Education and Early Childhood Services (Registration and Standards) Act Review

Consultation Paper | June 2026

Why review now?

The *Education and Early Childhood Services (Registration and Standards) Act 2011* has not undergone a comprehensive review since it was enacted. In the fifteen years since, contemporary standards for regulators have evolved considerably, comparable frameworks in other jurisdictions have been modernised, and the Disability Royal Commission has made specific recommendations directed at issues affecting students with disability in educational settings.

The Act's narrow definitions and prescriptive processes limit the Education Standards Board's (ESB) ability to act. This review is an opportunity to equip the ESB with a legislative framework that better protects children and young people and clarifies the roles of the Board and the Registrar.

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About This Paper

This paper is an invitation for you to respond to changes being considered as part of an independent review of the *Education and Early Childhood Services (Registration and Standards) Act 2011 (SA)* — the legislation that governs the Education Standards Board (ESB).

The review is assessing whether the Act gives the ESB the tools it needs to effectively oversee schools in South Australia. The final report will be presented to the Minister for Education, Training and Skills by the end of 2026 with the aim to implement a more contemporary and modern piece of legislation that provides flexibility for the future.

The ESB also regulates early childhood and care services (including childcare and outside school hours care) under the Education and Care Services National Law. The National Law is outside the scope of this review with the review predominantly focused on the legislation regarding the schools sector.

How to respond

You are welcome to respond to any or all of the questions in this paper. You do not need to address every question — focus on those most relevant to your organisation, sector, or experience. Responses may agree, partially agree, or disagree with the directions suggested, and may propose alternative approaches.

You may also make comment on other matters relevant to the Terms of Reference that are not covered in this paper.

Please explain the reasons for your position and draw on your own experience where relevant.

Feedback can be provided by:

- Email: ESB.EECSActReview@sa.gov.au
- Online: yoursay.sa.gov.au (search for 'Education and Early Childhood Services Act Review')
- Post: EECS Act Review Secretariat, Education Standards Board, GPO Box 1811, Adelaide SA 5001

Submissions may be made publicly available or quoted in the review's final report.

Structure of this paper

This paper is structured around six key areas of the review:

- Context and scope of the review (Part 1)
- Regulatory practice and registration processes (Part 2)
- Regulatory powers and enforcement tools (Part 3)
- Board governance, composition, and powers (Part 4)
- Registrar functions and structure (Part 5)
- Information sharing and transparency (Part 6)

Each section sets out the relevant context and poses questions to help stakeholders form and express their views. The paper draws on analysis of the Act, comparable regulatory models in other jurisdictions, and findings of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

Part 1: Context and Scope of the Review

1.1 Terms of Reference

The Terms of Reference were approved by the former Minister for Education, Training and Skills. They direct the review to examine:

- modernisation of regulatory functions in line with best practice principles
- registration processes
- strengthening offence provisions and powers to protect children and young people
- information collection, monitoring, and compliance powers
- information sharing provisions for inter-agency collaboration
- current Registrar arrangements
- complaints processes, including those relating to students with disability
- the Board's powers, governance arrangements, and composition
- the governance relationship between the Board and the operations of the ESB
- the name of the ESB

1.2 The Education Standards Board

The Education Standards Board (ESB) is the independent body responsible for registering and assuring the quality of schools and early childhood services in South Australia. Its functions include registering schools, conducting inquiries and proceedings, receiving serious complaints that may affect registration, and providing guidance to regulated parties. These functions are given to the Board itself, which is comprised of thirteen members.

The Act currently establishes three separate Registrar roles — the Registrar of Non-Government Schools, the Registrar of Government Schools, and the Registrar of Early Childhood Services. In practice, these roles have been held by one person. The review examines whether this structure remains fit for purpose.

1.3 The Regulatory Context

South Australia's school sector is, by any measure, highly professionalised. Schools operate within a dense web of funding conditions, reporting obligations, teacher registration requirements, and accountability to their school communities.

