

Key Legislation Impacting NSW Catholic Schools

A Reference Summary

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A. CANON LAW

B. DEPARTMENTS AND AGENCIES

- [NSW Department of Education \(DoE\)](#)
- [NSW Education Standards Authority \(NESA\)](#)
- [NSW Ombudsman](#)
- [Office of the Children’s Guardian \(OCG\)](#)
- [NSW Advocate for Children & Young People](#)
- [Australian Government Department of Education \(AGDET\)](#)
- [Australian Curriculum, Assessment and Reporting Authority \(ACARA\)](#)
- [Australian Charities and Not-for-profits Commission \(ACNC\)](#)
- [Australian Institute for Teaching & School Leadership \(AITSL\)](#)
- [Australian Skills and Quality Agency \(ASQA\) - VET](#)
- [Australian Human Rights Commission](#)
- [Australian Children’s Education and Care Quality Authority \(ACEQA\)](#)
- [Australian Securities and Investment Commission \(ASIC\)](#)
- [Fair Work Commission \(FWC\)](#)
- [NSW Food Authority](#)
- [NSW Health](#)
- [Aboriginal Affairs NSW](#)
- [NSW Aboriginal Land Council](#)
- [Secretariat of National Aboriginal and Islander Child Care \(SNAICC\)](#)
- [Australian Tax Office \(ATO\)](#)
- [The NSW Environment Protection Authority \(EPA\)](#)
- [Royal Society for Prevention of Cruelty to Animals \(RSPCA\)](#)
- [Safework Australia / Safework NSW](#)
- [Office of the eSafety Commissioner](#)
- [Office of the Australian Information Commissioner \(OAIC\)](#)
- [Workcover](#)
- [Information and Privacy Commission NSW \(IPC\)](#)
- [Catholic Professional Standards Limited \(CPSL\)](#)
- [Anti-Slavery Commissioner NSW](#)

C. NEW SOUTH WALES

1 Education Act 1990 (NSW)

1.1 Content

- 1.1.1 Part 3: K-12 curriculum requirements for all NSW schools.
- 1.1.2 Part 5: Attendance requirement and compulsory school-age.
- 1.1.3 Part 5A: Risk -assessments and dealing with students posing a risk to the safety of students and staff.
- 1.1.4 Part 7: Registration and continuing registration requirements for non-government school, including provisions related to financial assistance and not-for-profit requirements.

1.2 Impact

- 1.2.1 Sets credentialing requirements for the ROSA and HSC. Determines School Registration and Accreditation requirements and related obligations of school proprietors.
- 1.2.2 Also regulates State funding for non-Government schools. See Section 83B 'Financial and other assistance in respect of non-Government school children'.
- 1.2.3 Also, student attendance requirements which are integrated with Child Protection, Keep Them Safe, requirements, including section 22A Information Exchange powers. Also, Section 83C regulates the not-for profit status of non-government schools. The enrolment of Overseas Students is also regulated.

2 Education Standards Authority Act 2013 (NSW) ('NESA Act')

2.1 Content

- 2.1.1 Part 2 – Objects and Functions of Authority
- 2.1.2 Part 3 – Inspections of education premises

2.2 Impact

- 2.2.1 The NESA Act creates the independent statutory authority, the NSW Education Standards Authority (NESA) and prescribes its objects and the functions of the Authority. Such functions include; developing and monitoring teaching quality and professional standards, the school curriculum, forms of assessment, and regulatory standards for schools. Under section 14 of the NESA Act, NESA has the authority to inspect schools.

3 Teacher Accreditation Act 2004 (NSW) ('TAA Act')

3.1 Content

- 3.1.1 Part 2 – Authority's functions and Quality Teaching Committee
- 3.1.2 Part 4 – Accreditation of teachers
- 3.1.3 Part 4 – Miscellaneous: including the requirement of the Authority to be notified of certain matters and payment of suspended teachers.

3.2 Impact

- 3.2.1 The TAA Act gives NESA the power to monitor the accreditation process across all schools, and to ensure professional teaching standards are applied fairly and consistently. The TAA is also given the authority to make decisions on the approval of a teacher education course or program or a person or body to provide professional development in accordance with the professional teaching standards.

4 Vocational Education and Training (Commonwealth Powers) Act (NSW) 2010 ('VETCP')

4.1 Content

4.1.1 Section 7 – Amendment of Commonwealth Law

4.2 Impact

4.2.1 The VETCP transfers the jurisdiction for Vocation Education Training ('VET') regulation to the Commonwealth and dissolves the NSW VET Board. The result is that the National VET regulator (the 'Australian Skills Quality Authority ('ASQA')) has absorbed responsibility for VET regulation.

4.2.2 See the relevant [National Vocational Education and Training Regulator Act 2011 \(Cth\)](#) on page 26.

5 Skills Board Act 2013 (NSW)

5.1 Content

5.1.1 Part 2 – Constitution and functions of the Board

5.2 Impact

5.2.1 NSW Skill Board replaces the previous NSW Board for Vocational Education and Training. The Boards functions include:

5.2.1.1 Oversight of major reforms of the VET system in NSW and its implementation.

5.2.1.2 Monitor and advise the Minister on the financial performance, fiscal sustainability levels of training activities and the achievement of State priorities of VET system in NSW

5.2.1.3 The Board continues its role in allocating funding to the NSW Schools Consortium which is comprised of the three school sectors – the NSW Department of Education, the Catholic Education Commission, and the Association of Independent Schools – and the NSW Education Standards Authority. Relevant for State and Commonwealth VET Courses and School Based Apprenticeships and Traineeships.

