governance discipline of school councils. The first two criteria both reflect a positive outcome for the stated objectives. The Department considered them to be equally important, and assigned each an equal weight of 0.25. The third and the fourth criteria are cost related; the Department considered them equally important and assigned each a weight of 0.25. Using the symmetric scoring scale between +10 and –10, the Department rated the options to reflect a qualitative assessment of their merits and disadvantages relative to the base case.

### *Option 1—make regulations that allow councils to make their own rules for meetings*

#### Criterion 1—procedural compliance

The legislative framework for school councils clarifies the base level of governance requirements. While these requirements apply to all school councils, some councils confront situations that require more extensive deliberations and wider perspectives on decision making. School situations vary by factors such as school budget, school size, students’ cultural and family background (and other individual characteristics), community socioeconomic status and local issues. The base case accommodates different levels of stringency in governance arrangements to achieve substantive and procedural compliance with the relevant legislation.

This option would improve on the base case: it would bring governance discipline to school councils by requiring them to set rules on how they operate. School councils would set up Standing Orders to codify and formalise their meeting conduct and other decision making processes. The Department would need to approve these Standing Orders, to give reasonable assurance that a school council is meeting its legislated procedural governance responsibilities.

Without legal compulsion (as in the base case), some school councils could have a reduced interest, incentive or commitment to conform fully to base-level governance requirements in the Public Administration Act. This risk is heightened among school councils that struggle to develop adequate governance capability. Even school councils whose members are committed to good governance may struggle to achieve this without the clarity and coherence provided by the regulations. Inadequate discipline in school council management could manifest as a disregard for the rules, and as the use of *ad hoc*, inadequate decision making processes. As a result, the manner of conducting council meetings and making council resolutions could be disputed.

The mandatory use of Standing Orders on meeting rules would most likely improve compliance behaviour among these less disciplined school councils. Yet, many school councils can follow common governance practices with or without any policy directive. Based on VAGO’s 2009 finding of a low level of non-compliant behaviour, the low-discipline group in the base case seems to be a minority.

Because this option would improve governance discipline above the base case level for some school councils, the Department scored it at +3 on this criterion.

#### Criterion 2—system-wide consistency

Under this option, school councils could adopt differing meeting rules that meet or exceed the minimum standards set by the Department. However, while particular decisions may not be procedurally flawed, the differing processes or rules used for making those decisions could be perceived as arbitrary or discriminatory. Further, the autonomy given to school councils to set and adopt different governance standards would somewhat weaken the Department's influence on the councils' governance performance. This autonomy works against the coherence and consistency of system-wide strategies for improving school governance, because it may lead to inconsistent approaches to decision making across the school system. The quorum rule, for example, could determine how a school council accounts for the perspectives of parents and school workforce members in particular decisions.

Because this option would set minimum governance standards across all school councils, the Department considered it an improvement over the base case. However, the positive effect would be limited by a tendency for councils to apply differing governance practices, and by the resulting impediment to system-wide high governance performance. For these reasons, the Department scored the option at +2 on this criterion.

#### Criterion 3—compliance burden

The Department estimated the compliance burden of this option in terms of the extent of induced behavioural change in councillors. As explained above, the base case assumes only a minority of school councils would require an adjustment to their suboptimal way of conducting meetings. These councils would face a compliance burden if Standing Orders were mandated. But, the Standing Orders would impose no extra burden for the other school councils, which show high governance discipline in the base case.

To derive the incremental burden when the use of Standing Orders on meeting rules is mandated, the Department made the following assumptions:

##### *For the base case*

- Five per cent of school councils show low governance discipline because they do not meet as often as the procedural norm would require.
- These councils attain half of the meeting frequency adopted by other councils.
- Self-disciplined councils hold eight board meetings per year, based on a survey of small-sized public companies conducted by Ernst and Young LLP (2013).
- Each meeting requires two hours, in line with the Department's policy and training materials for school councillors (DET 2016c).

##### *For the intervention*

- The incremental compliance burden comprises increases in a council's meeting frequency.

- Councils that show low governance discipline in the base case increase their meeting frequency to the norm level.
- The additional time for meetings is eight hours per year—that is, one half of the norm for having eight meetings, which each last for two hours on average
- The value of unpaid volunteering work is \$35 per hour, based on the average hourly rate of employee earnings in Victoria.
- The average number of members per school council is 12, based on the 18,890 members serving as councillors (including volunteers and school principals) in around 1,500 government schools.

The Department estimated the incremental compliance burden for this option at around \$257,000 per year, or an annual average of \$170 per school. Table 6.1 shows the calculation based on the above assumptions. The burden appears small relative to the \$1.5 billion school funds managed by school councils. On this basis, the Department scored the option –1 on this criterion.

**Table 6.1: Calculation of incremental burden due to the mandatory use of Standing Orders**

Key parameter	Parameter value
Number of school councils	1,531
Proportion of low-discipline councils in base case	5%
Additional meeting hours under the option	8 per year
Number of councillors	12 per council
Economic cost of volunteering work	\$35 per hour
<b>Incremental compliance cost</b>	<b>\$257,208</b>

#### Criterion 4—implementation complexity

Under this option, the Department and school councils would incur modest adjustment costs. The Department would revise its policy directive to specify the requirement for Standing Orders on meeting rules and minimum governance standards. School councillors would need to become familiar with the new arrangements and develop new rules as Standing Orders. For these reasons, the Department scored the option at –1 on this criterion.

#### *Option 2—maintain the status quo*

#### Criterion 1—procedural compliance

Like Standing Orders, the proposed regulations for school councils would help codify governance standards. In particular, this option would reduce the risk of low discipline or non-compliance for some councils. The provision for the appointment of community members would open opportunities for councils to draw on a wide base of expertise and capability beyond the school community, contributing to governance discipline.

Under this option, regulatory formality would add to the assurance of compliance across all school councils. The introduction of explicit regulations on governance matters would make the compliance responsibility more salient to school councils than would the alternative scenario, in which councils develop their own rules. Reflecting this relative advantage, the Department scored this option at +4 on this criterion. The score is slightly higher than that of the alternative of using Standing Orders.

### Criterion 2—system-wide consistency

Remaking the 2007 Regulations would also instil governance discipline through Standing Orders on meeting rules. But it would not have option 1’s weakness of allowing different governance rules and protocols that could reduce the coherence and consistency of system-wide governance practices. For this reason, the Department scored the option at +4 on this criterion.

### Criterion 3—compliance burden

The Department assessed the compliance burden of this option using the same method applied to option 1. The proposed regulations would require school councils to hold at least eight meetings per year. This mandatory meeting frequency coincides with the norm assumed in the base case—that is, a total of eight board meetings per year (table 6.1).

Incremental compliance costs relate to the increased number of meetings held by low-discipline councils. The Department estimated the burden to be \$257,000 per year, which is a modest cost. For this reason, the Department scored the option at –1 for this criterion, which is the same score given to option 1.

### Criterion 4—implementation complexity

The proposed regulations would include minor changes from the current provisions, and would not require any particular adaptation by school councils. For these reasons, the Department scored the option at zero on this criterion.

### *Preferred option and its effects*

Table 6.2 summarises the multi-criteria analysis conducted to compare the costs and benefits of the two options relative to the base case. Remaking the 2007 Regulations was found to be more cost effective for promoting governance discipline, supporting formalised and disciplined decision making, and facilitating the sharing of compliance responsibilities among school councillors.

**Table 6.2: Multi-criteria analysis of options to regulate school councils**

Criterion	Weight	Base case	Option 1—mandate use of Standing Orders		Option 2—maintain status quo	
		Score	Assigned score	Weighted score	Assigned score	Weighted score
Procedural compliance	0.25	0	3	0.75	4	1.00
System-wide consistency	0.25	0	2	0.50	4	1.00
Compliance burden	0.25	0	–1	–0.25	–1	–0.25
Implementation complexity	0.25	0	–1	–0.25	0	0.00
<b>Overall</b>	<b>1</b>	<b>0</b>		<b>0.75</b>		<b>1.75</b>

Below are key prescriptions of the proposed regulations for school councils:

- A school council must meet at least eight times each year and at least once per school term.

- The president must preside at meetings. If the president cannot preside, then the vice-president must preside instead. If no vice-president has been elected, then an elected council member must preside.
- A school council meeting must operate with a quorum, which requires that not less than one half of the council members are present at the meeting and that a majority of members present are not Department employees.
- Decisions are made by voting, with voting members to be present at the meeting either in person or by video- or tele-conferencing.
- Council members must declare if they or a member of their direct family has a conflict of interest in a matter being discussed at a council meeting. They must not be present during the discussion, unless invited to do so, and when a vote is taken on the matter.
- A school council may have community members co-opted to the council with the same membership status and rights as those of parent and department employee members.
- Provision is made for the election and removal of office bearers for a school council. A school council may resolve to remove an office bearer from office but not from the school council.
- A school council may hold an extraordinary meeting at any time, if all council members are given reasonable notification.
- A school council must call a public meeting at least once every year to present its annual report and report its proceedings since the previous public meeting.
- A school council may form a sub-committee with at least three council members for particular purposes and terms of reference decided by the council.
- On the written approval by the Minister, a school council may delegate some of its power and duty to a person or body other than the principal. Exceptions include a power or duty relating to the use of school grounds and buildings, and to the approval of the school budget and annual report.
- A school council must keep proper accounts and records of its transactions and affairs, and any records necessary to sufficiently explain its financial operations and position.
- All cheques and negotiable instruments drawn on an account of a school council must be authorised by the principal and a council member nominated for this purpose. The same authorisation arrangement applies to all withdrawals or transfers out of a school council account.
- The principal must make available for inspection to the public a copy of the certified financial statements of the school council for the most recent calendar year.
- A school council must not employ a person in an ongoing position unless public notice has been published in a manner determined by the Secretary.
- A school council must keep the council seal in safe custody, and may affix it to a document of authority of the school council when witnessed by the president and one other office bearer of the council.

The relevant clauses for school councils in the 2007 Regulations would be retained, with only two proposed minor changes. The changes would:

- specify that a vice-president can preside at a school council meeting when the president is absent
- clarify that all council members (including community members co-opted by the council) have the same membership status.

## *Implementation and evaluation*

School councils will be notified of any proposed regulatory changes through the weekly departmental newsletter Schools Update. The guidance material for school councillors will also be updated.

Then, to evaluate any changes, the Department will collect data from the School Council Financial Audit Program and the School Review Program to monitor the compliance of schools and school councils with the proposed regulations. Under the audit program, the Department will continue to conduct financial audits of school councils in line with best governance practice and the requirements of the Act and other legislation. Schools will participate in the audit program at least once every four years. At a system level, the Department will measure councils' compliance in terms of the proportion of schools rated as 'unsatisfactory' or 'needing improvement'.

Under the review program, the Department will continue to evaluate the practices, strengths and performance outcomes of the selected schools in each review cycle. From 2016, this review program has been strengthened: it connects to the Framework for Improving Student Outcomes and involves Senior Education Improvement Leaders. It will use two compliance indicators:

- the proportion of schools referred by the reviewer with concerns about governance
- the number of school councillors who undertake school council training each year.

## **6.2 Parents' clubs and fundraising for government schools**

### *Background*

As defined in the Act, a parents' club is 'an association (by whatever name called) of parents of a Government school, whether or not the association also includes teachers and friends of the schools' (s. 1.1.3). The Act provides for the dissolution of a parent club, whereby the Minister can dissolve any parents' club (s. 2.3.2(6)(a)) and intervene to deal with matters arising from the dissolution (s. 2.3.2(7)). However, it contains no other specific provision relating to parents' clubs, apart from granting the Minister power to provide for their constitution, duties or powers (Schedule 5).

The Act and the 2007 Regulations do not define the statutory role and objective of a parents' club. The only exception is the provision in the 2007 Regulations (r. 48) that permits a parents' club to raise funds for school-related purposes as defined in the Act (s. 5.6.1), subject to approval by the school council (r. 45).

The 2007 Regulations provide for the formation and dissolution of a parent club, and for matters connected to the formation and dissolution (rr. 42–44, 46, 47). They also contain provisions on the fundraising activities of parents' clubs (r. 48), and on the use and banking of money raised and held by parents' clubs (rr. 45, 49–50). These regulations safeguard the interests of the school community. The rule, for example, for having at least six parents of students to initiate the formation of a parents' club is to ensure the club has sufficient community interest and input to keep it viable and supported in its engagement with the school community.

The Department issues a parents' club policy, including a model constitution that specifies the objectives of a parent club, functions and operational requirements. This policy and related guidelines

are in the SPAG. Under this policy directive, parents' clubs are formed to support the school, its students and the school community, and to work in co-operation with the principal, staff and school council in building effective partnerships between home and school. Such roles and responsibilities of a parents' club must conform to the duties and powers of a school council. Notwithstanding its collaborative relationship with the school council, a parents' club is not a sub-committee of the school council and has no legally prescribed powers and duties.

Parents' clubs may undertake fundraising activities, to help schools tap into community resources for particular school purposes or for augmenting school funds. In their fundraising activity, parents' clubs are subject to provisions in the *Fundraising Act 1998*. They also need to observe departmental policies on the management of school finances, including audit requirements.

Parents' clubs are authorised by statute—that is, a combination of the Act and the 2007 Regulations. As such, they are not covered by the *Associations Incorporation Reform Act 2012*, which provides for the registration and regulation of incorporated associations.

### *Base case and its consequences*

In the base case, the Act stipulates the conditions for classifying an association of people as a 'parent club'. The parents' club policy would remain in force (as set out in the SPAG) to guide and direct matters relating to the formation and dissolution of parents' clubs. Without the direction provided by the 2007 Regulations, the policy directive would be merely advisory as opposed to mandatory. Many parents' clubs would likely continue their collaborative role of supporting the school council in accordance with the policy directive.

However, without the 2007 Regulations, some individuals could form clubs in various forms for various purposes (including fundraising) without having the necessary controls and balances to ensure proper use of the money raised. In this scenario, a parents' club could be established without involving the principal and a quorum of parents, so could operate without parameters. Further, some parents' clubs could operate without the Department's endorsement or recognition if not all of their activities are school-related work as defined in the Act.

Without the 2007 Regulations, financial oversight of parents' clubs would be constrained. In principle, the clubs' fundraising activities are subject to the *Fundraising Act 1988*, but only if a club's annual fundraising amount exceeds the threshold for mandatory registration with Consumer Affairs Victoria. For those clubs not maintaining a financial link with the school, funds would be kept in a trust external to the school's account. As a result, the funds would stay outside the Department's audit program. If such a club dissolves, it could be difficult to track down its funds and assets, and transfer them back to the school.