Schooling is compulsory, and schools receive the vast majority of their funding from State and Commonwealth Governments. Parents contribute to fees in many cases. The sector is mature and substantially self-regulating.

Early childhood services and care services are more diverse in their organisational arrangements and range across a spectrum of being operated by an individual in their own home, through to corporations with multiple sites across jurisdictions. The national quality framework for early childhood education and care imposes substantial obligations on providers that the ESB regulates.

This context matters for the review. It would be neither proportionate nor appropriate to impose on schools the same level of prescriptive regulation that applies to early childhood services under the National Law. Rather, the starting point is that the regulatory framework should be calibrated to a mature sector — while still giving the ESB adequate tools to act when things go wrong and have appropriate oversight of the sector.

At present, the Act positions the ESB primarily as a registration authority, not a regulator that is easily able to take action for less serious breaches. This review examines how to close that gap.

The review will also consider contemporary legislative approaches that provide flexibility to respond to future changes in the school landscape. It will be important to ensure this flexibility is preserved in the final framework, with provisions for areas of anticipated change appropriately addressed through regulation rather than fixed in the Act.

1.4 The Disability Royal Commission

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Disability Royal Commission) found that many students with disability experienced harm in educational settings. Its findings are directly relevant to the ESB's functions.

Recommendation 7.10 included that State and Territory school registration authorities should embed new complaint handling duties and measures for compliance in registration requirements for all schools. The South Australian Government's response indicated that a review of the Act would include a greater focus on appropriate inclusive education practices.

The *Education and Children's Services Act 2019* has since been amended to require annual reporting to the Minister of de-identified data about enrolment, suspension, exclusion, and expulsion of students with disability. In response to recommendation 7.10, this review considers the ESB's role in relation to complaints and its capacity to investigate and address them.

Part 2: Regulatory Practice

2.1 Regulatory Principles

The Act sets out objects and principles that guide how the ESB exercises its functions. These include recognising children's right to high-quality education, protecting their health, safety, and wellbeing, and ensuring parents can access a diverse range of providers.

One notable difference between the Act and the National Law (which governs early childhood services) is that the National Law includes an explicit objective of promoting continuous improvement in service quality. The Act does not. This review invites feedback on whether improvement should be an explicit objective for schools regulation — or whether that goal is better pursued through other means.

Question 1

Are there any other key areas that the objects of the Act should incorporate? Should the objects and principles for schools be more closely aligned with those for early childhood services, as set out in the National Law? In particular, should improvement be an explicit object of schools regulation — or is this better addressed through other means?

2.2 Registration

Under the Act, all schools must be registered and it is an offence to operate without registration. To register, the ESB must be satisfied that the nature and content of instruction is satisfactory and that the school provides adequate protection for students' safety, health, and welfare.

Each school's registration is reviewed at least once every five years. Currently, the ESB selects schools annually for a validation review of a self-assessment that schools complete each year.

The Act also requires each school campus to physically display its certificate of registration. The ESB maintains a public website where anyone can check registration status. This physical display requirement appears outdated: it is more likely that someone concerned about registration status would search online than attend a school to inspect a certificate on a wall. The South Australian Skills Commission, by contrast, is required to maintain a publicly accessible online register.

Question 2 — Interim view for comment

The requirement for schools to physically display their certificate of registration at each campus should be removed, in favour of an obligation on the ESB to make registration information available via its website.

2.3 Standards and Codes

The Board can prepare or endorse codes of conduct for registered schools — but has never used this power. The reason may be a structural barrier in the Act: before a code of conduct can be implemented, the Board must obtain written approval from a majority of two prescribed peak bodies (the Association of Independent Schools of South Australia and the South Australian Commission for Catholic Schools). Either body can effectively veto any code.

This arrangement is unusual. It is rare for a regulator to be subject to veto by bodies representing the entities it regulates. The ordinary position — consistent with principles of regulatory independence — is that a regulator retains the authority to set standards and codes, without being vetoed by regulated parties. This has the potential to undermine the ESB's capacity to act as an effective and independent regulator.