5.2.1.4 Provision of statistical and accountability reports by RTOs (including schools) upon request.

6 Anti-Discrimination Act 1977 (NSW)

6.1 Content

6.1.1 Part 2 – Racial discrimination

6.1.2 Part 3 – Sex discrimination

6.1.3 Part 3A – Discrimination on transgender ground

6.1.4 Part 4 – Discrimination on the ground of marital status or domestic status

6.1.5 Part 4A – Discrimination on the ground of disability

6.1.6 Part 4B – Discrimination on the ground of a person's responsibilities as a carer

6.1.7 Part 4C – Discrimination on the ground of homosexuality

6.1.8 Part 4G – Age discrimination

6.1.9 Part 5 – General Exceptions

6.1.10 Part 9– Functions of the President, the Tribunal and the Board.

6.2 Impact

- 6.2.1 Regulates the application of the various grounds of discrimination to ‘private educational authorities’ in NSW.
- 6.2.2 Exceptions and exemptions apply to Catholic schools and Religious Bodies e.g. ‘teacher lifestyle issues’ as they relate to the religious purpose of the school. Subject to section 49ZO it is unlawful for schools to discriminate against a person on the ground of homosexuality, by refusing or failing to accept admission into school, denying or limiting access to any benefit, expelling or subjecting the student to any detriment. All schools subject to “Homosexual Vilification” provisions under Division 4 of the Act.
- 6.2.3 Race includes colour, nationality, descent and ethnic, ethno-religious or national origin under Part 1.

7 Children and Young Persons (Care and Protection) Act 1998 (NSW)

7.1 Content

- 7.1.1 Part 2 – Mandatory Reporting for Educational institutions
- 7.1.2 Part 14 – Offences involving children and young persons
- 7.1.3 Chapter 16A – Exchange of information and co-ordination of services
- 7.1.4 Chapter 14 Miscellaneous – 248 Provision on exchange of information “a prescribed body includes a registered non-government school within the meaning of the Education Act 1990, or a body or class of bodies (including unincorporated bodies), prescribed by the regulations for the purposes of this section”.

7.2 Impact

- 7.2.1 The Act requires that the best interests of the child or young person are considered in all decisions and actions. This includes the safety, welfare and wellbeing of children and young people who are removed from their families.
- 7.2.2 The Act gave specific powers to the former ‘Family and Community Services’, now the Department of Communities and Justice, to investigate child protection reports, and the courts to make orders.
- 7.2.3 It also sets out the responsibilities of each government agency, non-government agency and person involved in protecting and caring for children at risk of significant harm.
- 7.2.4 Under this Act persons who deliver education to children (that is employed teachers) amongst others, are mandatory reporters, meaning they must report to Communities and Justice if a child is at risk of significant harm. However, teachers in Catholic schools may instead report such concerns to their Principal, who is then obliged to make a report to Communities and Justice.
- 7.2.5 Note: [Children and Young Persons \(Care and Protection\) \(Child Employment\) Regulation 2015 \(NSW\)](#) - Employer legal responsibilities when employing children under the age of 15 years for entertainment, exhibition etc. Employers may be exempt in certain circumstances but must still notify the Children’s Guardian and comply with the Code of Practice.

8 Advocate for Children and Young People Act 2014 (NSW)

8.1 Content

- 8.1.1 Part 2 – Establishes the office of the Advocate for Children
- 8.1.2 Part 5 – Special inquiry powers into affecting children and young people.
- 8.1.3 Part 5 – Section 26 creates investigative role

8.2 Impact

- 8.2.1 The Act Replaces the NSW Commission for Children and Young People Act 1998

9 Child Protection (Working with Children) Act 2012 (NSW)

9.1 Content

- 9.1.1 Part 2 – Restrictions on child-related work
- 9.1.2 Part 3 – Working with children’s check clearances
- 9.1.3 Part 5 – Provision of Information
- 9.1.4 Part 6 – Functions of the Children’s Guardian

9.2 Impact

- 9.2.1 ‘Child-related work’ is defined in section 6 and 7 of the Act and applies to both employees and volunteers. Employers must not commence employment or continue to employ a worker in child-related work if the employer knows or has reasonable cause to believe that the worker does not hold or is awaiting current application of a Working with Children Check or where the worker has an interim bar.
- 9.2.2 Under section 35, reporting bodies have reporting obligations of conduct constituting assessment requirement trigger. Assessment requirement triggers are found under Schedule 1 of the Act.

10 Children (Criminal Proceedings) Act 1987 (NSW)

10.1 Content

- 10.1.1 Part 1: Section 5 – Criminal Responsibility

10.2 Impact

- 10.2.1 Provides that a child *under* the age of ten years cannot commit an offence.

11 Child Protection (Offenders Registration) Act 2000 (NSW)

11.1 Content

- 11.1.1 Part 2A – Child protection registration orders
- 11.1.2 Part 3 – Reporting obligations

11.2 Impact

- 11.2.1 The Act provides the legislative framework for the Sex Offender Register and applies to a person who has at any time been found guilty and sentenced by a court in respect of sexual and other specified offences committed against a child victim.

12 Civil Liability Act 2002 (NSW) (‘CLA’)

12.1 Content

- 12.1.1 Part 1A – Negligence
- 12.1.2 Part 1B – Child Abuse - Liability of organisation
- 12.1.3 Part 3 – Mental Harm

12.2 Impact

- 12.2.1 In NSW the common law of negligence is modified by statute. The CLA amends the application of the law of negligence to schools, limiting the likely liability of schools for injuries suffered by students and employees.
- 12.2.2 Part 1B related to vicarious liability of organisations. An organisation (including a school) must take reasonable precautions to prevent an individual associated with the organisation from perpetrating child abuse. An “individual associated with the organisation” is defined broadly and includes volunteers, contractors and religious personnel.

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- 12.2.3 Organizations will be liable for child abuse by associated individuals, if child abuse is committed by their employees, or people who exercise functions that are akin to employees, if the organisation placed the person in a role which gave the person the occasion to perpetrate child abuse and the person took advantage of that to abuse the child.
 - 12.2.4 Principal must provide and maintain safe systems of student supervision, including before, during after school, excursions, camps, retreats etc.
 - 12.2.5 Anti-Bullying Policies and Procedures and Cyber Safety.
 - 12.2.6 In-servicing of staff on school safety issues.
 - 12.2.7 Insurable risks

13 Crimes (Domestic and Personal Violence) Act 2007 (NSW)

13.1 Content

- 13.1.1 Part 4 – Apprehended Domestic Violence Orders
- 13.1.2 Part 5 – Apprehended Personal Violence Orders

13.2 Impact

- 13.2.1 The Act protects persons from domestic and personal violence. Allows individuals, and NSW Police on their behalf, to apply for Apprehended Domestic Violence Orders (ADVO) or Apprehended Personal Violence Orders (APVO) in circumstances where they have a reasonable fear of another person committing a personal violence offence against them.