### *Identifying the problem*

The Department considers parents' clubs provide a constructive means for the school and the community to work together to promote the school and education. For this model to work, parents' clubs need some independence from the school authority structure that encompasses the school council. This structural separation is essential for a school's effective engagement with parents across a wider spectrum beyond the school council, and for parents to have forums for raising ideas and giving feedback.

The Department perceives parents' clubs as an important way for parents to engage in issues relating to the welfare and general education policy of their school. To this end, a parents' club helps develop a shared parent view and contributes proposals on school policy and other educational issues to the school council. Inherent in the clubs' constitution is the open, voluntary and interest-based membership that enables a club to reach out to all parents and members of the community.

Because parents' clubs should have some independence in their decision making, some oversight of parents' clubs is needed so their activities do not conflict with the role and functions of the school council. As the school's governing body, a school council has a primary role of setting and monitoring the school's direction. The Department considers that a parents' club has a primary role of supporting the school.

Fundraising is a shared function of parents' clubs and school councils. For school councils, this function is prescribed in the Act (s. 2.3.5(a)). For parents' clubs, it is conferred through the 2007 Regulations (r. 48) and included in the model constitution. All fundraising by parents' clubs needs school council approval. The 2007 Regulations assign to school councils the responsibility for oversight of all school fundraising activities, to ensure these activities benefit the school. Nevertheless, given varying financial arrangements in schools, not all school councils have the same control over the way in which parents' clubs use their funds.

The Department considers a parents' club should be subject to financial oversight by the school council, given the council's general oversight function. This consideration reflects the intended purpose and role of parents' clubs, and the importance of maintaining integrity in school finances. Yet, the current financial arrangements for some parents' clubs do not entirely meet this expectation.

A weak financial link between a parents' club and the school council occurs when the club keeps funds in a trust (or bank account) separate from the school's account. This arrangement is permissible under the 2007 Regulations. But a parents' club using a separate account can expend funds without obtaining authorisation by school council officials. As such, funds raised from the school community may potentially not be used for school-related purposes, and the school has little legal recourse against the parents' club in this case.

There are approximately 540 parents' clubs in Victoria, which represent about one third of Victorian Government schools. Collectively, these clubs raised an estimated \$7 million (or on average \$13,000 each) in 2015. The Department knows of 24 parents' clubs that maintain a separate account, each with an average balance of around \$20,000.

The Fundraising Act requires organisations that fundraise more than \$10,000 per financial year to register with Consumer Affairs Victoria. Schools and school councils are exempt from this requirement, but parents' clubs are not exempt. The Consumer Affairs Victoria website does not list any parents' clubs as being registered, so parents' clubs using a separate account might not have raised more than \$10,000 annually, or some parents' clubs may be unaware of the registration requirement.

Weak financial oversight is a real risk to the integrity of school finances. The current regulatory provision on parents' clubs financial arrangements risks more clubs deciding to use a separate bank account. Yet parents' clubs with annual fundraising of less than \$10,000 are not regulated by the

Fundraising Act, and they are not incorporated. For these reasons, some parents' clubs may not be subject to regular financial oversight.

Given this lack of oversight, a parents' club could enter inappropriate procurement arrangements undetected. It may not follow the Department's procurement policy in its purchase of goods and services, for example.

Some stakeholders noted clubs using a separate account prefer greater control over the funds that they raise and are concerned that the school council would disagree with the club's view on the best use of the funds. They considered school councils preclude parents' clubs from maintaining independence.

But other stakeholders supported the arrangement under the 2007 Regulations whereby the parents' club keeps its funds in a school account. Under this arrangement, the club's expenditure is subject to a school sign-off process, and the trust account is subject to departmental audit. The Department considers this arrangement is satisfactory because it allows for greater financial accountability and oversight.

Financial irregularity in parents' clubs was rarely reported in the past, but the risk exists. Any irregularity in the future would be detrimental to public confidence in the government school system, and would frustrate the promotion of parent engagement with schools.

A recent departmental audit of school council finances (DET 2015d) highlighted concerns over weak financial oversight of some parents' clubs. The auditor qualified the handling of locally raised funds by schools, noting weaknesses in cash collections from school-based revenue raising:

*"A number of schools have expressed difficulty in managing the ongoing relationship with their Parents' club Committee. This is due to Parents' Clubs running fundraising activities such as uniform shops, movie nights etc. without adequate financial controls in place." (p. 35)*

In its 2014-15 annual report, VAGO (2015) expressed concerns that weak oversight contributed to significant shortcomings in schools' financial practices. VAGO's broader concerns about departments' weak monitoring of activities in their portfolio highlighted the need for a formal relationship between departments and their collaborators. For a parent club, its relationship with the school is formalised through the clauses in the 2007 Regulations that prescribe the principal's and the school community's involvement in the club's formation. This formation process, coupled with the constitution, sets rules and expectations for how a parents' club collaborates with the school and serves the school community.

### ***Specifying the objectives***

The rationale for regulating the operation of a parents' club lies with the Department's interest in maximising its support for the school and its community. Parents' clubs are instrumental in representing parent voices and gaining access to community resources and volunteer capacities. Their effectiveness in connecting parents to school-level decision making hinges on them having a cooperative and accountable relationship with the school council. For these reasons, the pertinent objectives of the proposed regulations are to:

- facilitate parents' participation in schools
- ensure parents' clubs are financially and operationally accountable to stakeholders
- support effective quality assurance of parents' club operations.

### *Identifying options*

The Department considered the following two intervention options, in contrast to the base case (in which the 2007 Regulations for parents' clubs sunset):

- constitute parents' clubs as a school council sub-committee
- replace existing regulatory provisions to require parents' clubs to use a school account.

#### *Option 1—establish parents' clubs as a sub-committee of the school council*

Regulations would be written to require parents' clubs to be established as a sub-committee of the school council. Accordingly, a parents' club would need to conduct activities under the direction of the school council. The establishment, termination, objectives and composition of a parents' club would be subject to the relevant regulatory provisions for a school council. Further, the school council would be directly responsible for fundraising. The parents' club would help the council in fundraising, but proceeds would be managed through a school account.

#### *Option 2—replace existing regulations to require parents' clubs to use a school bank account*

The Regulations would be remade to recognise parents' clubs as separate from school councils, and to impose requirements on the clubs' operation, including fundraising. The main provisions would be to regulate club formation, require fundraising to be approved by the school council, require funds to be expended for specific purposes and kept in a school account, and specify rules and processes for club dissolution.

School council approval of all club fundraising would ensure any money raised is for a school purpose and is appropriately expended in the interests of the school. This requirement would accord with the responsibility of school councils under the Act to ensure they expend council money for proper school purposes (s. 2.3.5(g)).

### *Assessing options*

The Department used the following four criteria to compare the options:

- Criterion 1—accountability, which reflects parents' clubs' commitment to meeting the expectations of their stakeholders, including fund donors and school councils. The Department assessed each intervention option in terms of bringing transparency to club operations and reducing the risk of financial irregularities.
- Criterion 2—community engagement, which directly follows from the intended purpose for parents' clubs to connect the school and its community.
- Criterion 3—the compliance burden, which would diminish parents' clubs' capacity to carry out club functions and, therefore, needs to be minimised. This criterion is particularly relevant for parents' clubs because they are run by volunteers.

- Criterion 4—implementation complexity, which considers the overhead impost of introducing an intervention or adapting to regulatory changes.

The Department considered these criteria are equally important to the above objectives for managing parents' clubs, so assigned an equal weight of 0.25 to each. It scored each option between +10 and –10 against each criteria.

### *Option 1—establish parents' clubs as a sub-committee of the school council*

#### Criterion 1—accountability

Compared with the base case, this option would bring greater oversight of parents' club activities because the school council would formally delegate the club's role and responsibilities. It would also impose strict control of decisions over club activities and fund uses, within the council structure.

Key relative benefits of this option include greater consistency between parents' club roles and functions and those of the school council as stipulated in the Act, and lower risk of financial mismanagement or wrongdoing in the parents' club. All funds raised and used by a parents' club would be accounted for and subject to the Department's audit requirements.

Such relational and institutional changes would also induce volunteers in a greater number of parents' clubs to meet stakeholder expectations. For all these reasons, the Department scored the option at +5 on this criterion.

#### Criterion 2—community engagement

A downside of this option is that it might counteract some parents' incentives to engage with schools. There may be parents who wish to contribute to the school community but do not consider that the school council adequately represents their views and preferences. This group of parents would be discouraged from joining a parents' club that is a part of the school council and has no capacity for independent decision making.

On the other hand, greater financial oversight resulting from this option would reduce reputational risk to government schools. This outcome could marginally lift community interest in school engagement and participation, relative to the base case.

The Department assessed that the direct negative impact on community engagement would dominate a small positive effect of reduced harm to school or system reputation. For this reason, the Department scored the option at -4 for this criterion.

#### Criterion 3—compliance burden

This option would mainly affect the administrative burden on parents' clubs in two areas: (i) approval for fundraising, and (ii) application to set up a club. Those that follow the policy directive in the base case would find this option saves their volunteers' time and effort, because internalising decision making with the school council would reduce paperwork and correspondence. But, for clubs that remain financially and operationally detached from the school council in the base case, this option would increase their compliance requirements and their administrative burden because of more stringent governance requirements.

To estimate the net change in compliance burden for fundraising approval, the Department assumed that a club is managed by six skeleton members (those who initiate forming a club and subsequently become core organisers of club activities). For clubs that would be collaborative with (detached from) the school council in the base case, their organisers would take two hours less (more) per year to prepare and submit fundraising applications. The assumed saving (lack of saving) of 12 hours per club was valued at \$35 per person hour, or at a total of \$418 per club, in line with the average hourly rate of employee earnings in Victoria. For 540 parents' clubs, the aggregate annual saving (lack of saving) was an estimated \$225,600.

To estimate the net change in compliance burden for club establishment, the Department assumed six new applications arise every year—that is, club growth of roughly 10 per cent per year. The time saving (lack of time saving) arising from the use of a sub-committee was assumed to be one hour per volunteer involved. Based on the same parameters used in the above calculation, the aggregate annual saving (lack of saving) would be around \$1,250. Combining the estimates in both areas yields an overall saving (lack of saving) of \$226,850.

The Department cannot be certain about the level of compliance with the policy directive in the base case. It considered the majority of parents' clubs would be collaborative. In this scenario the administrative burden for collaborative clubs would reduce while a small number of non-collaborative clubs would face increased burden, when assessed against the base case. For all clubs as a whole, there would be a modest net reduction in their administrative burden. Accordingly, the Department scored the option at + 1 for this criterion.

#### Criterion 4—implementation complexity

This option would not require substantive changes to the constitution and operation of school councils. However, major disruption would occur to existing parents' clubs. The 24 parents' clubs that use a separate account to hold funds would need to transfer all their funds to the school council. More broadly, all existing parents' clubs would need to dissolve and then be re-established as a school council sub-committee. This exercise would involve hundreds of parents' clubs. Given the complex implementation issues, the Department scored the option at -4 for this criterion.

#### *Option 2—replace existing regulations to require parents' clubs to use a school bank account*

#### Criterion 1—accountability

This option represents a middle way between the base case (in which parents' clubs engage with school councils in a collaborative relationship) and the option of absorbing parents' clubs into a formal council structure. As with option 1, this option would bring the benefits of a codified process for establishing and dissolving parents' clubs. Further, the provision that a parents' club must use a school account to bank their funds would assure financial integrity, which the base case does not offer for all clubs.

The proposed requirement for parents' clubs to place their funds in the school account would not affect the majority of parents' clubs that already bank their funds in this way. But it would lead to an incremental benefit because it would increase oversight of those parents' clubs that maintain a separate account and have only a loose connection with the school council.

The advantage of this option is that it would improve parents' clubs' accountability, compared with the base case. The incidence of financial mismanagement or wrongdoing across parents' clubs has been rare, but the proposed requirement for parents' clubs to use a school account would provide even greater assurance of a club's accountability to the school community. Accordingly, the Department scored the option at +3 for this criterion.

#### Criterion 2—community engagement

Compared with the base case, the degree of parents' clubs' independence from the school council would be somewhat lower under this option. So, to the extent that club autonomy is conducive to parent participation, this option could have a negative direct effect on community engagement. On the other hand, increased financial oversight would provide a risk control that helps boost public confidence in government schools and parents' interest in engaging with schools. In addition, it would remove clubs' responsibility for managing their funds, making the clubs more appealing for some volunteers.

If a majority of parents at a school wishes to close the parent club, there are provisions on the due process for dissolution and for the transfer of funds and assets to the school council. The 2007 Regulations provide a means by which a parents' club can be dissolved, discontinuing its activity and closing its account as appropriate. In the event of school closures or mergers, the provisions for dissolving the parents' clubs involved are crucial for avoiding dissension among parents of affected students. They also make transparent the whereabouts of funds raised from the broader community.

Overall, the Department considered the proposed regulations would have little net impact on community engagement relative to the base case. For this reason, it scored the option a zero for this criterion.

#### Criterion 3—administrative burden

The Department calculated the option's administrative burden using the same approach for option 1. The main difference is that the Department assumed no time saving for the group of collaborative clubs, because the policy directive stipulates the same approval procedure that the proposed regulations would do. The main change in burden would be limited to non-collaborative clubs. These clubs would need to spend more time (relative to the base case) seeking council approval of fundraising. Because they are a minority in the base case, the relative administrative burden under this option would be modest. The Department used the same cost and base-case parameters as above to indicatively cost the extra time and effort at \$112,800.

To reflect the estimated modest time cost imposed on parents' club volunteers, the Department scored the option at -1 for this criterion.

#### Criterion 4—implementation complexity

This option would require little adjustment to the council and club structures prevailing in the base case. The proposed regulations would introduce a regulatory framework that is largely the same as the policy directive that is the main engagement measure in the base case. The overhead impact of this option would be limited to parents' clubs that use a separate account to hold their funds, because these clubs would need to transfer all their funds to the school.

To reflect the option’s modest relative impact on implementation, the Department scored the option at –1 for this criterion.

*Preferred option and its effects*

Table 6.3 shows the result from the multi-criteria analysis of the relative costs and benefits of the two assessed options for intervening in parents’ clubs.