Hypothetical Case study: How the veto power limits the ESB

The ESB identifies a pattern of complaints across several registered schools relating to how staff communicate with students and families. It develops a code of conduct to set minimum expectations. Despite broad stakeholder support, one of the two prescribed peak bodies withholds its approval on the basis that the code would place administrative burdens on member schools. The code cannot proceed. The regulator has no mechanism to override this outcome, and the underlying concern remains unaddressed and concerns regarding the handling of complaints continues.

The Act provides no guidance about standards for school registration. The only reference is in the Regulations which provides that schools must comply with standards.[1] There is no requirement for the Board to keep standards under review. Outdated standards risk failing to reflect contemporary educational practice, community expectations, and emerging risks. The ESB published its current standards in 2019.

Case study: Consequences of outdated standards

A school seeking registration is assessed against standards published several years earlier. In the intervening period, significant changes have occurred in relation to child-safe environments, digital safety, and inclusive education. Because the standards have not been updated, the assessment does not require applicants to demonstrate compliance with contemporary best practice and may impose draconian requirements on innovative schools. Whilst Schools that meet the letter of outdated standards may nonetheless fall short of what the community reasonably expects.

Comparative example: Standards in the South Australian Skills Act

The *South Australian Skills Act 2008* explicitly requires the Skills Commission to set standards and review them at least every five years. Employers and employees are required to comply, and the Commission can impose sanctions for non-compliance.

Question 3 — Interim view for comment

The Act should explicitly require the ESB to develop and review standards (or codes) for school registration. The new framework should specify:

- that standards can address all matters relevant to registration
- the process for making and reviewing standards, including consultation with the sectors and other relevant parties
- that the current power of veto by peak bodies is removed

[1] Regulation 33 of the *Education and Early Childhood Services (Registration and Standards) Regulations 2025*

2.4 Monitoring and Assurance

The Act provides that it is a function of the Minister to work with the Board "to ensure effective monitoring and evaluation of the delivery of education and early childhood services". In the case of schools, the Act provides limited mechanisms for monitoring or evaluation.

The Act limits the ESB's ability to seek information from schools to matters relating to the provision of 'education services' — defined as 'courses of instruction in primary or secondary education'. This is a narrow definition that excludes other matters relevant to registration, such as financial information, compliance with complaint management policies, or incidents of harm to students.

The definition is also at odds with contemporary understandings of education. The Alice Springs (Mparntwe) Education Declaration — agreed by all Australian Education Ministers in 2019 — explicitly recognises education's role in supporting the wellbeing, mental health, and resilience of young people. A regulatory framework confined to 'courses of instruction' cannot capture the full scope of what a school must provide.

Comparative example: Victorian approach to monitoring

Victorian legislation provides that their Authority may, at any time, monitor or conduct an assessment of the financial capabilities of a non-government school. Registration is conditional on the school complying with any requirements of the Authority for this purpose. The Authority may also arrange a review of a registered school at any time to ensure standards or conditions are being met, including a specific review if there are student safety or financial concerns.

The regulator does not have an ability to seek data from schools more generally, for example about incidents of harm or complaint management. This makes it almost impossible to determine if there are patterns of concern in a particular school or sector or to undertake risk based regulation. By contrast, under the *Work Health and Safety Act 2012*, there are categories of incident (such as dangerous incident; serious illness or injury) and an obligation on a person conducting a business or undertaking to notify the regulator of them. A similar approach for schools would enable earlier identification of problems.

Without the ability to require reporting of incidents or complaints data, the ESB cannot identify patterns of concern or undertake risk-based regulation. The ESB is required to give effect to the principle that providers should not be burdened by regulation more than is reasonably necessary which would act as a fetter on the use of this power.

Question 4 — Interim view for comment

The ESB should be able to seek information from a school about any matter relevant to registration — not just 'education services' as currently defined.

Question 5

Should the Act give the ESB the ability to require schools to provide data or information of a particular category or threshold, either periodically or on an ad hoc basis?