14 Ombudsman Act 1974 (NSW)

14.1 Content

- 14.1.1 Part 3A – Child protection
- 14.1.2 Part 3B – Aboriginal programs
- 14.1.3 Part 3C – Protection of people with disability

14.2 Impact

- 14.2.1 Reporting an employee alleged to have engaged in reportable conduct to the Ombudsman (via Head of Agency): Section 25C Reports.
- 14.2.2 Monitoring of child protection investigations.
- 14.2.3 Practice standards for teachers – Codes of Conduct.
- 14.2.4 Aboriginal Education Programs oversight role
- 14.2.5 Section 25GA disclosures of reportable conduct to the relevant child, designated Agencies and Parents.

Note: Part 3A of the Ombudsman Act that deals with Reportable Conduct is expected to be repealed and replaced by Part 4 of the [Children’s Guardian Bill 2019](#).

15 Crimes Act 1900 (NSW)

15.1 Content

- 15.1.1 Division 8B, 60E – Assaults etc at schools
- 15.1.2 Division 15B – Voyeurism and Related Filming Offences
- 15.1.3 Section 316 – Concealing a Serious Indictable Offence

15.1.4 Section 316A – Concealing child abuse offence

15.2 Impact

15.2.1 An Act setting out the majority of criminal offences in NSW.

15.2.2 Section 60E relates to the reporting to police of school related incidents, which may be crimes involving community members, students or teaching relating to harassing, stalking or violence.

15.2.3 Division 15B relates to filming of persons engaged in a private act without consent. Application to mobile phones and the use of mobile devices at school or at school events.

15.2.4 Section 316 requires the school or school personnel to report certain serious misconduct to the police. Further, section 316A makes it an offence for an adult who knows, believes or reasonably ought to have known of child abuse offence being committed, and failed to report it.

15.2.5 Section 43B requires a person who works for an organisation that employs an adult worker in child-related work to reduce or remove a risk that the adult worker will commit a child abuse offence, where they have the power or responsibility to do so and are aware of the risk.

16 Enclosed Lands Protection Act 1901 (NSW)

16.1 Contain

16.1.1 Section 4 – Unlawful entry on enclosed lands

16.2 Impact

16.2.1 Right to remove unauthorised persons from school grounds and buildings and limit access by persons to school sites. The school may also serve an Enclosed Lands Notice which removes the right of that person to come onto school grounds.

17 Work and Health and Safety Act 2011 (NSW)

17.1 Content

17.1.1 Creates health and safety duties

17.1.2 Duty to consult employees

17.1.3 Safety Committees or Safety representatives to be formed and trained

17.1.4 Compliance with the Hazardous Substances Regulation

17.1.5 A Board of Studies school Registration requirement

17.1.6 Incident notification

17.1.7 Application to school-work experience/placement programs

17.2 Impact

17.2.1 Provides a framework to protect the health, safety and welfare of all workers at work

18 NSW Protection of the Environment Operations Act 1997 (NSW)

18.1 Content

18.1.1 School cleaning

18.1.2 Disposal of Waste

18.1.3 Chemicals in Schools

18.1.4 Inclusion in Architectural brief for school re-development

18.2 Impact

18.2.1 Regulates use of chemicals on school sites.

19 Workplace Injury Management and Workers Compensation Act 1998 (NSW)

19.1 Content

- 19.1.1 Part 2 – General workers compensation functions
- 19.1.2 Chapter 3 – Workplace injury management
- 19.1.3 Chapter 4 – Workers compensation

19.2 Impact

- 19.2.1 Provision of duties and obligations for employees injured at work. This includes section 44, requiring an employer to notify an insurer of an injured worker within 48 hours of becoming aware or workplace injury.
- 19.2.2 Employers and workers obligation to participate and co-operate and comply with the establishment of an injury management plan under section 46 and 47. The employer must also provide suitable work for an injured worker under section 49 and pay costs of treatment of injured worker where required under s 50.

20 Pesticides Act 1999 (NSW)

20.1 Content

- 20.1.1 Part 2 – Control of pesticides
- 20.1.2 Part 3 Pesticide Control Notice
- 20.1.3 Part 4 – Pesticide control orders
- 20.1.4 Part 6 Licenses and restricted pesticide authorisations
- 20.1.5 Part 7 – Control of prohibited residues in agricultural produce

20.2 Impact

- 20.2.1 Regulates pesticides and chemical use by schools, e.g. canteens and school agriculture plots.

21 Food Act 2003 (NSW)

21.1 Content

- 21.1.1 Part 1 – Offences relating to food
- 21.1.2 Part 4 – Inspection and seizure powers
- 21.1.3 Part 6 – Taking samples
- 21.1.4 Part 8 – Food safety schemes

21.2 Impact

- 21.2.1 Regulates management of food preparation and supply on school sites in the management of canteens and school kitchens (certain exemptions apply), registration of schools and development of new/refurbished facilities.

22 Local Government Act 1993 (NSW)

22.1 Content

- 22.1.1 Chapter 5 – Council functions
- 22.1.2 Chapter 6 – Service functions of Councils
- 22.1.3 Chapter 7 – Regulatory functions of Councils
- 22.1.4 Chapter 17 – Enforcement

22.2 Impact

- 22.2.1 Regulates school buildings/facilities, heritage protection of buildings and approval for school building projects relating to school sites.

23 Environmental Planning and Assessment Act 1979 (NSW)

23.1 Content

- 23.1.1 Part 4 – Development assessment and consent
- 23.1.2 Part 6 Building and subdivision certificate – Section 149 Certificate for School buildings for Registration
- 23.1.3 Section 4.14 – Limits and conditions of development consent on bushfire prone land.