**Table 6.3: Multi-criteria analysis of options to regulate parents’ clubs**

Criterion	Weight	Base case	Option 1—use a sub-committee structure		Option 2—require using a school account	
		Score	Assigned score	Weighted score	Assigned score	Weighted score
Accountability	0.25	0	5	1.25	3	0.75
Community engagement	0.25	0	–4	–1.00	0	0.00
Administrative burden	0.25	0	1	0.25	–1	–0.25
Implementation complexity	0.25	0	–4	–1.00	–1	–0.25
<b>Overall</b>	<b>1</b>	<b>0</b>	<b>–0.75</b>		<b>0.25</b>	

The Department prefers remaking regulations to the alternative of establishing parents’ clubs as a part of the school system structure. The preferred option would help address concerns about low financial transparency in a minority of parents’ clubs. Further, given its minimal implementation and compliance burdens, the option is a ‘no-regret’ solution that protects against the future incidence of financial mismanagement or wrongdoing in parents’ clubs.

The proposed change to parents’ clubs’ banking arrangements would likely affect only a relatively small number of parents’ clubs that are not already using a school account to keep funds. The Department’s proposal reflects the importance of balancing the transparency of club finances with the interests and initiatives of club volunteers in serving their school community. Some stakeholders favour providing parents’ clubs with greater operational and financial flexibility, such as autonomy in fundraising activity and the use of a separate bank account. In response, the Department is keen to collect more detailed stakeholder views on the two assessed options for regulating parents’ clubs.

The proposed regulations for parents’ clubs provide for clubs’ formation, financial arrangements and fundraising activities. They prescribe:

- the restriction that a parents’ club can be formed only in accordance with the regulations
- the procedure for proposing the formation of a parent club, including the establishment of an interim committee that does not have the fundraising rights and functions of a parent club
- the use of the model constitution published by the Secretary
- the requirement that the school council approve parents’ clubs’ fundraising and expenditure
- the requirement that parents’ clubs hold their funds in a separate subprogram of the school’s official bank account
- the rules for dissolving a parent club, including the automatic dissolution of parents clubs in the case of a school closure or merger
- the process that a school council must follow in considering a proposed fundraising activity

- the requirement that parents' clubs use raised funds for the purpose that they were raised.

The proposed regulations differ from the relevant clauses in the 2007 Regulations in four main ways:

- They would remove the existing option for a parents' club to maintain a separate bank account. Instead, all clubs would have to use a subprogram under the school's official account.
- They would provide for the automatic dissolution of parents' clubs in the case of a school closure or merger.
- They would clarify that an interim committee exists only to develop a constitution and seek ministerial approval for the formation of a parents' club. Importantly, an interim committee does not have the fundraising rights and functions of a parents' club.
- They would clarify that all parents' clubs must use the model constitution published by the Secretary of the Department.

### *Implementation and evaluation*

The Department would implement the proposed regulatory changes by:

- reviewing and updating the parents' club policy, to specify the role and conduct of parents' club operations as prescribed in the 2007 Regulations
- communicating the changes to all government schools potentially through a Schools Update message from the Deputy Secretary Regional Services Group
- communicating the changes to key stakeholders, including Parents Victoria, the Victorian Principals Association, the Victorian Association of State Secondary Principals and the Principals Association of Specialist Schools Victoria, via a letter from the Deputy Secretary Regional Services Group, or the Minister.

Evaluation of the proposed regulations for parents' clubs would focus on their impact on the incidence and risk of financial irregularities in parents' club fundraising. This impact would be based on the following indicators:

- the number of irregularity incidences in parents' club fundraising activities, as brought to the attention of the Department
- the number of parents' clubs subject to investigation for operational or financial irregularities
- the number of parents' clubs that review and submit constitutions
- the number of parents' club constitutions submitted in full compliance with the model constitution published by the Secretary
- the percentage of parents' clubs that disregard the proposed regulations by continuing to operate their own bank account.

The Department would collect and analyse data on these indicators, along with intelligence and stakeholder feedback on parents' club practices. It would use such information to improve school audit performance, and for policy review in support of the Education State agenda by promoting community engagement.

## 7. Regulations for transport and travelling allowances

### *Background*

The *Education and Training Reform Act 2006* (the Act) provides for regulations to be made (s. 5.10.1(2)) on matters that include students' transportation to schools and travel allowances paid to students (Schedule 5, clauses 1.3 and 1.4). The 2007 Regulations empower the Minister to provide transport services with prescribed eligibility criteria, and to grant travelling allowances to students (Part 9, Divisions 1 and 2). Specifically, the 2007 Regulations empower the Minister to:

- approve transport services for travel to and from school, including specialist schools and non-government schools (rr. 86–87, 89–90)
- provide free transport to students who live more than 4.8 kilometres from their nearest school (rr. 88–89)
- grant travel allowances and develop criteria for determining the allowance amounts (rr. 92–96).

(Note: Specialist schools are schools established for the main purpose of providing instruction for students with disabilities or social, emotional or behavioural difficulties.)

The 2007 Regulations also require a principal of a government school to notify the Secretary if an approved transport service fails to operate within the terms of its contract (r. 91).

### *Base case and its consequences*

In the base case with no regulations, the government would presumably use their power of procurement to provide the School Bus Program (SBP) and the Students with Disabilities Transport Program (SDTP). Neither the 2007 Regulations nor the Act require the Department to provide student transport and travel allowances; rather, these provisions are a policy decision. The current policy and procedures documents for the SBP and SDTP contain criteria that are additional to, but broadly consistent with, the 2007 Regulations. Without regulation, the eligibility criteria and special circumstances for the programs could be specified through those documents (box 7.1).

By contrast, the Minister relies on the 2007 Regulations to provide the Conveyance Allowance Program (CAP). So in the base case, no viable regulatory mechanism would exist to empower the distribution of CAP funding to individuals.

#### **Box 7.1 Victorian Government student transport assistance programs**

The Victorian Government currently provides three travel assistance programs:

##### *School Bus Program*

The School Bus Program (SBP) recognises the impracticality of providing education services in every community. Since inception, it has been expanded to tailor for diverse student needs. Operating under the departmental document *School Bus Program: Policy and Procedures* (DET 2016d), the SBP provides transport for students to attend their nearest government or appropriate non-government school in rural and regional Victoria. In 2015, transport was provided to approximately 70,000 students through 1,485 bus services that Public Transport Victoria contracted and managed. The program's annual cost in 2015 was \$205 million.

### Box 7.1 Victorian Government student transport assistance programs (continued)

Generally, to be eligible for the SBP, a student must reside in Victoria and meet three criteria:

- attend the nearest government school appropriate to their year level, or ‘appropriate’ non-government school (as measured by the shortest practicable route by car, from the student’s residential driveway to the school administration gate)
- reside 4.8 kilometres or more from the school (using the above measure)
- be aged 5–18 years of age

The nearest ‘appropriate’ school for students attending non-government schools is determined by the religious denomination of the school.

The SBP may also be accessible to students who do not meet the eligibility criteria for free transport, including those who live within the distance boundary. Some students may be exempt from the eligibility criteria (and not required to pay), while others may pay to access the program (if spare capacity is available). The fare is approved by the Minister via *School Bus Program: Policy and Procedures* (DET 2016d), and was \$480 per year in 2016. This arrangement is not set by regulation.

#### *Students with Disabilities Transport Program*

The Students with Disabilities Transport Program (SDTP) operates under the *Students with Disabilities Transport Program: Policy and Procedures* (DET 2016e). It provides transport for approximately 8,850 students to attend one of the 80 government specialist schools across Victoria. It provides access to department contracted bus services, school operated bus services and supplementary taxi services. The Department funds the service for students who live in a school’s ‘designated transport area’, which the Minister defines in the SDTP policy and procedures document and related briefings. In 2015, the annual program cost was about \$70 million.

#### *Conveyance Allowance Program*

The Conveyance Allowance Program (CAP) operates under the *CAP policy and procedures 2016*, helping families meet part of the costs of travel to school. In 2015, it provided travel allowance for 39,493 students in 772 schools, who could not access the SBP and the SDTP because service availability was limited. The total allowances paid in 2015 amounted to about \$25 million.

Generally, to be eligible for a conveyance allowance, a student must reside in Victoria and:

- attend the nearest government school or ‘appropriate’ non-government school (as measured by the shortest practicable route by car, from the student’s residential driveway to the school administration gate)
- reside 4.8 kilometres or more from the school (using the above measure)
- be of school age
- except for students of a specialist school, be enrolled in a school located outside the metropolitan conveyance allowance boundary for three or more days per week.

For CAP purposes, the metropolitan conveyance allowance boundary encircles postcode areas that are considered part of metropolitan Melbourne.

### **Box 7.1 Victorian Government student transport assistance programs (continued)**

The Department pays the allowance to students' families via the school. Schools are responsible for distributing CAP funds in a timely manner to families. The CAP is accessed largely by students of non-government schools who cannot access the SBP, which prioritises government school students for establishing routes.

#### *The future of existing programs*

##### School Bus Program administration trial

In 2016, the Department of Education and Training and Public Transport Victoria (PTV) have undertaken an administrative trial for the SBP. The trial aims to improve how families apply for, access and pay for SBP services. A pilot scheme allows families at the 11 participating school bus networks to apply online to PTV for access to the program. This direct online process reduces administrative burden on schools and ensures consistency in SBP applications.

The trial will be evaluated, with recommendations to extend the trial or roll out the program to be presented to the Minister for Education and Training and the Minister for Public Transport. The trial's evaluation may guide the Department in exploring additional policy options.

##### National Disability Insurance Scheme

In 2016, the National Disability Insurance Agency (NDIA) has settled a proposed approach and timeframe for working with state and territory governments to transition specialist school transport services from state and territory administered programs to the National Disability Insurance Scheme (NDIS) (box 7.2). As a result, the arrangements for the SDTP may change in the future.

#### *Identifying the problem*

The Victorian Government requires all children of the compulsory school age to be enrolled in a school or registered for home schooling. It encourages parents to choose a school that suits their child's needs.

Many families in rural and regional Victoria live a significant distance from their nearest school. Some choose home schooling or distance education. Others who send their children to school, may face challenges and significant costs in arranging transportation. A lack of service demand in these areas results in higher than usual transport costs, because a small number of service providers possess considerable market power. This market failure justifies government intervention.

Reviews undertaken in 2001 and 2011 confirmed that children in rural and regional Victoria face disadvantage from being isolated, living greater distances from school, and lacking access to public transport (DEECD 2011, DEET 2001). These children may be discouraged from attending school regularly, risking poor educational outcomes and creating an equity issue.

### **Box 7.2 National Disability Insurance Scheme**

The objective of the NDIS is to maximise choice and value for participants by enabling and encouraging a competitive service market in place of centrally provided arrangements. The process and time needed to achieve this objective will vary across different service types and starting points. For transport, for example, some form of active in-market commissioning may be required in the medium to longer term.

For a complex service such as school transport, the continuation of in-kind arrangements for a transitional period is prudent. Students need ongoing support while a nationally consistent approach to specialist school transport is being implemented. Based on phasing arrangements in the Bilateral Agreement, 2020 will be the first school year in which all school-aged participants have phased into the scheme in Victoria. As such, the Victorian Government will continue to administer the existing SDTP through to 2019, as an in-kind contribution to the NDIS by the government.

In advance of the 2020 school year, the National Disability Insurance Agency and relevant Victorian Government departments will work together to ensure a smooth transition of supports to the NDIS. They will assess the transport market in Victoria to identify a service delivery approach that balances:

- increasing choice and control for participants and their families/carers, with
- an adequate supply of supports and the financial sustainability of the NDIS.

This assessment will be completed by the first quarter of 2019, to allow sufficient time to inform stakeholders of the service delivery approach and to finalise arrangements for 2020.

Families of children with disabilities who attend specialist schools may also face challenges and significant costs of transportation. They may require using a special vehicle, for example, or living at a close distance from a specialist school.

To alleviate distance and transport cost barriers to school attendance, government may intervene to improve school participation. Governments can intervene by regulating prices, paying subsidies or providing services to ensure they are affordable to consumers.

As described in the base case, the Victorian Government currently addresses the distance and transport problems by providing services (via the SBP and the SDTP) and paying subsidies (via the CAP). Without regulation, the Department could still provide the SBP and the SDTP, but it could not provide the CAP using the current mechanism. Additionally, the eligibility criteria for the two bus programs would not be backed by regulation, leaving the Department exposed to legal challenges.

#### ***Specifying the objectives***

The primary objective of intervening in the provision of transport services is to ensure all students are supported to choose the option of attending school irrespective of where they live. The secondary objective is to deliver the service efficiently, making eligibility criteria fair and transparent so eligibility disputes are minimised.

### *Identifying options*

The CAP policy and procedures differ from the eligibility criteria in the 2007 Regulations. So, one proposed change to the existing regulation for the CAP is to decouple the program eligibility from school registration, to ensure the regulation is revised to be consistent with the current practice and policy in granting the conveyance allowance. The current regulation refers to an ‘appropriate’ non-government school, which is ambiguous in its meaning. The proposed change would instead allow the Minister to determine the eligibility of non-government students. The Minister would thus have the opportunity to set criteria that align with the CAP Policy and Procedures. A change of practice would be unlikely, but the regulation would be more consistent with the CAP policy and procedures.

External stakeholders, Independent Schools Victoria (ISV) and the Catholic Education Office (CEO), were consulted in 2011. They formally agreed to use the ABS Australian Standard Classification of Religious Groups (ASCRG) Narrow Groups to determine eligibility based on the denomination of the school. The Department consulted with ISV in December 2013 and with the CEO in March 2014 on the proposed amendments to the 2007 Regulations. Both stakeholders raised no objections, given the amendments would support the status quo. ISV subsequently made a submission in 2016, suggesting changes to make transport and travel allowances more widely available to some students at independent schools.

When adopted, the revised regulation would be communicated to relevant stakeholders and reflected in 2017-18 program policies. Through the consultation for the proposed regulation, stakeholders can confirm their support for the changes.

### *Preferred option and its effects*

In terms of school transport arrangements, the proposal explored in this RIS involves remaking the relevant aspects of the 2007 Regulations, with only minor changes to improve the operation of the current program on a ‘no-regrets’ basis. This approach will allow further work to be undertaken in 2017 on broader student transport arrangements. In addition, separate processes are in train, or are planned, to examine the Government’s initiatives for school transport—for example, the pilot project involving changes to the administration of the SBP commenced in 2016 and will be evaluated.

