**Statement of reasons for making the *Education and Training Reform Regulations 2017***

**Summary**

The Education and Training Reform Regulations 2017 (the Regulations) will provide an essential framework to support Victoria’s education and training sector. These Regulations will replace the *Education and Training Reform Regulations 2007* (the 2007 Regulations) which expire (sunset) on 26 June 2017 in accordance with section 5 of the **Subordinate Legislation Act 1994**.

As the Ministers responsible for administering the *Education and Training Reform Act 2006*, and the substantive policy of the Regulations, we have recommended to the Governor in Council that it make these Regulations.

**Background**

The *Victorian Guide to Regulation* (2016) recommends the preparation of a statement explaining how the general issues raised in the public submissions have been addressed in the Regulations. The ‘statement of reasons’ is to be published on the same website used to consult on the Regulatory Impact Statement (RIS) (http://www.education.vic.gov.au/legislation) and will also be made available in hard copy on request.

The Regulations relate to:

1. the conduct of school education, including prescribing the minimum standards for the registration of a Government or non-Government school;
2. the procedures and requirements for school registration;
3. admission, attendance and student engagement, including restraining students from dangerous acts or behaviour, at Government schools;
4. minimum and maximum age requirements for enrolment and attendance at Government schools and participation in programs and courses of study at Government schools;
5. the conduct of school councils in Government schools;
6. parents’ clubs and fundraising in Government schools;
7. procedures for and requirements of registration of students for home schooling;
8. minimum standards and procedures for registration of persons, bodies or schools to:
   * 1. provide accredited senior secondary courses; or
     2. award, confer or issue registered senior secondary qualifications;
9. dispute resolution and student welfare schemes;
10. the role of the Victorian Registration and Qualifications Authority (VRQA) in investigating certain complaints;
11. approval of transport services and grant of travelling allowances for students;
12. the grant of scholarships;
13. other matters necessary to give effect to the *Education and Training Reform Act 2006*.

**Consultation and submission responses**

The Department of Education and Training (the Department) undertook an initial public consultation process in May and June 2016. That process led to the Department receiving and considering 45 submissions on the operation of the 2007 Regulations, and identifying opportunities for improvement.

In September 2016, the Department invited organisations and individuals with an interest in education and training in Victoria to meet with the Department to discuss the operation of the 2007 Regulations and proposed changes.

Using this initial feedback, the Department prepared a Regulatory Impact Statement (RIS) and a consultation draft of the proposed Regulations.

The RIS concluded that the majority of the 2007 Regulations were proportionate and functioning well and did not require substantial change in the new Regulations. In summary, the RIS recommended some changes to policy reflected in the 2007 Regulations relating to:

* home schooling (including introducing a requirement for a learning plan at the time of registration, and clarifying the Victorian Registration and Qualifications Authority’s (VRQA) power to conduct reviews of existing home schooling registrations)
* parents clubs and Government school fundraising (including changes to the way parents’ clubs manage their funds)
* the minimum standards for registration of schools (including the school governance standard and the not-for-profit standard)
* a minor reduction to the ‘prescribed distance’ that applies for the purposes of a reasonable excuse for a child aged nine years or over to not attend school, from 5km to 4.8km consistent with the same prescribed distance for student transport assistance
* complaint investigation function of the VRQA (including new rules around when the VRQA may decline to investigate a complaint)
* minor clarification to the existing requirements for government school councils to allow for improved flexibility for ongoing operation.

The Department published notice of the RIS and consultation draft of the proposed Regulations in the Government Gazette, *the Herald Sun* and *The Age* and invited public comments. The 69-day public consultation period commenced on 21 December 2016 and ended on 28 February 2017. In response to the RIS, the Department received and considered 549 written submissions.

The majority of the submissions were from individuals in the home schooling community who raised issues with the proposed changes to home schooling, for example:

* the 28-day period for assessment of an application for registration being too long, (many people’s submissions were concerned that this could mean that a child who is experiencing bullying or other difficulties at school would not be able to be removed from school and immediately commence home schooling)
* the requirement to prepare learning plans being burdensome on parents and not sufficiently flexible to include the varied methodologies of home schooling
* the VRQA being granted a broad review power
* a lack of data to justify the proposed changes
* a lack of resources and government support for home schooling families
* insufficient consultation with home schooling families by the Department.