23.2 Impact

- 23.2.1 Regulates building approvals and building levies and bushfire planning for school sites

Note: The commencement of Part 6 provisions has been postponed until 1 December 2019.

24 Public Health Act 2010 (NSW)

24.1 Content

- 24.1.1 Part 5, Division 4 – Vaccine preventable diseases
- 24.1.2 Schedule 2 – Lists notifiable diseases.

24.2 Impact

- 24.2.1 Principals must request that parents provide the school with an Immunisation Certificate on enrolment so that the immunisation status of every enrolling child is known. Unimmunised students may be excluded from school in the event of a disease outbreak, but are not to be refused enrolment.
- 24.2.2 Principals should notify the local Public Health Unit if there is a confirmed case of a vaccine preventable disease.
- 24.2.3 Principals must forward the Immunisation Certificate when a child transfers to another school.

25 Summary Offences Act 1988 (NSW)

25.1 Content

- 25.1.1 Part 2 – Offences in public and other places
- 25.1.2 Part 4 – Public assemblies

25.2 Impact

- 25.2.1 Relevant to management of school safety issues. A person must not use offensive language or conduct themselves in an offensive manner in or near, or within hearing from, a public place or a school according to sections 4 and 4A. Ban on students bringing knives to schools according to section 11C. Regulates the possession of liquor by minors under s11.

26 Animal Research Act 1985 (NSW)

26.1 Content

- 26.1.1 Part 4 – Accrediting and Licensing
- 26.1.2 Part 5 – Offences

26.1.3 Part 6 – Inspectors

26.2 Impact

26.2.1 The Animal Research Act 1985 (NSW) requires that all schools are accredited with the Department of Primary Industries as animal research institutions and have access to an animal ethics committee. Accreditation is managed through each of the three school sectors, NSW Department of Education, Catholic Schools NSW and the Association of Independent Schools of NSW (AIS).

26.2.2 The school sectors have established the Schools Animal Care and Ethics Committee (SACEC) in order to comply with the Animal Research Act 1985 (NSW) and to monitor the use of animals for teaching and research purposes in their schools.

26.2.3 Under Section 26 of the Act, every school using animals must hold a current, completed Animal Research Authority to use animals for research or teaching purposes.

26.2.4 Once the school has a current, completed Animal Research Authority it then has the responsibility to ensure the provision of:

26.2.4.1 adequate resources and facilities for the appropriate care and welfare of the animals

26.2.4.2 adequate security to ensure the safety of the animals, including during weekends and school holidays

26.2.4.3 a plan for handling emergency situations, including bushfire, flood, drought and vandalism, based on a current risk assessment related to the animals in the school's care

26.2.4.4 a procedure that is consistent with the SACEC grievance procedures to resolve any grievances relating to the care and use of animals in schools.

27 Health Records and Information Privacy Act 2002 (NSW)

27.1 Content

- 27.1.1 Part 4 – Provision for private sector agencies
- 27.1.2 Part 6 – Complaints against private sector persons

27.2 Impact

- 27.2.1 Regulates the collection, storage and management of medical records relating to
 - 27.2.1.1 Students with disability
 - 27.2.1.2 Some counsellor reports
 - 27.2.1.3 Some family records.

28 Roman Catholic Church Communities' Lands Act 1942 (NSW)

28.1 Content

- 28.1.1 Section 10 – Powers of bodies corporate
- 28.1.2 Section 11 – Additional Powers of body corporate
- 28.1.3 Section 15 – Trust preserved

29 Roman Catholic Church Trust Property Act 1936 (NSW)

29.1 Content

- 29.1.1 Section 5 – New Diocese
- 29.1.2 Section 9 – Power of bodies corporate
- 29.1.3 Section 9A Additional powers of body corporate
- 29.1.4 Section 9B – Delegation of powers etc of bodies corporate

29.2 Impact

- 29.2.1 (In conjunction with the *Roman Catholic Church Communities' Lands Act 1942 (NSW)* - Establishment of Church bodies (Dioceses, Orders) as Legal Entities/Trusts/Corporations. Identification of NESA school proprietors for unincorporated schools.

30 Charitable Fundraising Act 1991 (NSW)

30.1 Content

- 30.1.1 Part 2 Fundraising appeals

30.2 Impact

- 30.2.1 Regulates fundraising for a charitable purpose; certain Church groups/activities are exempt.

31 Children (Education and Care Services National Law Application) Act 2010 (NSW)

31.1 Content

- 31.1.1 Part 2 – Adoption of National Law

31.2 Impact

- 31.2.1 Apply a national law to regulate education and care services (including early childhood and out of school hours care). Catholic sector providers of Children's Services must meet compliance requirements including for OSHC.

32 Government Information (Public Access) Act 2009 ('GIPA') (NSW)

32.1 Content

- 32.1.1 Part 2 – Open government information – general principles
- 32.1.2 Part 3 – Open access information
- 32.1.3 Part 4 – Access applications

32.2 Impact

- 32.2.1 The GIPA legislation encourages the proactive public release of Government information. Also certain information provided by Catholic agencies to Government bodies or Statutory Authorities may become the subject of GIPA access orders. Certain 'Child Protection' files and records may be accessed especially in relation to Working with Children Checks.

33 Minors (Property and Contracts) Act 1970 (NSW)

33.1 Content

- 33.1.1 Part 2 – Capacity at eighteen years
- 33.1.2 Part 3 – Capacity of minors

33.2 Impact

- 33.2.1 Persons under 18 can enter into certain contracts for their own benefit: contractual capacity of minors. Possible application to school enrolment by children (Students under 18) independently of parent involvement.

34 Retail Leases Act 1994 (NSW)

34.1 Content

- 34.1.1 Part 2 – Entering into a lease
- 34.1.2 Part 2A – Security bonds
- 34.1.3 Part 3 – Rent and outgoings
- 34.1.4 Part 5 – Assignment and termination

34.2 Impact

- 34.2.1 Application to various lease conditions for the provision by third parties of canteens, school uniform shops and childcare on school premises.