The preferred approach is to make regulations that prescribe some eligibility criteria and empower the Minister to determine CAP eligibility criteria for non-government school students. The proposed regulations would empower the Minister to:

- approve transport services to and from school, including government schools, government specialist schools and non-government schools
- provide free transport to eligible government school students—that is, those who live more than 4.8 kilometres from their designated neighbourhood school or in the designated transport areas for government specialist schools
- provide free transport to eligible non-government school students—that is, those who live more than 4.8 kilometres from their school, which is the nearest non-government school that is appropriate for that student in accordance with criteria determined by the Minister

- exempt some students from the eligibility criteria, to allow them to access free transport services if the services can accommodate them
- exempt some students from the eligibility criteria, to allow them to access transport services if the services can accommodate them and if the Government faces no additional cost
- set travel allowances and develop criteria for determining the allowance amounts
- for granting travel allowances, set criteria to determine an appropriate non-government school for students attending non-government schools.

Under the proposal, principals must also immediately notify the Secretary if a contractor of an approved transport service fails to operate within the terms of its contract. This requirement is consistent with standard practice and not a material burden imposed by regulation.

On determining program eligibility of non-government school students, the Department prefers a broad approach over a prescriptive approach to setting eligibility criteria for travel allowances. A broad approach provides greater flexibility and longevity. By contrast, a prescriptive approach might have required the regulation to include a list of recognised denominations, which cannot be easily amended.

#### *Changes from the 2007 Regulations*

Under the 2007 Regulations, non-government school students are eligible for the CAP if they attend their nearest appropriate school appropriate to their year level. An 'appropriate' school is one that in 'accordance with the school's registration' is appropriate for the student. In practice, the school's denomination determines appropriateness for a particular student.

The Department proposes to change the eligibility criteria for non-government school students from being prescribed in regulation, to being determined by the Minister. This change would enable greater flexibility to amend the criteria in accordance with policy changes, and to increase provisions' longevity. It would also make the regulation consistent with current practice and the CAP policy and procedures.

#### *Implementation and evaluation*

Most of the proposed regulations are being replaced, and are substantively the same as the existing regulations. For this reason, an implementation plan is not required. For the change to the eligibility criteria for non-government school students, the CAP policy and procedures would be updated to reflect the criteria determined by the Minister.

To evaluate whether student transport regulation is achieving its objectives, the following Budget Paper 3 measures may be used:

- number of government school students supported by the conveyance allowance
- number of non-government school students supported by the conveyance allowance
- number of eligible specialist school students provided with appropriate travel
- total output cost of support for students with disabilities
- total cost for travel allowances and transport supports (excluding for special needs students).

This series of data identifies how many families are supported for student transport, and the extent to which their costs are reduced. The Department may also monitor the attendance of students with disabilities, and whether those students have access to student transport, to determine whether those students with access to student transport have higher attendance than that of their peers who do not have access.

## 8. Other regulations

This chapter discusses regulations relating to:

- reasonable excuse – prescribed distance
- consumer protection in education and training
- senior secondary qualification awarding bodies
- prescribed forms
- scholarships and allowances.

### 8.1 Reasonable excuse – prescribed distance

#### *Background*

Under the *Education and Training Reform Act 2006* (the Act), the parents of a child of compulsory school age must enrol their child in a registered school or register their child for home schooling (s. 2.1.1). When a child is enrolled at a school, the parent must also ensure the child attends the school at all times when the school is open, unless they have a reasonable excuse (s. 2.1.2).

Students can undertake distance education for all or part of their education to fulfil compulsory education. They can enrol with Distance Education Centre Victoria (DECV), which is a Victorian Government school registered with the Victorian Registration and Qualifications Authority (VRQA). Alternatively, they can enrol in a mainstream school and receive a distance education program from the DECV or another registered school for either all or part of their education.

Students seek distance education for several reasons, including because they live far away from their nearest school. Some students undertake distance education because the school they attend does not offer a particular subject; for example, a senior student in a rural school wants to study a language that their school does not offer. As mentioned in chapter 7, work will be undertaken in 2017 to examine the Government's initiatives for student transport assistance.

Students living in some rural areas may incur costs to access education, due to the need to travel between their home and the nearest government school or appropriate non-government school. Reviews undertaken by the Department in 2001 and 2011 confirmed many children in rural Victoria encountered disadvantages from locational isolation, living far from school and experiencing a lack of access to public transport (DEECD 2011, DEET 2001).

The Act sets out a number of 'reasonable excuses' for not attending school, including if there is no government school within a prescribed distance of the child's residence and the child receives a distance education program through a registered school (s. 2.1.3(b)). This provision enables some students to enrol in a mainstream school without attending full-time classes. Instead, they can undertake all or part of their education through a distance education program with a registered school, such as the DECV, to avoid the travel costs of attending school without being recorded as absent. A senior secondary student wishing to study from home for some days of the week may study part of a course through distance education, for example.

The 2007 Regulations prescribe the distance parameter that gives effect to the ‘reasonable excuse’ clause. Currently, it is three kilometres for children under nine years of age, and five kilometres for all other children (r. 12).

### *Base case and its consequences*

The base case is defined as the situation in the absence of regulations. In this scenario, the Act would make it excusable to not attend school provided the student lives outside of the prescribed distance. However, there would be no prescribed distance that gives effect to the provision for a reasonable excuse in s. 2.1.3(b). Not specifying a distance for a reasonable excuse would make this section of the Act inoperable, because there would be no enforceable guide of what distance constitutes a reasonable excuse for not attending school.

### *Specifying the objectives*

The primary policy objective is that all children receive a high quality education. Students living far away from their nearest school are given the option to be engaged with the school system by means of distance education, either by enrolling in the DECV or enrolling in a mainstream school while receiving a distance education program from a registered school such as the DECV.

The secondary objective is to allow students who are enrolled in a mainstream school while receiving distance education to avoid travel costs for attending school.

### *Identifying the problem*

The Act permits students to not attend school so long as they receive a distance education program and live far away from their nearest school. The residual problem relates to the need for a distance norm that underpins this exception.

### *Identifying options*

Section 2.1.3(b) of the Act enables a distance to be prescribed in subordinate legislation. The relevant issue to consider in replacing the regulations is identifying the prescribed distance and calibrating it by student age. The Department considers the current prescribed distance is largely appropriate. Stakeholders did not raise any concerns to suggest students are adversely affected by the current age-specific distance thresholds.

### *Preferred option and its effect*

The proposed regulations include a prescribed travel distance for a reasonable excuse for not attending school—that is, three kilometres for children under nine years of age and 4.8 kilometres for all other children.

### *Changes from 2007 Regulations*

Compared with the 2007 Regulations, the Department proposes reducing the prescribed distance for children aged nine and over from 5 to 4.8 kilometres. This change brings the prescribed distance in line with the arrangements for student transport assistance under r. 88(1) of the 2007 Regulations, which provides travel support for students who live more than 4.8 kilometres from their nearest

government school or appropriate non-government school (see chapter 7). Without this change, students could be eligible for transport assistance on the grounds of high travel costs but precluded from using the distance-based excuse to not attend school. Further work on student transport arrangements will be undertaken in 2017.

### *Implementation and evaluation*

The proposed change will be communicated to stakeholders in schools through the School Update newsletter to principals and business managers in schools as well as revisions to the Guidelines for CASES21 absence categories. CASES21 is the Department's system for recording student information. The DECV will also examine whether its distance criteria should align with the proposed regulation.

The Department will evaluate the proposed prescribed distance by collecting new data on the number of students who are enrolled in a mainstream school while receiving a distance education. This analysis would assess accessibility to distance education among students who are subject to the prescribed distance criterion. Such information can be used to support a future review of this provision in the Act and the proposed regulations.

## **8.2 Consumer protection in education and training**

### *Background*

The 2007 Regulations only apply to education and training providers that are regulated by the Victorian Registration and Qualifications Authority (VRQA) and their students. These providers operate only in Victoria or in Victoria and Western Australia, and do not have international learners. The regulations do not apply to providers that are regulated by the Australian Skills Quality Authority (ASQA), the national regulator.

As at 30 June 2016, VRQA regulated 271 providers or 25 per cent of the registered training organisations (RTOs) operating in Victoria. About 10–15 per cent of Victorian students are enrolled in VRQA-regulated providers. The majority of these providers are small private RTOs; others are community based adult education providers and schools that are registered to deliver VET courses. The VRQA does not regulate any Victorian TAFE institutes or dual sector universities.

The *Education and Training Reform Act 2006* (the Act):

- empowers the Minister to approve a dispute resolution and student welfare scheme for vocational educating and training (VET) providers (the 'VET student dispute resolution scheme') (s. 4.6A.5B)
- provides that students may make complaints to the VRQA about RTOs (s. 4.6A.6)
- subject to regulations being made, empowers the VRQA to investigate complaints made by students about the breach of principles in s. 1.2.1(a), (c), (e) and (f)<sup>34</sup> by any education and training provider that it regulates, including registered schools and non-school senior secondary providers ( clause 9.3 of Schedule 5)

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<sup>34</sup> These principles include 'supporting and promoting' the principles and practice of Australian democracy, and making performance information about the school and the student's achievement available.

- provides that a person may make a complaint to the VRQA about a VRQA authorised officer who takes action under the Act against RTOs (ss. 5.8.3U, 5.8.1(4)).

Section 4.6A.5B(2)(b) of the Act states that, for approving a VET student dispute resolution scheme, the Minister must have regard to any criteria set out in the regulations as well as the matters specified in Schedule 7 to the Act. Part 7A of the 2007 Regulations contains criteria for approving and implementing a VET student dispute resolution scheme. In 2014, the Minister delegated the power to approve a VET student dispute resolution scheme to the Director of the VRQA (delegation dated 7 January 2014).

Currently, no scheme is in place. The Act intends for a scheme to be enacted if problems or concerns arise in the VET system that would be addressed most effectively by government enacting a scheme to be used by participating RTOs to settle disputes. A VET student dispute resolution scheme only applies to RTOs that are regulated by the VRQA.

Part 8 of the 2007 Regulations sets out the VRQA's role in investigating complaints. The VRQA promulgates this mandate through a complaints policy and associated procedures, which is published on its website. The VRQA policy for managing complaints is modelled on the Commonwealth Ombudsman's *Better practice guide to complaints handling* (2009).

Education and training providers are also subject to consumer protection arrangements under a range of Commonwealth and Victorian consumer protection legislation.

The regulatory system for education and training has been, and will continue to be, shaped by prevailing policy concerns and perceptions of risk. In 2012, the then Labor Opposition made an election commitment to refer Victoria's powers for registering and regulating RTOs to the Commonwealth Government. The Victorian Government is currently negotiating with the Commonwealth Government on the terms of this prospective referral, with a view to it being effective in 2017.

In 2015, in response to the *Review of Quality Assurance in Victoria's VET System* (DET 2015c), the Victorian Government foreshadowed establishing a new body to investigate and resolve students' complaints about VET providers. The Victorian Government is investigating the nature of VET student complaints and the most appropriate mechanism for addressing them.

### *Needs for consumer protection*

Service users, as consumers, may need protection against inappropriate services and unfair trading practices. In most cases, a service user not satisfied with the product or service received can approach the service provider to resolve their dispute. Service providers have incentives to minimise and resolve disputes with consumers to protect their reputation. However, consumers may need support to resolve disputes, especially where unequal bargaining power exists between resource-rich organisations and vulnerable consumers. Consumers become vulnerable if they do not have the needed resources, knowledge or confidence to liaise with or challenge service providers, or if they face high costs in doing so.

For post-school education and training, opening up the VET market to diverse providers made consumer protection more important, particularly to ensure the integrity of learning outcomes.

Quality is key to securing the trust of students, employers, industry and governments in the system's ability to deliver relevant learning outcomes. Students must be sure the qualifications they enrol for are valued in the labour market. When making recruitment decisions, employers want to be sure the qualifications are gained from reputable providers.

Consumer protection is one aspect of a broader regulation and quality assurance framework for the education and training market. Setting standards for registering providers is an important quality assurance mechanism. Providers that are regulated by ASQA must comply with the national Standards for VET Regulators 2015 (the Standards). The Standards ensure:

- the integrity of nationally recognised training by regulating RTOs and VET accredited courses
- consistency in the VET regulators' implementation and interpretation of the standards applying to RTOs and VET accredited courses
- the accountability and transparency of VET regulators.

Other common mechanisms include qualifications frameworks, course and qualification accreditations, and institutional reviews. Further, providers receiving public funding to deliver training must meet contract measures that govern their service provision and quality. VET funding contracts are in place between the Department of Education and Training and training providers, including individual TAFE institutes, for the delivery of government subsidised training. The VET funding contract sets out requirements that training providers must abide by to maintain compliance as contracted providers in receipt of government subsidies. The contract and associated guidelines set standards of behaviour, as well as prescribing minimum requirements with regard to provider practice in the delivery of training services. These contractual provisions provide protections for students.

Some providers also have internal quality assurance controls, which could also be recognised by general quality assurance bodies such as ISO 9001. Likewise, voluntary membership organisations or industry association partnerships can provide partial control of service quality (Misko 2015).

Registering providers is the core of quality assurance, supporting other regulatory mechanisms. As discussed in chapter 4, provider registration involves:

- setting minimum standards for service provision to screen out low quality providers in the market (table 4.2, appendix 4.2)
- requiring education and training providers to make information available, so service quality can be monitored and assessed.

Consumer protection regimes help assure quality service provision in education and training. These regimes are variably based in the common law, primary or subordinate legislation and industry voluntary self-regulation.

The Australian Consumer Law (ACL) is a national law that provides uniform consumer protection and fair trading throughout Australia. It applies to all education and training services, setting out the rights of students and learners as consumers and the obligations of training providers and marketers. The Australian Competition and Consumer Commission and Consumer Affairs Victoria enforce consumer laws. Their regulatory mandate focuses on transactional matters arising from business-to-consumer interaction, including:

- misleading, deceptive and unconscionable conduct
- unsolicited sales
- unfair contract terms
- consumer guarantees.

Information disclosure is an important part of an effective consumer protection regime, enabling consumers to make informed decisions and regulators to assess, manage and sanction service practices. To do this, both registration and consumer law regimes impose requirements on service providers to provide information on their services and processes of interaction with consumers.

Although they are important for quality assurance, provider registration and consumer law regimes cannot adequately regulate providers in a highly diversified, constantly evolving market. A recent study by the National Skills Standards Council identified their limitations (NSSC 2013). The study raised concerns about inconsistency and variability in quality standards. First, standards can be interpreted and implemented differently. Second, standards tended to emphasise business processes, rather than quality aspects in training and assessment.