Part 3: Regulatory Powers

3.1 Information Gathering and Evidence Powers

The Act gives the ESB limited tools to carry out its regulatory function. Compliance with standards is the key to registration — but the current standards largely focus on whether schools have the right policies and procedures in place. Having a policy does not mean it is being followed.

The ESB cannot inspect a school unless there is evidence of a serious issue. Without evidence to form a reasonable suspicion that there is cause for disciplinary action — or that an offence has been committed — the ESB cannot investigate complaints, identify systemic issues, or monitor compliance.

Because the ESB can effectively only act on serious complaints, problems that generate no complaints may go undetected for extended periods.

Case study: The limits of the current framework

A registered school has a child safety policy published on its website that sets out detailed procedures for reporting allegations and training staff. On its face, the school satisfies the relevant registration standard.

Over time, several parents make separate complaints to the ESB about the school's handling of incidents involving student welfare. None of the complaints, individually, meets the threshold of a serious incident or an allegation that an offence has been committed — in each case, the school says the matter was handled internally in accordance with its policy.

The ESB acknowledges the complaints but, because there is no evidence of a serious issue sufficient to trigger investigation, and because the school can point to a compliant policy, the ESB has limited capacity to examine whether the policy is actually being applied. It cannot visit the school or compel the school to produce records of how incidents were handled without proper cause for suspecting an offence or that disciplinary action is warranted.

The problem is not that schools are generally acting in bad faith. The problem is structural: a regulator without proactive powers can only respond to what is brought to it in a form that meets the legal threshold for action. Systemic issues rarely present themselves that way. They emerge gradually through patterns that are only visible to a body empowered to look. Without the ability to access this information easily there is a significant risk that systemic issues will go unaddressed until they result in a serious incident, which may result in harm to students.

Case study: When patterns go unseen

Over a school year, four separate incidents occur at the same school: a student with disability is found alone in the sick bay after school; a student is left on a school bus and not discovered until the driver returns to the depot; a student is found unsupervised during a class excursion; and a young student is left alone in a classroom while staff attend a briefing.

Each incident is handled internally. In some cases parents are informed; in others they are not. None is reported to the ESB.

In the following year, a fifth incident occurs and a parent lodges a formal complaint. The ESB assesses it. Without visibility of the four previous incidents, the assessment is made on the basis of one event. The

systemic failure remains invisible. Systemic failures rarely present as a single, obvious event — they accumulate across different students and different contexts over time. A regulator that cannot access data about patterns will fail to see the risk.

This contrasts sharply with the ESB's powers under the National Law for early childhood services, where authorised officers can enter premises at any time, require evidence, and obtain information on reasonable suspicion. A six-year-old left alone on a school bus is not substantially less vulnerable than a four-year-old in childcare. The regulatory tools should reflect that. As the law presently stands, an authorised officer under the Act has different powers than the same authorised officer has under the National Law. This unduly complicates enforcement.

Case study: Authorised officer powers

An authorised officer visits an OSHC service before school, using the general power of entry under the National Law for the purpose of monitoring compliance. The authorised officer is told by a parent, Sandy, that there is an issue with play equipment which Sandy thinks is a safety issue. The equipment is on part of the school site which is not used by the OSHC service. The issue as described does not meet the threshold for the authorised officer to use powers under the Act and so the authorised officer does not inspect the equipment. Later that day a child is injured on the equipment. Sandy tells the media that the issue was reported not only to the school but also an ESB inspector that day and if only they had done something about it, the child would not have been injured. Under the current framework and powers there is little the ESB could have legally done in this situation.

Comparison with other jurisdictions

In other Australian jurisdictions, the relevant regulator can proactively access information, conduct inspections, and compel production of documents without first needing to have cause to believe that a serious incident has occurred. South Australia's school registration framework is the only model in which the regulator is so limited.