35 Coroners Act 2009 (NSW)

35.1 Content

- 35.1.1 Chapter 3 – Coronial jurisdiction

35.2 Impact

- 35.2.1 Inquiries and recommendations impacting school activities and the implementation of a school's duty of care e.g. safe sporting activities guidelines and anaphylaxis procedures. Also, school counsellors and information exchange, see the Wildman 2010 Case.

36 Surveillance Devices Act 2007 (NSW)

36.1 Content

- 36.1.1 Part 2 – Regulation of installation, use and maintenance of surveillance devices

36.2 Impact

- 36.2.1 Regulates the installation, use, maintenance and retrieval of surveillance devices in NSW
- 36.2.2 Note that if the common property, or part of it, is also used as a workplace say for a building manager, then the Workplace Surveillance Act 2005 (NSW) (find below) also applies and cameras must be clearly visible with signage warning of the surveillance at each entrance.
- 36.2.3 Note also the Privacy Act (1988) Australian Privacy Principles: The APPs applicable to the collection, use and disclosure of personal information also apply to the recording and dissemination of audio files where the individuals in the audio file are reasonably able to be identified.

37 Workplace Surveillance Act 2005 (NSW)

37.1 Content

- 37.1.1 Part 2 – Notification of workplace surveillance of employees
- 37.1.2 Part 3 – prohibited surveillance
- 37.1.3 Part 4 – Covert surveillance of employees at work

37.2 Impact

- 37.2.1 Regulates Computer, CCTV and tracking surveillance by and in schools

38 Explosives Act 2003 (NSW)

38.1 Content

- 38.1.1 Part 2 – Offences relating to explosives
- 38.1.2 Part 3 – Explosives licenses and security clearances

38.2 Impact:

- 38.2.1 Provides for the regulation and control of the handling of explosives and explosive precursors; to provide for the regulation of certain other dangerous goods.

D. COMMONWEALTH

39 Australian Education Act 2013 (Cth)

39.1 Content

- 39.1.1 Part 2 – Grants of financial assistance to States and Territories
- 39.1.2 Part 3 – Recurrent funding for schools
- 39.1.3 Part 5 – Capital and other funding
- 39.1.4 Part 6 – Approving authorities and bodies
- 39.1.5 Part 8 – Taking action for non-compliance and requiring amounts to be repaid
- 39.1.6 Part 9 – Miscellaneous

39.2 Impact

- 39.2.1 The principal legislation for the provision of Australian Government funding to government and non-government schools.
- 39.2.2 The Act sets out the rights and responsibilities of organisations in order for them to receive Australian Government funding for the purposes of school education.

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- 39.2.3 These organisations include approved authorities for schools, block grant authorities and non-government representative bodies. The Act also sets out broad expectations for compliance, to ensure funding accountability to the Commonwealth and to school communities.
 - 39.2.4 Not-for-Profit status of schools, section 75.
 - 39.2.5 Note: The Australian Education Regulation 2013 guide, the 2018 Non-Government Reform Support Fund Guidelines and the Capital Grants Program Guidelines

40 Australian Curriculum Assessment and Reporting Authority Act 2008 (ACARA Act) (Cth)

40.1 Content

- 40.1.1 Part 2 – Australian Curriculum, Assessment and Reporting Authority
- 40.1.2 Part 3 – The Board of the Australia Curriculum, assessment and Reporting Authority
- 40.1.3 Part 4 – Chief Executive Officer, staff and committees
- 40.1.4 Part 5 – Finance
- 40.1.5 Part 6 – Other matters

40.2 Impact

- 40.2.1 Australian Curriculum K – 12
- 40.2.2 Reporting School Performance information
- 40.2.3 ‘My School’ website
- 40.2.4 Certain Privacy “exceptions” for information exchange.

41 Education Services for Overseas Students Act 2000 (Cth)

41.1 Content

- 41.1.1 Part 2 – Registration providers
- 41.1.2 Part 3 – Obligations for registration providers
- 41.1.3 Part 4 – The national code
- 41.1.4 Part 5 – Tuition protection service
- 41.1.5 Overseas Student Tuition Fund the TPS Direction and the TPS Advisory Board

41.2 Impact

- 41.2.1 Enrolment of Full-Fee-Paying Students and Enforcement of Visa requirements of in respect of enrolled students.
- 41.2.2 Diocesan Catholic school authorities as CRICOS providers for NSW Catholic schools
- 41.2.3 Visa conditions for students and Section 20 Notices of Visa breaches. The school is also required to give information about accepted students under section 19.
- 41.2.4 Visa conditions and funding for schooling for students including asylum seekers.

42 Migration Act 1958 (Cth)

42.1 Content

- 42.1.1 Part 2 - Arrival, presence and departure of persons

42.2 Impact

- 42.2.1 Section 137J - Non-complying students may have their visas automatically cancelled – applying to Section 20 of the Education Services for Overseas Students Act 2000 in relation to visa held by non-citizen. Here, a registered education provider must send a notice to a non-citizen who breaches a condition of the non-citizen’s visa that is prescribed by regulations made for the purposes of that Act. The notice must give particulars of the breach and must require the non-citizen to attend before an officer for the purpose of making any submissions about the breach and the circumstances that led to the breach
- 42.2.2 The non-citizen’s visa is cancelled by force of this section at the end of the 28th day after the day that the notice specifies as the date of the notice unless, before the end of that 28th day.