A small number of submissions supported the proposed changes to the regulation of home schooling, noting that increased regulation would lead to better oversight of education for children.

Other submissions raised concerns about other aspects of the proposed Regulations including parents’ clubs’ bank accounts, student transport assistance, school governing body members being ‘fit and proper’ persons, and the use of restraint to respond to situations of immediate danger in a government school.

**Reasons**

After consideration of the submissions received about the consultation draft of the proposed Regulations, some further, mostly clarifying, changes have been made. The key changes are explained in the Issues section below.

In response to the feedback in the submissions, the Government made some changes to:

* regulation 5 (definition of ‘proprietor’)
* regulation 14 (temporary closure of Government schools)
* regulation 58 (fundraising in Government schools)
* regulation 72 (application for registration for home schooling)
* regulation 77 (requirement to notify VRQA of changes to details)
* regulation 117 (a for profit school registered before 1 July 2007 may continue to be conducted on a for profit basis)
* regulation 119 (transitional provision – minimum standards for registration of schools)

The remainder of the Regulations are in a similar form to the consultation draft published in December 2016, with the exception of some minor drafting amendments to that draft to correct or clarify provisions and for consistency with current legislative drafting style and practice.

**Conclusion**

After taking all of the above matters into account, we have decided that the proposed Regulations should be made as proposed and with the changes listed above.

**THE HON JAMES MERLINO MLA**

**Minister for Education**

**THE HON GAYLE TIERNEY MLC**

**Minister for Training and Skills**

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# Issue 1 - Home Schooling

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| Issue |
| The Government is introducing new regulations for home schooling with increased registration and ongoing monitoring requirements. Under the proposed changes:   * when applying to register for home schooling, families will be required to provide a learning plan to the Victorian Registration and Qualifications Authority (VRQA) that outlines how they will deliver instruction in the eight key learning areas and what resources and materials they will use to deliver instruction. * the VRQA will be able to review a proportion of registered families each year to ensure that the conditions of registration are being met. The review would require parents to provide evidence that instruction is taking place regularly, and evidence of their child’s learning progress. |
| Government response |
| In Victoria, school education is compulsory for children between the ages of 6 and 17. The Government recognises that parents may choose to home school their children for a variety of reasons. Families who choose to home school accept the full responsibility for the education of their child and families take this responsibility very seriously.  The 2007 Regulations only require a parent who wishes to home school their child to submit an application form attesting that they understand and will abide by relevant regulations to home school their child. There is no further follow-up monitoring or assessment of the child’s learning progress nor is there a requirement to demonstrate any specific understanding of instructional practice that will meet their child’s needs. The Victorian position under the 2007 Regulations is quite different to other Australian jurisdictions, all of which have active regulatory oversight of home schooling families. For example, in South Australia home schooling families must adopt the Australian curriculum, are subject to a home visit assessment for registration, and must submit to ongoing home visit assessments as they re-register for home schooling each year.  The submissions received show that the vast majority of home schooling families are providing a rich and varied education to their children. Regulations aim to improve the quality of instruction for home schooled children and their educational outcomes. The submissions received during the public consultation process provided a great deal of insight into the home schooling community.  The Government is introducing a new requirement that the parent responsible for home schooling provide a learning plan at the time of registration. Requiring a parent to draft a learning plan will prompt all parents who are considering home schooling to reflect on the specific educational needs of their child, whether they are equipped to deliver education in a home setting, and how they will deliver that education. For the overwhelming majority of parents, this will not be onerous when compared with the task of taking responsibility for educating their child. It is expected that most home schooling families are already engaging in some form of planning for their children’s education and will be able to easily articulate that in a plan.  The learning plan requirement will be broad enough to encapsulate a range of learning approaches and styles. There is no requirement for the parent to adopt any particular curriculum or learning approach, which is the case for many other Australian jurisdictions. The proposed approach is flexible and will allow for a broad range of learning styles, and recognises that home schooling methods and approaches may change over time. The existing requirements that the responsible parent for home schooling substantially address the eight key learning areas and provide regular and efficient instruction in accordance with the principles of Australian democracy remain.  The proposed changes will extend the time for the VRQA to assess an application for registration of home schooling from 14 days to 28 days. The additional time is required to give the VRQA sufficient time to assess the learning plans. Students of compulsory school age must remain enrolled in school until they are registered for home schooling. This reflects the requirements of the *Education and Training Reform Act 2006* which requires all Victorian children of compulsory school age to either be enrolled in and attending a registered school or registered for home schooling. If, when registration is pending for home schooling, a child is unable to attend school due to special circumstances, the parents should approach the principal and request that their child be excused from attending school, as allowed by the *Education and Training Reform Act 2006*.  The VRQA’s review function considers whether the eight key learning areas are being addressed as a whole. The review will require parents to provide evidence of the student’s educational progress. Practical examples of this may include samples of student work over time or NAPLAN results, if available. It is anticipated that the VRQA will review around ten per cent of registered families each year. Unlike many other Australian jurisdictions, the Regulations would not mandate home visits. In Victoria, a home visit may only be conducted with the parent’s consent.  The assessment of learning plans and the conduct of reviews will be undertaken by qualified assessors engaged by the VRQA. Assessors will have knowledge and expertise in educational practices, and will be able to apply that knowledge to consider different types of learning styles.  When comparing Victoria to other Australian jurisdictions, it becomes clear that even under these Regulations, Victoria will continue to have the least onerous regulatory approach. For example, in New South Wales children can only be registered for a maximum of 24 months, and parents must reapply and receive a home visit every time they wish to be registered or re-registered. Data shows the system in New South Wales is effective, but maintaining that level of regulation imposes a burden on families and the regulator. Both Tasmania and Western Australia require home visits to ensure the developed program is satisfactory for the child’s learning. Queensland requires a parent to complete an annual report on their child for routine monitoring, which assists with data collection, and ensures that Government has oversight of how children are progressing, but this requirement would create a regulatory burden on parents.  The new Regulations balance the need for increased oversight with the need for families to maintain flexibility. The reforms will assist the Department to deliver on its responsibility to ensure that all children are receiving a quality education. |