The 2013 NSSC study questioned whether the ACL can adequately protect learners without additional protection arrangements. First, consumer laws rely largely on the consumer taking the service provider to the court once mediation processes have been exhausted. Legal settlements are not always the best way to redress a disputed matter and its adverse consequences on the learner's skill development, especially when learning opportunities are irreversibly lost.

Second, the legal process, from instigation to resolution of a dispute, often takes a long time. Prolonged legal processes not only discourage consumers from resolving a dispute or grievance, but also deflect attention away from the commitment to high quality education and training. Third, disputes or concerns in education and training may not attract the attention of consumer law regulators, who must allocate limited resources to economy-wide consumer matters.

The Act provides for two consumer protection tools in the education and training sector: granting powers to the Minister to approve a dispute resolution scheme for VET students and to the VRQA to investigate complaints about registered providers. Both are designed to provide a formal avenue for learners and training providers to raise disputes or complaints, have them investigated, and resolve them transparently and efficiently.

Dispute resolution and complaint investigation are complementary in protecting the rights of learners and training providers. Learners and training providers are parties to a 'contract' to provide training services. A dispute resolution scheme can help address their disagreements about the meaning, circumstance or effect of such a contract-like relationship. Not all disputes arise evidentially from the violation of laws or regulations. Rather, they may be disagreements between the parties to a contract. Nevertheless, some disputes can occur to a large group of people or create difficulties for others beyond the contracting parties; these types of dispute could have far-reaching social impacts. Further, for disputes that occur in large numbers, devising common solutions for them can be more efficient for society as a whole. For these reasons, government has a role in helping to resolve disputes.

Developing industry- or sector-specific consumer dispute resolution schemes is a contemporary response to the need for effective, efficient consumer protection (Shea and Rickett 2006). This

approach provides a non-litigious solution to consumer disputes, with the responsible regulator or mediator investigating the facts in a particular dispute and compelling agreement between parties to resolve conflicts.

The VRQA’s complaint investigation role supports continuous improvement in the Victorian education and training sector. The VRQA uses complaint investigation outcomes to manage compliance risks within its own regulatory realm. Complaint investigation results are also shared with the Secretary and relevant Commonwealth departments, and regulators that have policy and regulatory responsibilities for Victorian students and learners.

The VRQA received 167 complaints in 2015-16 (table 8.1). Among the most common complaints were matters relating to poor quality training, assessment, teacher/trainer conduct, bullying and fees. The majority of complaints were lodged against VET and apprenticeship providers. For these training providers, the incidence rate of complaints—85 complaints against 271 VRQA-regulated VET providers—reflects the prevalence of dissatisfaction with training quality in the broader sector over the past few years.

**Table 8.1: Number of complaints received by the VRQA**

Year	VET	School	VRQA	Senior secondary	Home school	Apprentice -ships	Others	Total
2013-14	83	23	10	1	5	6	3	131
2014-15	107	29	5	5	10	18	6	180
2015-16	80	57	5	9	7	5	4	167

Sources: VRQA 2015, VRQA 2016b.

Similarly, concerns with poor quality of training were directed against numerous providers subject to the Commonwealth regulatory regime. Expanding the VET FEE-HELP scheme attracted providers to the VET market and incentivised providers to actively promote their courses to students. Some RTOs targeted students from vulnerable groups using inducements such as free laptops. These providers enrolled students in inappropriate training under the VET FEE-HELP scheme, wasting public resources without regard for the quality of learning outcomes. Some of the affected students incurred personal costs or built up outstanding loans that would unlikely be repaid. Since November 2014, the Victorian Government has had to restore training entitlements to 10,000 students who received substandard training from publicly funded providers.

Given the prevalence of unscrupulous provider behaviour in the VET sector, the Victorian Government conducted the *Review of Quality Assurance in the VET System* (DET 2015b). This review examined evidence from student and employer surveys, training delivery data, complaint assessments and investigations, and stakeholder consultations. It concluded that training quality in Victoria is variable and quality control is weak. To address the problem of declining student and employer satisfaction with the quality of training in Victoria, the Victorian Government’s response to the review foreshadowed that a new body to investigate and resolve student’s complaints would be established.

### *Base case and its consequences*

The base case assumes the absence of the 2007 Regulations. Learners and students are protected by the Standards, the VET funding contracts and Australian Consumer Law protections, and:

- the Minister is empowered to establish a VET student dispute resolution scheme, but has no pre-existing criteria to guide how to establish the scheme
- the VRQA is empowered to investigate some complaints, and will have to utilise existing complaints policy and procedures.

Without regulations for a VET student dispute resolution scheme, the Minister or their delegate could, subject to the Act, create their own criteria when setting up the scheme. But, these criteria would not necessarily reflect principles such as efficiency, fairness and confidentiality, which are important for public acceptance of and confidence in the scheme. For example, some people may perceive the scheme to be biased towards a particular interest group. This scenario would lead to low public support for the scheme, constraining its effectiveness in resolving disputes that are significant to the sector and the wider community.

The Act empowers the VRQA to investigate some complaints, so it would most likely maintain a complaints policy and procedures in the base case. Its policy and procedures would set out the scope of complaints to investigate, the procedures for investigating and the grounds for refusing to investigate. But without explicit legislative provision, these investigative arrangements would be administrative in character and rely on the VRQA's discretion and the cooperation of the complainant and the person or body being complained about. As a result, complaints may be handled inefficiently and not resolved satisfactorily.

The base case does not feature an independent complaint handling body for the VET sector, as foreshadowed by the Victorian Government. The Victorian Government is undertaking policy development work to explore the nature of VET student complaints and the most appropriate mechanism for responding to those concerns.

### *Identifying the problem*

The base case offers an ineffective legislative framework for consumer protection in the education and training sector for two reasons. First, consumer laws emphasise transactional and contractual matters, rather than quality outcomes for students and learners as consumers. Second, the base case does not offer the necessary regulatory backing to implement the quality assurance regimes enabled by the Act efficiently.

The Act empowers the Minister to set up a dispute resolution scheme for VET students, and requires the VRQA to investigate complaints, which is integral to its registration compliance responsibility. However, the Act does not include the necessary provisions to make these quality assurance measures fully effective and efficient. After the 2007 Regulations sunset, the government has no pre-existing criteria to establish a principles-based dispute resolution scheme if it becomes involved in resolving a dispute in the VET sector. And, the VRQA's investigative powers would also lack clarity and regulatory force.

### *Specifying the objectives*

The primary objectives of government intervention in dispute resolution and complaint investigation are to uphold the quality of education and training in Victoria, reduce the risk of harm on students and learners from exposure to poor quality service provision, and support participants in the VET sector to efficiently resolve disputes that are significant to the community.

The secondary objective is to ensure the quality assurance mechanisms are efficient, effective and transparent. Achieving this objective would improve students' learning outcomes, reduce providers' compliance burden, and streamline the regulator's compliance enforcement practices.

Guided by these objectives, the Department considered the options for replacing regulations for VET student dispute resolution schemes and for VRQA complaint investigations.

### *Option analysis for regulating VET student dispute resolution schemes*

#### *Identifying options*

For intervening in dispute resolution, the Department identified and compared two options with the base case:

- maintain the status quo
- let the regulations sunset.

#### *Assessing options*

The regulations set out the criteria the Minister must consider when establishing a VET student dispute resolution scheme. The prescribed criteria highlight the principles for:

- efficiency—the scheme provides for timely resolution of disputes and regular review of its performance
- privacy—the scheme treats information confidentially and complies with privacy laws
- transparency—RTOs must publicly disclose to students whether they are a member of a dispute resolution and student welfare scheme
- fairness—the operation of a scheme, including costs to students, must have regard to their financial circumstances and arrange for timely reporting on scheme activities.

These requirements are essential for ensuring public confidence in the impartiality and public interest perspective of a scheme that addresses disputes between learners and training providers. The current regulations provide reasonable criteria for a dispute resolution scheme, allowing the Minister to approve a scheme in a short time whenever necessary (such as several providers in financial distress affecting many students).

The provision for setting up a dispute resolution scheme may still be useful if and when Victoria transfers its VET regulatory powers to the Commonwealth Government. Replacing the current regulations would ensure no new gaps in consumer protection are created for the transition period upon an agreement to the referral. Further, a scheme can be established to mediate or disputes. That is, the Government could establish a scheme that mediates between the parties or advocates a

particular position that is significant to the community without using formal regulatory powers or making regulatory determinations.

Regardless of whether power is transferred to the Commonwealth Government, the Victorian Government can establish a VET student dispute resolution scheme to complement or facilitate—rather than substitute—the Commonwealth’s role in regulating VET in Victoria. South Australia and Queensland have both transferred their VET regulatory powers to the Commonwealth Government, but also have VET advocacy bodies. The South Australian Training Advocate was established in 2003. The Queensland Training Ombudsman was established in early 2016, based on the South Australian model. Both are independent bodies and work closely with the Australian Skills Quality Authority (ASQA) in sharing information.

The Department considered allowing the regulations to sunset without replacing them. This option adopts the base case. However, the Department rejected this option because it removes the benefit of a principles-based dispute resolution scheme.

### *Preferred option and its effects*

The Department proposes replacing the regulations. Replacing the regulations in their current form would not generate burden unless and until the Minister or their delegate approves a scheme. If a scheme is set up, the VRQA would incur costs for running it. RTOs must comply with any prescribed scheme requirements and disclose their membership of the scheme to their students. Without any scheme details, the Department cannot estimate the burden or cost impact on RTOs and the VRQA.

There is no plan to set up such a scheme. However, if a scheme is initiated and approved under this option, its purpose, structure and implementation would be subject to prescribed principles. This approach reduces the risk of scheme design flaws because regulatory safeguards limit the Minister’s discretion about the scheme design.

The base case (no regulations) increases the risk of flawed scheme design, which could discourage students using dispute resolution processes as a means of consumer protection. This outcome could reduce the VET system’s capacity and flexibility in managing complaints or disputes that are not related to training providers violating registration standards.

### *Implementation and evaluation*

There is no scheme in place, and there is no current plan for the Minister or the Director of the VRQA to establish a scheme. Therefore, no implementation strategy is required for the RIS.

If the Minister or the Director of the VRQA approved a scheme, evaluation would involve monitoring:

- the number and type of complaints lodged, investigated and resolved—to analyse the causes of student complaints (such as business misbehaviour, information failure, or consumer choice biases) and inform potential policy solutions
- the time taken to resolve disputes—to examine the scheme’s efficiency
- the number of complaints referred from other consumer protection schemes—to examine the scheme’s accessibility and visibility

- the outcomes of reviewing scheme performance, as required under the proposed regulations—to analyse a scheme’s effectiveness and efficacy.

### *Option analysis for regulating VRQA complaint investigations*

#### *Identifying options*

Regulators in other jurisdictions manage complaints about education and training providers differently. In New South Wales, the Department of Education publishes its complaint handling policy for a wide range of issues, including schools, TAFE, departmental employees and child protection. The NSW Board of Studies, Teaching and Educational Standards has specific arrangements for handling complaints of overseas students; it shares this responsibility with the Commonwealth Ombudsman. The NSW Board and the Commonwealth Ombudsman both publish the procedures for complaint handling on their respective websites.

The ASQA is not explicitly empowered to manage complaints under the *National Vocational Education and Training Regulator Act 2011 (Cwlth)* (NVR Act), because complaint investigation is not one of its legislated functions. However, the Minister may make standards under the NVR Act that apply to VET regulators. In 2014, the Minister made the Standards for VET Regulators 2015 (Cwlth), which require the VET regulator to communicate effectively and implement a transparent complaint process to enhance regulatory practices and outcomes. The ASQA also publishes a complaint policy on its website.

The Western Australian Training Accreditation Council is not explicitly empowered under its enabling act or regulations to investigate complaints. Nevertheless, it complies with Standard 3 for VET regulators. Its complaint handling policy and procedures can be found on its website.

Other principles-based arrangements for managing complaints include the *National code of good practice for responding to complaints about vocational and education training quality* (DEST undated) and the Commonwealth Ombudsman's *Better practice guide to complaints handling* (2009).

The Department compared two options for complaint handling with the base case—that is, the current regulations for the role of the VRQA in investigating complaints lapse and are not replaced:

- replace the current regulations with minor changes to clarify when the VRQA is not required to investigate a complaint
- replace the 2007 Regulations with principles-based regulations.

#### *Assessing options*

Replacing the regulations under option 1 would provide visibility and accountability to complainants and the VRQA. It would specify the grounds that the VRQA can investigate complaints, and provides some procedures for the VRQA to follow in investigating complaints. This option also clarifies that complaints must be in writing, although the VRQA complaint procedure allows VRQA staff the discretion to assist applicants who have difficulty making complaints in writing because of disability. The proposed changes neither substantively change the VRQA’s current obligations and ability to investigate complaints, nor materially affect the VRQA’s workload or practices.

A key advantage of a principles-based regulatory approach, option 2, is that it allows the regulator flexibility in handling complaints to meet varied stakeholder needs and address emerging issues. Under this approach, regulations set broad expectations on matters such as communication, natural justice, information and data maintenance and access. The regulator then follows these expectations to develop its own complaint handling procedures.

The VRQA's overhead and administrative costs may increase by moving to a principles-based system. And, given the number of complaints the VRQA normally receives each year, it is unlikely the VRQA could offset these costs by improving its regulatory performance under a principles-based system.

Therefore, the Department proposes implementing option 1—replacing the 2007 Regulations with minor changes. The proposed regulations would require complaints to be in writing, lodged within 12 months of the incident, and not be trivial, frivolous or without substance, or able to be dealt with by a different consumer protection mechanism, for example, any other person, body, court or tribunal. These additional requirements allow the VRQA to focus on reasonable, credible complaints and to avoid wasteful administrative burden.

### *Preferred option and its effects*

The Department proposes replacing the 2007 Regulations with the following changes to:

- enable the VRQA to investigate complaints about:
  - RTOs
  - principles specified in the Act, that is, 'supporting and promoting' the principles and practice of Australian democracy, and making performance information about the school and the student's achievement available
  - 
  - authorised officers appointed under s. 5.8.1(4) of the Act.
- require the complainant to first raise the complaint with the person, principal or provider's governing body (as the case may be) and require that the person, principal or governing body must be given reasonable time to respond, unless there are reasonable circumstances that would prevent the complaint from being made to the person, body, school or provider.
- specify the VRQA is not required to investigate a complaint that is:
  - not made in writing, or
  - made more than 12 months after the incident.
- permit the VRQA to refuse to investigate a complaint on one of the following grounds:
  - The complaint is trivial, frivolous or without substance.
  - The complaint can better be dealt with or has already been dealt with by another person, body, court or tribunal.