43 New Tax System (Goods and Services Tax) Act 1999 (Cth)

43.1 Content

- 43.1.1 Division 49 – GST Religious Groups

43.2 Impact

- 43.2.1 Relates to GST and Schools
- 43.2.2 Subsection 49-30(1) of the *A New Tax System (Goods and Services Tax) Act 1999* ("GST Act") states that "a supply that a member of a GST religious group makes to another member of the same GST religious group is treated as if it were not a taxable supply."
- 43.2.3 Conversely, subsection 49-35(1) of the GST Act states that "an acquisition that a member of a GST religious group makes from another member of the same GST religious group is treated as if it were not a creditable acquisition." – Applies to Catholic Church GST Group

44 Privacy Act 1988 (Cth)

44.1 Content

- 44.1.1 Part III – Information Privacy
- 44.1.2 Schedule 1 – Australian Privacy Principles
- 44.1.3 Part IIC – Notification of eligible data breaches

44.2 Impact

- 44.2.1 Regulates the collection, storage use and management by schools of:
 - 44.2.1.1 Clearly expressed and up-to-date privacy policy
 - 44.2.1.2 Personal information in material form
 - 44.2.1.3 Student records
 - 44.2.1.4 Staff records
 - 44.2.1.5 Family records
 - 44.2.1.6 Access rights of students/parents to school records. Capacity of students aged 15 years plus
 - 44.2.1.7 Cloud Computing Services
 - 44.2.1.8 School Counsellor records “Use” and “Disclosure” issues
- 44.2.2 Part IIIC - obligation to conduct assessments of suspected data breach and notify the Australian Information Commissioner (OAIC) individuals whose personal information is involved in a data breach likely to result in serious harm.

See [NCEC and ISCA Privacy Compliance Manual May 2018](#)

45 Australian Information Commissioner Act 2010 (Cth)

45.1 Content

45.1.1 Part 2 – Office of the Australia Information Commissioner

45.2 Impact

45.2.1 Establishment of the Office of Australian Information Commissioner. Capacity to review Privacy policies and practices of schools. Also oversight of new FOI procedures relevant to school/system records transferred to Government agencies.

46 Taxation Administration Act 1953 (Cth)

46.1 Content

46.1.1 Part IVD – Protection of Whistleblowers

46.2 Impact

46.2.1 Broadly consistent with whistleblower protections under the *Corporations Act 2001* (Cth) found below, however relates to suspected breaches of tax misconduct. Provides a comprehensive regime for the protection of individuals who report breaches of the tax laws or misconduct.

47 Copyright Act 1968 (Cth)

47.1 Content

47.1.1 Part II – Copyright in original literary, dramatic, musical and artistic works

47.1.2 Part IV – Copyright in subject matter other than works

47.1.3 Part IVA – Uses that do not infringe copyright

47.1.4 Part V – Remedies and offences

47.2 Impact

47.2.1 Copyright involves a collection of rights in certain creative works such as text, artistic works, music, computer programs, sound recordings and films. The rights are granted exclusively to the copyright owner to reproduce the material, and for some material, the right to perform or show the work to the public. Copyright owners can prevent others from reproducing or communicating their work without their permission or may sell these rights to someone else. Schools must adhere to copyright provisions relating to the copying/use of such material.

See '[SMARTCOPYING](#)' website for advice, or the '[Schools](#)' webpage.

48 National Vocational Education and Training Regulator Act 2011 (Cth)

48.1 Content

48.1.1 Part 7 – National Vocational Education and Training Regulator

48.2 Impact

48.2.1 This Act has established the “Australian Skills Quality Authority, or (National Vocational Education Training Regulator)”. During 2012/13 ASQA became the Registration authority overseeing VET delivery across most State and Territories including the RTOs for NSW Catholic schools.

49 Family Law Act 1975 (Cth)

49.1 Content

49.1.1 Part VII – Children

49.2 Impact

- 49.2.1 Management of family law situations impacting schools e.g. name change disputes, access disputes, including access to school reports, authority to enrol, etc. Child 'Location Orders' served on school Principals under section 67M(2).
- 49.2.2 Generally, parents will have shared parental responsibility to make major decisions about their children, including in relation to education, unless a court orders otherwise.

50 Racial Discrimination Act 1975 (Cth)

50.1 Content

- 50.1.1 Part II – Prohibition of racial discrimination
- 50.1.2 Part IIA – Prohibition of offensive behaviour based on racial hatred
- 50.1.3 Part IV – Offences
- 50.1.4 Part VI – Race Discrimination Commissioner

50.2 Impact

- 50.2.1 Prohibits racial discrimination in all schools

51 Sex Discrimination Act 1984 (Cth)

51.1 Content

- 51.1.1 Part 1 – Preliminary
- 51.1.2 Part II – Prohibition of discrimination
- 51.1.3 Part III – Functions of the Australian Human Rights Commission
- 51.1.4 Part IV – Offences
- 51.1.5 Part V – Sex Discrimination Commissioner

51.2 Impact

- 51.2.1 Prohibits sex discrimination and sexual harassment in all schools
- 51.2.2 Determines the functioning of the Australian Human Rights Commission.
- 51.2.3 In servicing of staff on Sexual Harassment policy and procedures, establishes lawful and unlawful conduct by employers, provides for certain limited exemptions for religious schools

52 Australian Human Rights Commission Act 1986 (Cth)

52.1 Content

- 52.1.1 Part I – Preliminary
- 52.1.2 Part II – Australian Human Rights Commission
- 52.1.3 Part IIA – Aboriginal and Torres Strait Islander Social Commissioner
- 52.1.4 Part IIAA – National Children's Commissioner
- 52.1.5 Part III – Miscellaneous

52.2 Impact

- 52.2.1 It is not unlawful to exercise an exclusion or preference made in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed. Australian Human Rights Commission processes discrimination complaints, including DDA complaints.

53 Workplace Gender Equality Act 2012 (Cth)

53.1 Content

- 53.1.1 Part III – Workplace Gender Equality Agency
- 53.1.2 Part IV – Reports by relevant employers
- 53.1.3 Part IVA – Reviewing compliance with this Act and consequences of non-compliance
- 53.1.4 Part V – Director of Work

53.2 Impact

- 53.2.1 Establishes the Workplace Equality Agency
- 53.2.2 Employment and promotion of women
- 53.2.3 Employer reporting requirements for “relevant employers” being employers with more than 100 employees.