# Issue 2 – Changes to Parents’ Clubs and Government School Fundraising

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| Issue |
| The Government is making some changes to the regulations for parents’ clubs operating in Government schools by:   * removing the option for a parents’ clubs to maintain a separate bank account; instead, all clubs will hold funds in a subprogram under the school’s official account * providing for automatic dissolution of parents’ clubs if the school closes or merges * clarifying that the function of an interim committee is limited to developing a constitution and seeking ministerial approval to form a Parents’ Club * mandating consistency with the use of the model constitution published by the Secretary to the Department. |
| Government response |
| The Government respects the important role that parents’ clubs play in supporting school councils, schools themselves and the wider community by offering independent ideas and feedback on the welfare and education policy of their school. For parents’ clubs to operate effectively, the regulations should strike a balance between the need for autonomy from the school and the need for accountability.  There are approximately 540 parents’ clubs operating in Victoria, representing about one third of Victorian Government schools. In 2015, these clubs generated an estimated $7 million in funds. Parents’ clubs fundraising is an important source of additional income for schools and funds raised are used for a variety of purposes.  Parents’ clubs support school councils by engaging in fundraising activities. Currently, most parents’ clubs keep their funds in a subprogram of the school’s account, while a small number of parents’ clubs keep their funds in a trust (or bank account) which is separate from the school’s account. While there have been no reported incidences of parents’ clubs misusing funds, maintaining a separate bank account could potentially pose a risk to the integrity of school finances, as funds could potentially be spent for non-school related purposes, and schools have limited oversight of this spending.  The Regulations will remove the option for a parents’ club to have a bank account separate from the school council’s account. There are approximately 26 parents’ clubs with separate bank accounts. These parents’ clubs will be supported to transition to the new arrangements. Practically, this will result in minimal changes except for the school council providing approval for parents’ clubs for specific fundraising and expenditure initiatives. The proposed regulatory changes reflect the importance of balancing the transparency of club finances with the interests and initiatives of club volunteers in serving their school community.  The Regulations also provide for voluntary dissolution and clarify that a parents’ club must automatically dissolve if a school closes or merges. The Regulations also provide a revised procedure for forming an interim committee for the purposes of forming a parents’ club. The interim committee will not have the fundraising rights and functions of a parents’ club. The interim committee is formed solely to develop the club’s constitution and seek ministerial approval for the formation of the club.  The Regulations will require parents’ clubs to adopt a constitution that is consistent with the model constitution published by the Secretary of the Department. This will lead to greater consistency in the operation of parents’ clubs across Victoria. |