The above requirements would permit a complainant to come directly to the VRQA for serious complaints, if the complainant is particularly vulnerable, or if the complainant is affected by the issues or is fearful of retribution. The requirements would apply to complaints relating to school exchange organisations.

### *Changes from the 2007 Regulations*

The proposed regulations clarify that the VRQA need not be satisfied that the complaint was first raised with the subject of the complaint, if that complaint does not relate to a registered school, body or provider, or if there are reasonable circumstances preventing the complaint first being made to the registered person, body or provider.

The proposed regulations also make explicit that the VRQA can refuse to investigate a complaint that is better dealt with or has already been dealt with by another person, body, court or tribunal. This approach would prevent a complainant from seeking multiple avenues of redress for the same issues, facts and circumstances. It would also prevent the VRQA spending time on a complaint that would be better dealt with by a different complaints mechanism, or undertaking a parallel investigation with another capable body or re-investigating a complaint that has already been handled by another body.

Replacing Part 8 of the 2007 Regulations prescribes only the particulars of complaints relating to a breach of principles. Unless the Act specifies circumstances for investigating complaints (s. 4.6A.6 and s. 5.8.3U), the VRQA investigates complaints as an administrative action that is incidental to a statutory function or power.

The Department cannot estimate the change in complaints resulting from these proposed changes. The Department considers the proposed change to the complaints policy is likely to slightly decrease the number of complaints received because the VRQA is provided with greater scope to not investigate complaints.

The proposed changes are not intended to change the VRQA's current obligations and abilities, nor are they expected to change the VRQA's workload or practices. Table 8.2 summarises the impacts of the proposed regulations for VRQA complaint investigations on various stakeholders compared with the base case.

**Table 8.2: Indicative impacts of proposed regulations for VRQA complaint investigations**

	VRQA	Complainants	Broader community
Benefits	Reduces costs of disputes about complaints processes and powers to investigate a complaint, including grounds for refusing to investigate a complaint, because a legislative framework supports the scope and process	Reduces costs to complainants by having clear and transparent grounds and processes for making complaints, because claimants no longer approach the wrong organisation to make a complaint	Reduces costs of disputes about complaints processes and powers to investigate a complaint, including grounds for refusing to investigate a complaint, because a legislative framework supports the scope and process
Costs	Less flexibility to adjust processes in response to emerging issues	Specifying what the VRQA can investigate may leave some complainants without a mechanism to seek redress, compared with the case where the VRQA must investigate all complaints that it receives	None

### *Implementation and evaluation*

The proposed regulations do not significantly alter the VRQA's current complaint handling activity. Little adjustment to VQRA practices would be necessary to implement the changes in the proposed regulations. The VRQA would update its policy and procedures for investigating complaints. Further, it would develop a communications plan to notify registered entities about the proposed changes via workshops, newsletters, website information and other mass or targeted media.

The VRQA would use its existing evaluation framework to assess the performance and outcomes of implementing the proposed measures for handling complaints. This framework supports ongoing regulator improvement exercises.

Key features of the VRQA's evaluation framework include monitoring the time taken for responding to complaints, a service standard specified in the VRQA's current complaints policy and associated procedures. Further, the VRQA reports the number and type of complaints in its annual report, including the type of organisations against which complaints are made.

The VRQA also uses the data and intelligence from its evaluation framework to inform its audit and risk management committee and its board about emerging risks in the sector and the effectiveness of its regulatory approach. These processes are subject to ongoing review and reporting to the board of the VRQA, and to the Minister as necessary. Chapter 4 presents further details of the VRQA's implementation and evaluation plans for the proposed regulations.

## **8.3 Senior secondary qualification awarding bodies**

### *Background*

Under the Act, a senior secondary qualification (SSQ) awarding body is a person or an organisation that awards, confers or issues a registered SSQ (s. 4.4.5). The Act includes provisions for the VRQA to register SSQ awarding bodies (s. 4.2.2(e)) and to accredit and register qualifications and courses (s. 4.2.2(c)).

Section 4.3.11 sets out the criteria for registration of a person, body or school in respect of senior secondary courses and qualifications. These criteria refer to minimum standards for: student learning outcomes and welfare services; student enrolment records and certification; teaching, learning and assessment; governance, probity and compliance with statutory requirements; and quality assurance, review and evaluation processes. The quality of student welfare services is a crucial factor to consider when registering senior secondary courses and qualifications.

The Act empowers the VRQA to set standards for registration (s. 4.3.11(1A)). To regulate SSQs, the VRQA provides guidelines on the requirements and processes for the registration of SSQ awarding bodies, and for the accreditation of the qualifications that they award (VRQA 2010). The VRQA guidelines encapsulate the standards prescribed in schedule 8 of the 2007 Regulations (r. 75). Accordingly, a registered SSQ awarding body must meet the prescribed standards for quality assurance, student record management, governance and probity, policy and procedure.

An SSQ is accredited and registered for up to five years. The awarding body is also registered for up to five years, after which registration and accreditation must be renewed. Changes to an awarding body

and the qualification that it awards may affect the body's capacity to meet the standards. In such circumstances, the VRQA may more frequently assess the registration status of this body and its qualification. Renewal applications are subject to the same requirements prescribed in the 2007 Regulations and the VRQA guidelines for regulating SSQs.

The following conditions also apply to SSQ registration:

- A new or existing awarding body may seek registration to award an existing SSQ that another registered awarding body owns. In this situation, the applicant seeking registration must have the authorisation of the qualification owner to award that qualification.
- Individual courses that contribute to the award of a particular SSQ need VRQA accreditation. This accreditation must be undertaken at the same time as the accreditation of the SSQ.
- Subject to registration conditions, schools or other providers can *provide* accredited SSQs but they do not award or issue the qualifications. A registered SSQ provider must be authorised by the qualification or course owner, and must comply with the authorisation conditions.

At present, the two organisations registered to award SSQs in Victoria are:

- the Victorian Curriculum and Assessment Authority (VCAA)—an independent statutory authority that awards the Victorian Certificate of Education (VCE) and the Victorian Certificate of Applied Learning (VCAL)
- the International Baccalaureate (IB)—a not-for-profit education foundation that awards the International Baccalaureate Diploma (IBD).

In 2015, the VCAA awarded 258,472 VCE study scores to more than 80,000 students. It recorded 49,460 VCE completions and 13,257 VCAL completions. Also the VCE (Baccalaureate), an additional senior secondary credential for students studying another language and mathematics, was issued to 4033 students, an increase of 201 since its inception in 2014 (VCAA 2016).

In 2016, 16 schools in Victoria provide the IB program (IB 2016). In 2014, the IB awarded about 2,160 IBD qualifications to Australian students (IBSchools NSW/ACT 2014).

Victoria introduced registration for SSQ awarding bodies after a controversy in Scotland in 2000, when several thousand senior secondary students received incorrect assessment results that affected their qualifications. This incidence was caused by administrative and computer errors in the processing of test scores. It undermined confidence in the awarding body, confused students who had applied for post-secondary courses, and necessitated payment of compensation to some of the affected students. In response, the Victorian Government streamlined the quality assurance function of the VCAA and created the VRQA to regulate SSQ providers and awarding bodies.

The Act provides for the separation of the VCAA's responsibilities for developing courses and assessment products and services, and for regulating courses and qualifications. This separation of duties reduces potential conflicts in having one body undertake all these functions. Under the Act, the VCAA has no powers to enforce standards or exclude low quality providers. Instead, the VRQA can cancel the registration of SSQ providers and awarding bodies if they do not meet prescribed standards.

The VRQA operates in a legal framework that requires it to manage accreditation under Victorian legislation and national standards and quality indicators to protect the integrity of education and qualifications in Australia. The Australian Qualifications Framework (AQF) encompasses such national standards and quality indicators to support consistency in and community expectations of post-compulsory schooling in Australia. The AQF provides for a qualification that marks the completion of secondary schooling as a senior schooling certificate of education. Such SSQs are meant to prepare students for the initial entry into the workforce, vocational education and training, higher education studies and citizenship.

### *Use of qualifications*

Qualifications are testimonies of individual learning. For this reason, they carry intrinsic and economic value (NCVER 2005). Employers use SSQs to recruit workers from among secondary school graduates. Post-school education institutions use SSQs to select applicants for entry into their courses. The Australian Tertiary Admission Rank (ATAR) is the primary criterion for entry into most undergraduate university programs in Australia. In Victoria, an ATAR is based on VCAA-issued VCE results. In other states and territories, it is based on SSQs compatible with the AQF. Being underpinned by these consistent qualifications, the ATAR is adopted to unify the university entrance system in Australia (except for Queensland, which will begin using the national ATAR system in 2018).

Post-school education and training providers and employers may have options to assess and select applicants. They could use, for example, self-developed standards and criteria, common qualifications, or a combination of these approaches. However a qualification is used to assess a student's readiness for further education or employment, the quality of student qualification may be uncertain. Such uncertainty arises because the qualification provider and owner tend to know more about the underlying education or skill development outcomes than do others who use the qualification to inform decisions.

A key reason for regulating SSQs is to overcome the barrier of information asymmetry to efficient recruitment, entry selection and further education planning. Regulating SSQs is also important for assuring the quality of school education, because education is an experience good (which means its quality and outcomes are difficult to assess until after completion) and switching providers part way through the education may incur costs.

Qualification awarding bodies have incentives to uphold the relevance and value of their qualifications in line with community expectations. The quality attributes of a qualification are related to the assessment and award process, as well as the qualification's status and the utility of the learning. By providing accurate and timely assessment results and adequately differentiating achievement outcomes, awarding bodies can increase the trust and acceptance of a qualification. Such attributes need to meet community expectations if the public is to continue to demand the qualification.

Information asymmetry and market power, however, could weaken the incentive to develop and issue rigorous qualifications. The market power of an awarding body depends on the availability and cost of competing qualifications. It also depends on how the qualification compares with other alternatives (if available) in catering for students' learning needs and aspirations, and in informing employers' and tertiary education providers' skill needs and selection priorities.

Easily understandable and comparable qualifications can support permeable learning pathways, restricting the market power of an awarding body. Victorian students may choose between the VCE and the IBD, for example. Further, the VCE is one of numerous equivalent SSQs used to derive the ATAR for tertiary entry selection in Victoria and elsewhere in Australia.

Organisations that use qualifications in their selection processes may have incentives to seek information about the quality and value of qualifications. Students and parents also have incentives to do so. Attributes such as rigour, consistency and reliability influence whether a qualification is widely accepted. For these reasons, awarding bodies are incentivised to provide relevant information to maintain the currency and prominence of their qualifications.

In the case of SSQs, awarding bodies in other jurisdictions have processes to establish the comparability of the VCE and VCAL with their own qualifications. In Victoria, the VCAA undertakes a similar process for validating qualifications awarded in other jurisdictions. This validation service is typically provided on a cost recovery basis. Service users may also face other costs in searching for information on cross-jurisdictional recognition and assessment of qualifications.

Compared with other jurisdictions in Australia, Victoria is unique in requiring SSQ awarding bodies to be registered and in separating the functions of developing and accrediting SSQs. Elsewhere, a government owned statutory authority plays the dual role of developing and issuing qualifications. This arrangement relies on particular integrity controls for the qualifications awarded. In NSW, for example, the prescriptive and mandatory senior secondary curriculum means the need for a separate quality assurance mechanism is less significant. Nevertheless, students in NSW have less flexibility than their Victorian counterparts in assessing curriculum materials to meet diverse and evolving needs for learning. To a large extent, therefore, differences in the school system architecture drive different designs of the SSQ framework across jurisdictions.

### *Base case and its consequences*

The base case assumes the absence of the regulations for SSQs. The Act would require the VRQA to register SSQ awarding bodies and to accredit and register their qualifications. Therefore, the VRQA would have to be satisfied that an awarding body meets the general registration requirements of the Act. However, it would have no legislative basis to prescribe the standards for the operation and role of a SSQ awarding body. In effect, the VRQA would be unable to enforce the Act in governing SSQs.

This scenario could affect the way in which SSQ awarding bodies design and issue qualifications:

- The Victorian Government could encourage the VCAA to follow its policy for SSQs and adhere to guidelines that are the same as (or similar to) the current standards. Such a policy directive would have no sanction power because the VCAA, as an independent authority, could act on its own understanding of the relevant legislation.
- The IB could use its distinctive curriculum framework to maintain its reputation for offering globally recognised qualifications. In the base case, it would have greater flexibility to develop courses and programs for delivery in Victoria.
- New SSQ awarding bodies might be attracted to Victoria to offer niche qualifications, although they would face hurdles to building trust and confidence in their qualifications without adequate quality assurance of assessment and validation.

The VRQA would set registration conditions outside the legislative realm, such as issuing a guidance note. This approach would suffer from ambiguity around the source of authority. It could lead to cost increases for administering the registration process, such as when an applicant cannot comply with a requirement and wishes to dispute its statutory necessity. Without a low-cost enforcement regime, however, the base case would increase the risk of flawed qualifications.

### *Identifying the problem*

The regulation of SSQs addresses the residual problem of needing a transparent, streamlined registration process to achieve efficient quality assurance of awarding bodies. The 2007 Regulations articulate the manner in which minimum standards for registration apply to SSQ awarding bodies, giving an operational effect to the intention of the Act.

### *Specifying the objectives*

The primary objective of registering SSQ awarding bodies is to ensure, at a minimum cost, the quality and integrity of SSQs awarded in Victoria. The secondary objective is to provide a mechanism by which SSQ awarding bodies meet the Act's requirements for assessment by the VRQA. Achieving these objectives would ensure:

- the VRQA has an efficient process to assess SSQ awarding bodies against the prescribed criteria for registration
- organisations that are not registered do not award qualifications
- SSQ awarding bodies obtain registration to operate at the lowest cost.

### *Identifying options*

The Department considered the following two options for intervention, compared with the base case of not replacing the 2007 Regulations when they lapse:

- maintaining the status quo
- making performance-based regulations.

#### *Option 1—maintain the status quo*

Schedule 8 of the 2007 Regulations defines an SSQ awarding body and sets out standards for quality assurance, student records, governance and probity, policies and procedures, and investigations. SSQ awarding bodies must satisfy the VRQA that they meet these standards. They can do so by applying for registration every five years and providing evidence that they meet each standard. They must also notify the VRQA about changes to the qualification design, and they must provide evidence of adopting appropriate policies and procedures to maintain the integrity of the qualification. Under this option, these current requirements would continue.