54 Disability Discrimination Act 1992 (Cth)

54.1 Content

- 54.1.1 Part 1 – Preliminary
- 54.1.2 Part 2 – Prohibition of disability discrimination
- 54.1.3 Part 3 – Action plans
- 54.1.4 Part 4 – Functions of Australian Human Rights Commission
- 54.1.5 Part 5 – Other offences
- 54.1.6 Part 6 – Disability Discrimination Commissioner
- 54.1.7 Part 7 – Miscellaneous

55 Disability Standards for Education 2005 (Cth)

55.1 Content

- 55.1.1 Part 3 – Making reasonable adjustments
- 55.1.2 Part 4 Standards for enrolment
- 55.1.3 Part 5 – Standards for participation
- 55.1.4 Part 6 – Standards for curriculum development, accreditation and delivery
- 55.1.5 Part 7 – Standards for support services
- 55.1.6 Part 8 – Standards for harassment and victimisation
- 55.1.7 Part 10 – Exceptions

55.2 Impact

- 55.2.1 enrolment issues relating to students with disabilities
- 55.2.2 provision of curriculum and assessment
- 55.2.3 staffing / HR issues relating to disability of staff
- 55.2.4 design, layout and construction of facilities for students/staff with disabilities
- 55.2.5 reasonable adjustments for children with disabilities required by all schools.
- 55.2.6 Managing extreme behaviour/see also NSW Education Act Part 5A

56 Fair Work Act 2009 (Cth)

56.1 Content

- 56.1.1 Chapter 1 – Introduction
- 56.1.2 Chapter 2 – Terms and Conditions of Employment
- 56.1.3 Chapter 3 – Rights and responsibilities of employees, employers, organisations etc.

56.2 Impact

- 56.2.1 Covers all employees employed in NSW Catholic schools following transition from NSW to Commonwealth Industrial Relations system
- 56.2.2 A new safety net comprised of three parts:
 - 56.2.2.1 National Employment Standards (NES) – a set of 10 minimum employment conditions that apply to all employees which must be met by employers as a minimum.
 - 56.2.2.2 Modern Awards – streamlining of thousands of state and federal awards in approximately 100 federal awards.
 - 56.2.2.3 General Protections – aim to protect workplace rights and freedom of association and to provide protection from workplace discrimination
- 56.2.3 Regulates the operation of Fair Work Commission, the Tribunal established to hear employment disputes (e.g. unfair dismissal applications)
- 56.2.4 In some circumstances this Act can give employees under particular enterprise agreements access to 'Fair Procedures' rights to work place investigations files, including files relating to Reportable Conduct. Access restrictions may apply regarding third party rights.

57 Corporations Act 2001 (Cth)

57.1 Contains

- 57.1.1 Chapter 2A – Registering a Company
- 57.1.2 Chapter 2B – Basic features of a Company
- 57.1.3 Chapter 2D – Officers and Employees
- 57.1.4 Chapter 2E – Related Party Transactions
- 57.1.5 Chapter 2G – Meetings
- 57.1.6 Chapter 2M – Financial reports and Audits
- 57.1.7 Part 9.4AAA – Protection for Whistleblowers

57.2 Impact

- 57.2.1 Regulates the establishment and operation of Corporations, including 'A Company Limited by Guarantee'. Provides for Company regulation by ASIC.
- 57.2.2 Chapter 2E is designed to protect the interests of a public company's members as a whole, by requiring member approval for giving financial benefits to related parties that could endanger those interests.
- 57.2.3 Legal entity status for some Congregational schools. Section 1317AI primarily affects companies and other entities that will be required to develop whistle-blower policies and/or potentially deal with greater whistleblowing activity under Part 9.4AAA.

58 Australian Sports Anti-Doping Authority Act 2006 (Cth)

58.1 Content

- 58.1.1 Part 2 – National Anti-Doping Scheme
- 58.1.2 Part 2A – Violations List
- 58.1.3 Part 3 – ASAD’s establishment and function
- 58.1.4 Part 8A – Civil Penalty Provisions
- 58.1.5 Part 8B – Infringement Notices

59 Australian Sports Anti-Doping Authority Regulations 2006 (Cth)

59.1 Content

- 59.1.1 Part 3 – Testing and Investigating

59.2 Impact

- 59.2.1 Provides for the drug testing of school ‘Athletes’ in certain circumstances.

60 Competition and Consumer Act 2010 (Cth)

60.1 Content

- 60.1.1 Part II – The Australian Competition and Consumer Commission’
- 60.1.2 Part IVB = Industry codes
- 60.1.3 Part VIA – Proportionate liability for misleading and deceptive conduct
- 60.1.4 Schedule 2 – Chapter 2 – Part 2-1 Misleading and deceptive conduct

60.2 Impact

- 60.2.1 Section 18 application of “misleading and deceptive” conduct provisions to school enrolment advice, advertising and promotions.
- 60.2.2 Part 3 renders unfair or unjust terms of consumer contracts void.
 - 60.2.2.1 terms and conditions of student enrolments
 - 60.2.2.2 student discipline issues (suspension, exclusion)
 - 60.2.2.3 procedural fairness (suspension, exclusion)
 - 60.2.2.4 capacity of minors
 - 60.2.2.5 Electronic use policies for students and families

61 Australian Charities and Not-for-Profit Commission Act 2012 (Cth)

61.1 Content

- 61.1.1 Chapter 2 – Registration for not-for-profit entities
- 61.1.2 Chapter 3 – Responsibilities of registered entities
- 61.1.3 Chapter 4 – Regulatory powers of the ACNC Commissioner
- 61.1.4 Chapter 5 – The Australian Charities and Not-for-profit-Commission

61.2 Impact

- 61.2.1 Regulates the registration and entitlements of not-for-profit entities. Sets governance and external conduct standards under Part 3-1. Sets duty of record keeping and reporting under Part 3-2, and a duty to notify under Part 3-3. Exemption for Basic Religious Charities (Parishes), conditions apply under Chapter 3, 45-10

62 Australian Charities and Not for Profits Commission (Consequential and Transitional) Act 2012 (Cth)

62.1 Content

- 62.1.1 Schedule 1 – Application and transitional provisions
- 62.1.2 Schedule 2 – References to charities etc

62.2 Impact

- 62.2.1 This Act sets out transitional arrangements for the establishment of the ACNC and amends other legislation.