# Issue 3 – Registration of Schools

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| Issue |
| The Government considers it appropriate to maintain the current approach to the registration of schools, including the substance of the minimum standards for school registration.  The following proposed changes will strengthen or clarify the requirements for school registration:   * clarify the ‘not-for-profit’ status of a school proprietor so that schools and school proprietors do not engage in prohibited agreements or arrangements, including those between the school and the proprietor * introduce a broader definition of ‘proprietor’ to make it clearer who is responsible for a school’s governance * 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 the significant people who have influence over a school’s operations and decisions * require a registered school to not only publish a clear statement of philosophy but also to be able to demonstrate how it is enacted * require a school to have suitable arrangements in place to enable it to comply with applicable guidelines issued by the VRQA * require the school to be conducted in accordance with the scope of its registration * administrative change to stipulate the date for an application for, or amendment to, a school registration. |
| Government’s response |
| The Education State in schools is about improving outcomes for all Victorian students. Effective regulation of school registration is the government’s mechanism for ensuring that all primary and secondary schools in Victoria have the structures in place to deliver a high quality education. The prescribed minimum standards provide assurance to the public that regardless of which school they choose, their children will have access to a quality education.  Consultation with stakeholders and evidence from the VRQA has demonstrated that the broad approach to school registration is fit for purpose. However, the Government considers that there are opportunities to improve the effectiveness of the minimum standards for school registration.  The Regulations strengthen the definition of a ‘not-for-profit school’ to ensure that money raised by a school is directed solely towards its educational purpose. This is important to safeguard and maximise the benefit of public and parental investment (for example, through fees) in the education of Victorian children. The changes broaden the definition of a ‘prohibited agreement and arrangement’ to prohibit the transfer of school funds and assets to organisations or individuals that operate on a not-for-profit basis as well as those operating for profit. This intent will be supported by the change to the minimum standards requiring schools to have ‘sufficient controls’ in place to ensure that such a transfer does not take place.  The Government has decided to more clearly identify those responsible for decision-making in non-Government schools and to require those governing bodies and individuals to meet a ‘fit and proper person’ test. In particular, the ‘fit and proper person’ test will apply to:   * a broader definition of ‘proprietor’ which is intended to capture all relevant individuals and bodies responsible for and involved in the management of a school ; and * a ‘responsible person’, which is intended to assist the VRQA to identify the people who (collectively or individually) have a significant influence over the school’s operations, even where those persons do not have an official office or title.   These changes are proportionate to the relatively broad scope for decision-making and the corresponding higher risk to governance and/or finances in non-Government schools. The ‘fit and proper person’ test includes a new element requiring disclosure of relevant adverse findings or other sanctions relating to dishonesty or non-compliance with an obligation relating to the provision of education. The requirement to satisfy the ‘fit and proper person’ test is ongoing and ensures that the responsible people in non-Government schools conduct themselves appropriately for those responsibilities.  For many non-Government schools this change will involve minimal additional regulatory burden due to their existing compliance requirements under federal legislation related to their incorporated or company structure, or charitable status. The benefit of its inclusion in the minimum standards for registered schools in Victoria is that it allows the VRQA to enforce a similar standard for decision-makers as a requirement for school registration. This change will not apply to Government school councils and principals as their operations are regulated by other legislative instruments and governance structures that are ultimately regulated by the Minister for Education, who is responsible for Government schools.  There are a few small changes to other minimum standards that are being made which require registered schools to:   * have systems in place to ensure they can comply with the VRQA’s guidelines * be conducted in accordance with the scope of their registration * be able to demonstrate how the school’s philosophy is enacted.   The Regulations also provide that an organisation seeking to become registered as a school must do so by 30 June of the year before it intends to operate. This change reflects current practice, whereby the VRQA gazettes 30 June as the application date each year. |