#### *Option 2—make performance-based regulations*

This option would involve developing a framework of outcomes against which SSQ awarding bodies would demonstrate their performance. The framework would incorporate criteria such as the qualification's acceptance by tertiary institutions and awarding bodies outside Victoria, and the

incidence of disputes about awarded qualifications. It would specify desired outcomes or objectives, rather than the means by which to achieve them.

### *Assessing options*

Both options provide the VRQA with a legislative basis for determining whether SSQ awarding bodies meet the criteria for registration. The VRQA could thus act on SSQ awarding bodies not meeting the criteria. Both options also provide certainty for the VRQA and SSQ awarding bodies about the requirements and how they can be fulfilled.

The use of performance-based standards for registration under option 2 would help reduce compliance costs for SSQ awarding bodies, compared with the base case or the status quo. Such cost savings could arise because the awarding body may not need to act to meet the outcomes, other than to provide evidence that its qualification is widely accepted and that stakeholders are satisfied. However, substantial overhead costs would arise from developing a new framework and implementing it. A performance-based approach may also decrease regulatory effectiveness and increase costs for the VRQA in determining whether an SSQ awarding body meets the objective of quality assurance.

Replacing the 2007 Regulations (option 1) would make it easier for the VRQA to ascertain whether SSQ awarding bodies are adopting processes to meet the objectives of accessibility, timeliness, integrity and efficiency. This option would provide a clear basis for an SSQ awarding body to identify how it can meet prescribed standards, and for the VRQA to assess that body in a low-cost way.

For the above reasons, the Department considers option 1 to be a more cost-effective way to meet the objectives of intervention. Neither of the two registered SSQ awarding bodies (the VCAA and the IB) approached the Department with specific issues during the preliminary consultations. The VCAA also formed part of the Department's working group that supported the options analysis.

### *Preferred option and its effects*

Replacing the 2007 Regulations would involve costs to the VRQA (in assessing the two qualification awarding bodies every five years) and costs to the awarding bodies (in completing the application form and providing evidence). These costs are largely attributable to the general requirements prescribed in the Act for organisations seeking registration by the VRQA, and would be undertaken by SSQ awarding bodies seeking to maintain their reputation in a competitive international field.

The required evidence on standards relates to requirements in s. 4.3.11 of the Act. Here is a summary of registration conditions for an SSQ awarding body:

- Quality assurance—an SSQ awarding body must:
  - have processes in place to develop courses
  - have arrangements and processes in place to ensure the registered qualification is accessible, awarded or conferred in an accurate and timely manner
  - have assessment frameworks, policies, criteria and standards relating to the curriculum, teaching and learning
  - have processes in place to oversee assessment of the qualification
  - have quality assurance, review and evaluation processes.

- Student records—an SSQ awarding body must:
  - have student record management policies and procedures that detail student enrolment, certification and assessment
  - have procedures to maintain student records and results, and provide them to students and VRQA on request
  - monitor patterns of student participation and completion rates, and the quality of outcomes of students in the registered SSQ
  - each year, analyse student participation, completion rates and outcomes, and make this information publically available
  - advise both registered SSQ providers and the VRQA about patterns of participation and outcome quality.
  
- Governance and probity—the governance and management of an SSQ awarding body must be structured to:
  - develop and review courses and curriculum
  - manage assessment processes
  - develop accurate systems for the management of student records.
  
- Policies and procedures—an SSQ awarding body must:
  - respond to and supply any information requested by the VRQA
  - comply with any guidelines issued by the VRQA
  
- Investigations—an SSQ awarding body must:
  - conduct investigations and hearings and, if necessary, amend or cancel assessments
  - have arrangements in place to enable the VRQA to conduct audits in relation to the minimum standards
  
- Owner requirements—if not the owner of the qualification, an SSQ awarding body must:
  - satisfy the VRQA that it will meet the requirements of the qualification owner.

### *Implementation and evaluation*

Given that the sunseting 2007 Regulations are being remade and the proposed regulations are the same as the existing ones, an implementation plan is not necessary.

Through its industry engagement, the Victorian Government would monitor the value that education institutions place on the qualifications from the two registered SSQ awarding bodies. A panel of independent experts advise the VRQA, and the VRQA would use the panel’s feedback to advise its board on policies and procedures for the registration of SSQ awarding bodies. The VRQA would also monitor the outcomes of registration applications to advise its board.

## **8.4 Prescribed forms**

### *Background*

The Act states ‘prescribed forms’ must be used for:

- school enrolment notices (s. 2.1.17)

- school attendance notices (s. 2.1.18)
- notice of appeal to the Merit Protection Board (s. 2.4.57(3)(b))
- notice of appeal to the Disciplinary Appeals Board (s. 2.4.68(3)(b)).

Each form is a legal notice for initiating a process to enforce a legal duty (regarding compulsory school education), or a review of the exercise of a legal power (regarding a determination made by the Secretary).

### *School enrolment/attendance notices*

The Act empowers a school attendance officer—a person employed, and appointed by the Minister, under the *Public Administration Act 2004* to issue a school enrolment notice to a parent if the officer has reasonable grounds to believe the child is not enrolled in a school (s. 2.1.15). Section 2.1.17 states this notice must be in the prescribed form and include:

- the full name and address of the parent
- the full name and date of birth of the child
- a statement explaining the enrolment options available
- a request that the parent complete the reply form
- the date by which the parent must respond.

The Act empowers a school attendance officer to issue a school attendance notice if the officer has reasonable grounds to believe a child is absent for five days in the previous 12 months, has not provided a reasonable excuse and measures to improve attendance have been undertaken, or are considered inappropriate in the circumstances (s. 2.1.16). Section 2.1.18 states this notice must be in the prescribed form and include:

- the full name and address of the parent
- the full name and date of birth of the child
- the dates the officer believes the child did not attend school
- a request that the parent complete the reply form
- the date by which the parent must respond.

As required by the Act, the *Education and Training Reform (School Attendance) Regulations 2013* (the 2013 Regulations) contain school enrolment and school attendance notices as Schedules 1 and 2. These notices include the required information (the particulars of the allegation that the parent is not fulfilling their legal duty to ensure their child of compulsory school age is enrolled at, or attending, a registered school or home school); and also a short standard form that the parent is encouraged to use when replying to the notice. The parent's reply form allows the parent to explain whether or not the child they are responsible for is enrolled in or attending school or, if not, why not. The parent's explanation of non-enrolment or non-attendance may provide a 'reasonable excuse', which means no further enforcement action may be taken in respect of the allegation in the notice about failure to enrol or attend.

Conversely, if the parent fails to respond to a notice (at all, or to the satisfaction of the school attendance officer), the parent commits an offence against s. 2.1.21 of the Act. The school

attendance officer can, as the case requires, issue an infringement notice (within the meaning of the *Infringements Act 2006*) in respect of that offence that requires paying a penalty (s. 2.1.23).

The proposed regulations incorporate the 2013 Regulations for convenience.

### *Appeals to Merit Protection/Disciplinary Appeals Boards*

Under the Act, a departmental employee can appeal to the Merit Protection Board (s. 2.4.57) if the Secretary makes a determination that the employee is incapable of performing his or her duties due to physical or mental incapacity. Similarly, the employee can appeal to the Disciplinary Appeals Board (s. 2.4.68) if the Secretary makes a determination about unsatisfactory performance or misconduct. In both cases, the notice of appeal must be in a prescribed form. In these instances, the 2007 Regulations (r. 133, Schedule 10) prescribe the minimum information the relevant board needs to hear the appeal. It includes:

- relevant board
- appellant name and address
- copy of the notice of determination
- reasons for appeal
- indication of whether appellant will be represented by another person at the hearing.

The Secretary makes about 130 determinations each year and about a dozen are appealed.

### *Interpretation of prescribed forms*

The *Interpretation of Legislation Act 1984* provides for substantive but not strict compliance with the requirement to use a prescribed form. In practice, this means the required information contained in the prescribed form must be provided, but a person does not have to use the relevant prescribed form. However, a prescribed form must exist for this legal presumption about substantive compliance to operate.

### *Base case and its consequences*

The base case is defined as the situation in the absence of the regulations. The Act requires a prescribed form be used to initiate a formal, legal process (either to enforce compulsory school education, or to appeal against a determination of the Secretary). If there were no prescribed forms, the enforcement and appeal processes would be frustrated. This result would be contrary to Parliament's intention in enacting a scheme of primary legislation (the Act) and delegated legislation (prescribed forms that are required by the Act, and that give effect to the Act).

In the case of enrolment/attendance notices, the Act mandates information to be included in the prescribed forms. In addition, the official enrolment or attendance notices (containing that information) must be in the prescribed form. No other form of notice would enforce compliance with the Act effectively.

In the case of appeals, the Act mandates using a prescribed form of notice to initiate an appeal, although the Act does not specify all of the information required to be included in the notice. As such, the Act relies on regulations to prescribe the form of appeal notice and to specify the information it includes. Without the regulations to prescribe a form, a notice of appeal would potentially include

insufficient information to make the Act operable. As a consequence, appellants may potentially provide wrong or unnecessary information, which may also increase the risk of the board making a jurisdictional error.

### *Identifying the problem*

#### *School enrolment/attendance notices*

Without a legal mechanism to enforce compulsory education for a child of compulsory school age, children may suffer poor educational outcomes as a result of non-attendance. The Act prescribes the procedure for enforcement, while the 2013 Regulations govern the conduct of school attendance officers by providing school enrolment and attendance notices. The formal notices are necessary for school attendance officers to enforce the legislation, and they provide procedural fairness to the parent who must respond to the notice.

#### *Appeals to Merit Protection/Disciplinary Appeals Boards*

The Secretary may have reason to terminate a staff member's duties on occasion. To ensure this process is fair, the staff member has the right to appeal under the Act. Under the Act, employees can initiate appeals using the prescribed form, but the 2007 Regulations prescribe the form and the information to include. Without the regulations, there is insufficient information to make the Act operable, since the Act does not specify the information required in a notice of appeal. Without the regulations, notices of appeals could be made inconsistently or incompletely, with appellants failing to provide the necessary information to establish that the appeal is within a board's jurisdiction.

### *Specifying the objectives*

The primary objectives of the proposed regulations are to ensure the following processes are clear, fair and consistent:

- enforcing laws that require a parent to provide education for their child of compulsory school age (whether at a registered school, or at home with registration)
- conducting appeals against the Secretary's determination in relation to an employee.

The secondary objectives are to ensure these processes are formal and efficient, and sufficient information is provided while unnecessary information is not provided.

### *Identifying options*

The regulations relating to appeals are due to sunset in June 2017, while the 2013 Regulations relating to school enrolment are not due to sunset until 2023.

For convenience, the Department proposes to incorporate regulations relating to school enrolment and attendance into the proposed 2017 Regulations, and then revoke the 2013 Regulations. Similarly to the appeals regulations, the Act intends that a prescribed form be used for the enforcement of compulsory school attendance. The enrolment and attendance notices represent the first step in a possible law enforcement process, so a formal process for this interaction between school attendance officers and parents is needed. These regulations enable an efficient process that is also fair and consistent.

The Department proposes replacing the regulations and schedule for appeals. Allowing the regulation relating to appeals to sunset is not desirable because it would frustrate the legislative intention of the Act—a prescribed form is anticipated for use in initiating an appeal under the Act. A degree of formality is standard practice when appealing a determination of the Secretary to a review body constituted under a statute. A standardised form ensures appellants provide all the relevant information a board requires to conduct the review. It also ensures appellants do not include unnecessary information. This approach makes the process efficient for both the relevant board and the appellant.

### *Preferred option and its effects*

#### *School enrolment/attendance notices*

School attendance officers would need to send notices of enrolment or attendance to parents, who would need to respond using the reply form included in the notice. Regulation prescribes both the form of notice and the form of parent reply. The Department does not propose changing the wording of the 2013 Regulations.

#### *Appeals to Merit Protection/Disciplinary Appeals Boards*

Appellants of the Secretary's determinations would need to set out the reasons for appeal in their written application to the relevant board. Requiring an appellant to set out the reasons in a prescribed form does not place any additional burden on the appellant or the board, compared with what they would otherwise undertake to present and gather the necessary information.

#### *Changes from the 2007 Regulations*

The form in Schedule 10 of the 2007 Regulations would be updated to reflect the amendments to the Act in 2008. This change involves adding underperformance as a permissible ground for appeal to the Disciplinary Appeals Board (Division 9A).

### *Implementation and evaluation*

Implementing the change to the notice of appeal form would involve replacing the regulations with the proposed change and changing the form in Departmental and board webpages to link to a new form, and reprint hard copy forms.

The 2013 Regulations would be revoked from June 26 2017, with these provisions included in the proposed 2017 Regulations. The enrolment and attendance forms would not change so there would be no implementation required.

## **8.5 Scholarships and allowances**

### *Background*

The Act provides the Minister with the power to grant a scholarship to a person at any school, university or other educational institution subject to any terms or conditions prescribed by the regulations (s. 5.7.2). The 2007 Regulations establish the conditions of the scholarship awarded, and

limit the amount of the scholarship to \$30,000 per year (rr. 101–102), making s. 5.7.2 of the Act operable. Currently, no scholarships expressly rely on the Minister’s power in the Act.

Under the *Financial Management Act 1994*, the Minister and the Secretary both have discretion in determining whether or not an applicant receives public funding and what conditions apply for providing a publicly funded financial benefit. This authority allows the Minister to allocate funds from the Department’s budget to set up scholarships. The Department uses other arrangements to fund and allocate scholarships for education, including private bequests.

The Department currently administers 22 scholarship schemes, comprising 210 scholarship awards with a total value of about \$245,000 per year. None of these scholarships expressly rely on s. 5.7.2 of the Act. These include:

- Lynne Kosky Memorial VCAL Scholarship—which is funded by the Department and consists of payments of \$5,000 grants over five years for students who face financial barriers to remaining in education. A total of \$20,000 was awarded in 2016.
- Wannik Education Scholarship—which provides \$5,000 to Indigenous students in government schools for years 11 and 12 who demonstrate a high potential to succeed in their chosen pathway. Twenty scholarships totalling \$100,000 were awarded in 2016.

### *Needs for scholarships*

Education generates significant benefits for individuals and society. In particular, education can foster inclusion and reduce economic disadvantage. However, not all people have the same access to high quality education. Some students face significant financial barriers to undertaking education because they must pay course fees upfront and meet day-to-day living expenses. Further, students are constrained in the extent that they can work to support their study. Such financial barriers to education exacerbate and entrench the financial disadvantage for students in particular communities.