63 Charities Act 2013 (Cth)

63.1 Content

- 63.1.1 Part 2 – Definition of charity
- 63.1.2 Part 3 – Definition of charitable purpose

63.2 Impact

- 63.2.1 Provides for the registration and regulation of charities by the Australian Charities and Not-for-profits Commission (ACNC).

64 Modern Slavery Act 2018 (Cth)

64.1 Content

- 64.1.1 Part 1 – Preliminary
- 64.1.2 Part 2 – Modern Slavery Statements
- 64.1.3 Part 3 – Access to modern slavery statements
- 64.1.4 Part 4 – Miscellaneous

64.2 Impact

- 64.2.1 Commencing the 1 January 2019, entities based or operating in Australia which have AU\$100 million or more in annual global revenue must report annually on their efforts to address modern slavery in their operations and supply chains. “Modern slavery” constitutes things such as human trafficking and child labour.
- 64.2.2 Entities covered by the Commonwealth Act are required to provide a “Modern Slavery Statement” every year. The Minister will publish these on a Modern Slavery Statements Register, which is available to the public online.
- 64.2.3 May be voluntarily complied with under section 6.

65 Student Identifiers Act 2013 (Cth)

65.1 Content

- 65.1.1 Part 1 – Preliminary
- 65.1.2 Part 2 – Student identifiers

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- 65.1.3 Part 3 – Authentic VET transcripts
 - 65.1.4 Part 4 – Student identifiers registrar etc.
 - 65.1.5 Part 5 – Other matters

65.2 Impact

- 65.2.1 Creation of a unique identifier for all VET students including school VET students
- 65.2.2 New responsibilities for all RTOs.

66 Financial Framework (Supplementary powers) Act 1997 (Cth)

66.1 Impact

- 66.1.1 This Act contains rules about how public money and property are to be dealt with. Many of the detailed rules are in Finance Minister’s Orders made under section 63 and regulations made under section 65

67 National Disability Insurance Scheme Act 2013 (Cth)

67.1 Content

- 67.1.1 Chapter 2 – Assistance for people with disability and others
- 67.1.2 Chapter 3 – Participants of their plans ‘
- 67.1.3 Chapter 4 – Administration
- 67.1.4 Chapter 6 – National Disability Insurance Scheme Launch Transition Agency
- 67.1.5 Chapter 6A – NDIS Quality and Safeguards Commission

67.2 Impact

- 67.2.1 Eligibility of school students for NDIS Assistance, Part 1 Becoming a Participant and Section 74 Children.
- 67.2.2 School information exchange requirements, section 55.
- 67.2.3 Request for personal information and assessments, Section 26
- 67.2.4 Participants plans, Sections 31-41.

68 Enhancing Online Safety for Children Act 2015 (Cth)

68.1 Content

- 68.1.1 Part 1 – Preliminary
- 68.1.2 Part 2 – eSafety Commissioner
- 68.1.3 Part 3 – Complaints and objections
- 68.1.4 Part 4 – Social media services
- 68.1.5 Part 5 – End-user notices relating to cyber-bullying material
- 68.1.6 Part 5A – Non-consensual sharing of intimate images
- 68.1.7 Part 6 – Enforcement

68.2 Impact

- 68.2.1 Responding to Cyber-Bullying
- 68.2.2 Role of the Children’s eSafety Commissioner

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- 68.2.3 Prohibit the posting of, or threatening to post, an intimate image without consent on a social media service

69 Australian Immunisation Register Act 2015 (Cth)

69.1 Content

- 69.1.1 Section 10 – Describes the purpose of the Register.

69.2 Impact

- 69.2.1 Provides for certification when a vaccination or course of vaccination is completed.

70 Criminal Code Act 1995 (Cth)

70.1 Content

70.1.1 Part 5.3 Terrorism

70.2 Impact

70.2.1 Section 101.5 (collecting or making documents likely to facilitate terrorist acts), section 474.15 (using a carriage service to make a threat).

71 National Insurance Scheme 2013 (Cth)

71.1 Content

71.1.1 Chapter 2 – Assistance for people with disability and others

71.1.2 Chapter – Participants and their plans

71.1.3 Chapter – Administration

71.1.4 Chapter 5 – Compensation payments

71.1.5 Part 6 – National Disability Insurance Scheme Launch Transition Agency

71.2 Impact

71.2.1 establishes:

71.2.1.1 The National Disability Insurance Scheme, and

71.2.1.2 The National Disability Insurance Scheme Launch Transition Agency (known as the National Disability Insurance Agency or NDIA).

72 Superannuation Guarantee (Administration) Act 1992

72.1 Content

72.1.1 Part 3 – Liability of employers other than the Commonwealth and tax-exempt Commonwealth Authorities to pay superannuation guarantee charge

72.1.2 Part 3A – Choice of funds requirements

72.1.3 Part 4 – Superannuation guarantee statements and assessments

72.1.4 Part 5 – Administration

Part 6 – Collection and recovery of charge

72.1.5 Part 7 – Additional superannuation guarantee charge

72.1.6 Part 8 – Payments of amounts of shortfall components for the benefit of employees

72.1.7 Part 9 – Miscellaneous

72.2 Impact

72.2.1 If you are an employer you have an obligation to pay superannuation contributions on behalf of all your eligible employees, in addition to their wages and salaries. This compulsory superannuation guarantee requires you to pay superannuation for all your employees and contribute to their preferred super funds if available.

E. ADDITIONAL LAWS IMPACTING ON SCHOOLS

1. Equitable Law
2. Procedural fairness in disciplining students (especially secondary)
3. Also see NSW NESA School registration requirements, teacher accreditation requirements, re policies and procedures for suspension and expulsion of students.
4. Defamation (reports, letters, emails, websites) - Defamation Act 2005 (NSW)
5. Common law of Confidentiality (Not Privacy Statute Law)
6. school counsellors
7. school chaplains
8. student records maintained by Diocesan offices, schools and teachers

DISCLAIMER:

This is only a general reference point for some key Legislation and compliance requirements relevant to NSW schools, it does not constitute any form of legal advice.