Finance markets may provide loans to students but borrowing costs tend to be high, because the risk of default is relatively high. Private bequests for education are limited. For these reasons, government has a role in supporting some students to continue their education to achieve equity objectives. Governments in Australia achieve this outcome in several ways, including through:

- student loan schemes that assist students with course fees, such as HECS and VET FEE-HELP
- Commonwealth-funded allowances that assist with living costs, such as AUSTUDY, ABSTUDY, the Youth Allowance Scheme and student start-up scholarships
- discounts for RTO fees for eligible concession card holders
- public and private scholarships.

The HECS and VET FEE-HELP schemes help students overcome financial barriers to higher education by allowing students to defer their course fee payments until their income reaches a certain level. However, these schemes are not available to all students and they are not strictly need based, because financial capacity is not a determinant of eligibility. Further, they do not assist with day-to-day living expenses or other costs of education. Allowances based on financial needs can assist with living expenses, but students may also incur other expenses.

Scholarships are an option for government to financially support students who are ineligible for other assistance or to provide additional support for expenses not covered by other forms of assistance. The Act and the *Financial Management Act 1994* provide for the granting of scholarships and for public funding in prescribed circumstances.

To promote confidence in public administration and ensure funds meet policy objectives, eligibility criteria, obligations and conditions on recipients must be specific and transparent. Fund recipients must also provide evidence that they meet such eligibility criteria and conditions. Prescribing the criteria and conditions for granting public money in legislation would ensure scholarships are effective in supporting recipients to make satisfactory progress in their study. It also allows the public to scrutinise the conditions under which money is to be awarded, and creates a disincentive for applicants to renege on conditions or fraudulently claim eligibility.

There are no known instances of scholarship recipients not meeting the conditions of their scholarships or fraudulently claiming eligibility, where the Department would have to resort to enforcing the scholarship conditions through legal procedure. This result highlights the significance of legislated criteria and conditions in providing clarity of purpose to the Department and scholarship applicants. The Department considers the potential risk with public money misuse to justify having legally enforceable criteria and conditions for scholarships.

#### *Base case and its consequences*

The base case is defined as the situation in the absence of the proposed regulations—that the Minister would be empowered to grant scholarships without having the terms and conditions set out in regulations, making the Act's provision inoperable. The Government could not rely on s. 5.7.2 of the Act to provide students with financial support to undertake education. Students would continue to have access to other forms of financial support including scholarships from the Government subject to conditions and criteria with high enforcement hurdles.

#### *Identifying the problem*

The residual problem to be addressed by the proposed regulations relates to instilling a low-cost enforceable mechanism that ensures public funds are granted through scholarships to fulfil intended purposes. One solution is to impose conditions and obligations on scholarship recipients, such as requirements to take up jobs in hard-to-fill vacancies or for graduate teachers to work in specific schools after graduation for a specified period. Sureties can provide a way of ensuring that obligations are met.

#### *Specifying the objectives*

The primary objective of the regulations is to support students to meet the cost of continuing their education in the face of financial barriers. The secondary objective is to ensure the integrity of providing public funds to individuals, which requires specifying transparently the conditions under which funds are paid and making them legally enforceable. Limiting the amount of funds to award would control integrity risk. Achieving this objective would contribute to public accountability, creating clear expectations about granting and administering public funds.

The Department may seek to achieve particular objectives with its scholarships—for example, providing incentives for graduate teachers to take up hard-to-fill vacancies in rural locations or for particular subjects. Obligations and sureties are important for ensuring scholarship policy objectives are met.

### *Identifying options*

The options considered relate to the conditions specified in the regulations. Under the 2007 Regulations, scholarship applicants must enter into an agreement with the Minister that includes provisions for: (i) the term of the scholarship; (ii) the amounts of payments; (iii) any obligations for the applicant; and (iv) any sureties required. The 2007 Regulations contain requirements that the applicant is accepted for admission into the course for which the award was made, and attends the institute for which the scholarship was awarded; and that the Secretary is satisfied with the attendance, conduct and progress of the scholarship recipient. The regulations also specify that the value of a scholarship must not exceed \$30,000.

The Department did not consider options that provide low assurance of the link between funds use and policy objectives. An example is imposing a minimal condition such as one relating only to the payment amount. Reducing eligibility requirements may give the Minister greater flexibility to grant scholarships that meet applicants' needs, but at the expense of increasing the risk that applicants may not use the funds as intended for particular policy objectives.

### *Assessing options*

The Department considered two options:

#### *Option 1—replace the 2007 Regulations to support scholarships under the Act*

No changes are made to the 2007 Regulations relating to scholarships. If the Minister wants to issue a scholarship under the Act, he or she would have the regulations in place to prescribe conditions and limits on amounts.

#### *Option 2—replace the 2007 Regulations to include performance-based obligations*

Under this option, the regulations are remade to include conditions that are based on applicants meeting certain performance-based criteria. Most of the existing conditions are retained, with other obligations modified to link payment to performance over the term of the scholarship. Specifically, scholarships would be allocated based on a set of eligibility conditions but payments to recipients would vary depending on, for example, the evidence they produce of their achievement such as progress reports and references from their instructors.

### *Preferred option and its effects*

Compared with the base case, both options promote equity by supporting students who face financial barriers to continuing their education and providing the Minister with flexibility to grant need-based scholarships.

The preferred option is to keep the current regulations. While currently, no scholarships expressly rely on the Minister's power in s. 5.7.2 of the Act and the 2007 Regulations, the Government may wish to

grant scholarships under this section of the Act in the future. The Act does not contain sufficient detail to guide granting and managing scholarships. Prescribing conditions in the regulations would fill this gap, giving the Minister and scholarship applicants transparency, consistency and fairness in allocating scholarship funds. It would also allow the Government to tailor the particulars of each scholarship to the policy intent of each award.

By contrast, option 2 is likely to impose a high cost on the Department to establish and monitor performance-based conditions, particularly for addressing disputes that may arise over the interpretation of such criteria. Recipients would incur costs for having to demonstrate that they fulfil performance-based criteria. Further, the contingency of payment on performance would add uncertainty and financial insecurity to recipients' study plans.

Given no scholarships have been issued under s. 5.7.2 of the Act, a new performance-based framework is unlikely to generate net benefits that justify its development costs.

The annual cap of \$30,000 for a scholarship recipient exceeds the highest value of scholarships that the Department has awarded. This cap is considered appropriate for future scholarships because it allows for inflation over time and is broadly in line with the amount of other scholarship schemes.

### *Implementation and evaluation*

An implementation plan is not required, given that sunseting regulations are proposed to be remade with no changes.

The Department will monitor the use of s. 5.7.2 of the Act to determine how many scholarships are issued under the Act and whether conditions are met. If a scholarship is issued under s. 5.7.2, the Department will develop a plan to monitor and enforce compliance with the conditions of the scholarship. This plan will involve collecting information on how many times the conditions of scholarships are not met and need to be enforced through legal procedure. The plan will enable the Department to assess whether the regulations are effective in discouraging students from renegeing on the conditions of their scholarships or fraudulently claiming eligibility.

## 9. Regulations to sunset

The Department proposes not to replace the regulations relating to the education maintenance allowance and the elections for the council of the Victorian Institute of teaching after they sunset. This chapter explains the rationales for these proposals.

### 9.1 Education Maintenance Allowance

Before 1 January 2015, the Education Maintenance Allowance (EMA) provided financial assistance to eligible low-income families to help reduce the costs of educating their children. The EMA was available to students attending a government or non-government school. It was a means-tested payment available to parents holding a Centrelink or Veterans Affairs concession card.

From 1 January 2015, the Victorian Government discontinued payment of the EMA and instead introduced financial support to Victoria's neediest schools. Those schools are identified using the Student Family Occupation and Education Index. The change followed from the 2013 Heads of Agreement about national school funding reform, which was signed by the Victorian and Commonwealth governments (the Gonski Agreement). As part of the funding reform, the Victorian Government has changed the way it helps low income families with education expenses.

The Victorian Government introduced new funding to help eligible families meet the costs of camps, sporting participation and excursions. The Camps, Sports and Excursions Fund (CSEF) commenced in 2015. Families holding a valid means-tested concession card and temporary foster parents are eligible to apply. Payments are made directly to the school and are tied to the student. Approximately 222,000 Victorian school students directly benefit from the CSEF.

Division 1 of Part 10 of the 2007 Regulations provides for EMA applications and grants, including:

- eligibility criteria for a parent to apply for the EMA (r. 97)
- eligibility criteria for an institution to apply for the EMA for a student in its custody (r. 98)
- procedures for completing an application (r. 99)
- the powers and functions of the Minister and Secretary in granting the EMA (r. 100).

Given that changes have already been made to the program, Division 1 is redundant and should expire when the 2007 Regulations sunset.

### 9.2 Elections for the council of the Victorian Institute of Teaching

Up to 2014, the *Education and Training Reform Act 2006* provided for the council of the Victorian Institute of Teaching (VIT) to comprise no more than 12 members—that is, five members appointed by the Governor in Council on the recommendation of the Minister, six members elected in accordance with the Act and the 2007 Regulations, and one position for the Secretary.

The 2007 Regulations prescribe the process for electing members to the council of the VIT (Part 11, rr. 103–132).

The *Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Act 2014* was passed to amend the 2006 Act, to provide for a new composition of the council of the VIT. Following the amendment, the council can have no more than

12 members, comprising up to 11 members appointed by the Governor in Council on recommendation of the Minister, plus one position for the Secretary.

Following the 2014 amendment to the 2006 Act, the council of the VIT has no elected positions. The amendment has made Part 11 of the 2007 Regulations redundant, so Part 11 should expire when the 2007 Regulations sunset.

## 10. Impact on small business and competition

The legislative framework for the regulation of education and training providers consists of the *Education and Training Reform Act 2006* and associated regulations, Ministerial Orders and Victorian Registration and Qualifications Authority (VRQA) guidelines. Its impact on small business and competition arises primarily from the Act's requirement for entities to register with the VRQA to operate in Victoria. In particular, the Act and Ministerial Orders, rather than the 2007 Regulations, provide for registration fees as part of the compliance costs.

The proposed regulations affect a range of entities, including government owned and not-for-profit (NFP) organisations, and private operators that deliver education and training services. They also affect individuals and families. This chapter examines the impact of the proposed regulations on small business and competition in the education and training sector.

### 10.1 Impact on small business

According to the *Victorian Guide to Regulation* (DTF 2014), it is good practice for a RIS to consider the regulatory impact of proposed regulations on small business. This requirement reflects the concern that regulation can result in disproportionate administrative and compliance costs on small businesses. The concern arises because those businesses have limited resources to meet compliance requirements, and because the compliance burden is often a fixed cost that remains the same regardless of the scale of operation.

The proposed regulations will affect registered training organisations (RTOs) and other non-school organisations that deliver vocational education and training (VET) and senior secondary courses. Schools must be not-for-profit (s. 2.7.1 and r. 26 of the Australian Education Regulation 2013 (Cwlth)), so they are not businesses (section 4.1).

The costs of complying with registration requirements generate the main impact on RTOs and other non-school service providers. Most of the compliance costs are caused by the requirement to register under part 4.3 of the Act. The 2007 Regulations operationalise this requirement. The Department considers the regulations to not materially add to the costs imposed by the Act, as captured in the base case (chapter 4).

There are no reliable estimates of the compliance costs associated with the registration of RTOs and non-school senior secondary course providers. The costs attributable to the regulated standards for registration are likely small, because the regulations map directly to the corresponding registration requirements of the Act. Further, none of the regulations for minimum standards or criteria relates to requirements other than those in the Act (chapter 4).

During the consultation process, no stakeholders raised issues relating to the compliance burden of registration. Consequently, the Department considers the proposed regulations to be unlikely to impose material burden on RTOs and non-school providers in addition to the Act's requirements.

### 10.2 Competition assessment

In assessing competition impacts, the Department's guiding principle is that regulation should not restrict competition or market entry unless it can be demonstrated, for the community as a whole,

that the benefits of the restriction outweighs the costs, and that the objectives of regulation can be achieved only by restricting competition.

The Department applied the National Competition Policy (NCP) competition test to guide its assessment of whether the proposed regulations restrict competition. This test is based on the following questions:

- Is the proposed measure likely to affect the market structure of the affected sector(s)?
- Will it be more difficult for new firms or individuals to enter the industry after the proposed measure is imposed?
- Will the costs/benefits associated with the proposed measure affect some firms or individuals substantially more than others (such as small firms and part-time participants in occupations)?
- Will the proposed measure lead to higher ongoing costs for new entrants that existing firms do not have to meet?
- Is the proposed measure likely to affect the ability or incentive to innovate or develop new products or services?

Table 10.1 summarises the scope of competition assessment for the proposed regulations. The Department identified registration as a potential constraint on competition in education and training markets.

**Table 10.1: Scope of competition assessment**

Regulations	Regulated entities	In scope
Home schooling	Individuals	No
Registration of schools	Government entities, NFPs	Yes
Registration of senior secondary course providers	Government entities, businesses	Yes
Registration of RTOs	Government entities, NFPs, businesses	Yes
Travel and transport	Individuals	No
Parents' clubs	Individuals	No
School councils	Individuals	No
Government school education		
• Age requirement	Government schools, individuals	No
• Terms dates	Government schools, individuals	No
• School closures	Government schools, individuals	No
Registration of senior secondary qualification awarding bodies	Government entities, NFPs, businesses	Yes
Consumer protection	Government entities	No
Scholarships	Individuals	No
Prescribed distance	Individuals	No
Prescribed forms	Individuals	No

Registration requirements are prescribed to assure the quality of teaching and learning. Meeting these requirements depends on the employment of qualified professionals and managers for carrying out quality assurance functions. Implementing the proposed regulations for registration would be unlikely to curtail the supply of qualified workforce to the sector.

The proposed regulations would uniformly apply to all new entrants and incumbents in the sector, so would have no discriminatory impact on particular providers. For non-school providers that compete

with schools for students in certain courses, the proposed regulations would not diminish their competitiveness because the schools would face no less stringent registration requirements.

For bodies that award senior secondary qualifications, the Department assessed that the regulatory costs incurred for registration are insignificant relative to normal operational costs. Additionally, both new entrants and incumbents would face largely the same regulatory costs. For these reasons, the proposed regulations would not disadvantage the entry of a new body that awards these qualifications. The real barrier to entry is non-regulatory, relating to the sunk costs required for building the trust and acceptance of the qualification on offer.

For these reasons, the Department concluded that the proposed regulations do not restrict the market entry and competition of individual education and training providers.

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