Jurisdiction	Threshold to gather information	Powers available
SA — Schools (current)	Evidence of a serious issue, cause for disciplinary action, or that an offence has been committed before investigation powers apply.	Information relating to 'education services' (instruction) only; no proactive inspection or power to compel documents.
Early Childhood (National Law)	At any reasonable time for compliance purposes — no prior complaint or evidence of wrongdoing required.	Enter approved premises; inspect, copy and remove documents; require occupier and persons present to provide information.
New South Wales	At any reasonable time — no prior notice required; no threshold beyond compliance purpose.	Access premises and relevant documents to conduct audits, inspections, and compliance activities. Ability to impose conditions on a school's registration, as well as suspend, reduce or place conditions on financial assistance.

Victoria	Reasonable belief that information is necessary to determine compliance.	Review the operations of schools, accept enforceable undertakings and apply to the Court where an undertaking has been breached, request information to determine compliance and disclose information proactively with prescribed bodies.
Queensland	Written notice to school's governing body required; information must be necessary to assess compliance.	Inspect school premises with notice, copy and seize documents, require production of information and records relevant to accreditation and compliance functions and show cause and compliance notice processes to address identified concerns or breaches.
Western Australia	Administrative and compliance purposes connected with registration functions.	Require information from registered schools, issue quality improvement notices and compliance directions, impose conditions on registration, restrict new enrolments, and cancel registration where necessary. Inspectors may conduct inspections, including without notice, and obstruction of an inspector is an offence.
Tasmania	Information may be obtained where reasonably necessary to assess registration or ongoing compliance.	Register, suspend, or cancel registration, inspect premises, require information and documents, and seize material under warrant. Hold broader powers to administer and oversee compliance with the registration framework.
Australian Capital Territory	To determine compliance with registration requirements and legislative obligations.	Registration reviews, issue compliance directions or take regulatory action, including imposing conditions, suspending registration, or cancelling registration. May also enter school premises to exercise compliance and inspection powers.
Northern Territory	Tied to assessing school registration and compliance with approved standards.	Require information and records, conduct investigations and take action including issuing compliance or show cause notices, varying, suspending or cancelling registration where necessary.

Comparative examples: authorised officer powers

The *South Australian Skills Act 2008* gives authorised persons the power to: question any person about the operation or enforcement of the Act; require production of any record or document required to be kept under the Act; examine, copy and take extracts; take documents and seize items that may constitute evidence of an offence; and enter and inspect premises where education or training is provided. These powers operate without first requiring evidence of a serious incident.

Section 27 of the *Teachers Registration and Standards Act 2004* prescribes that the Teachers Registration Board or the Registrar may, at any time, require a registered teacher or the employer or a former employer of a registered teacher to provide information relating to the teacher or the teacher's employment.

Question 6 — Interim view for comment

Authorised officers should not need to have reasonable grounds to suspect a breach before they can use their powers. The powers of an authorised officer should be modelled on those available under the National Law.

3.2 A Graduated Compliance Framework

The primary purpose of the ESB's regulatory functions is to protect children and young people in educational settings. Currently, if a school fails to comply with registration requirements, the available regulatory response is essentially binary: either the matter does not meet the threshold for action, or it proceeds to formal disciplinary proceedings. The consequences of disciplinary action are severe, and include:

- imposing conditions on registration that restrict the right to provide education services
- cancelling any endorsement
- suspending or cancelling registration
- disqualifying the school from being registered under the Act

This all-or-nothing structure means the only realistic regulatory response to a serious concern is the most severe process and sanction — even where a more proportionate intermediate response would be appropriate and effective.

The Act also does not provide emergency or interim powers to take rapid protective action in genuinely urgent situations. In the most serious cases, the ESB currently has no ready power to prevent children remaining in an environment of concern while regulatory processes run their course. This is a significant gap compared to frameworks governing early childhood services, where interim suspension and urgent compliance direction powers are available.

Modern regulatory frameworks provide a graduated range of tools — from guidance and education, through improvement notices and compliance directions, to conditions on registration and ultimately suspension or cancellation. The National Law provides such tools for early childhood services:

- compliance directions and notices

- show cause notices prior to suspension or cancellation
- immediate suspension if there is an immediate risk to children
- emergency action notices
- enforceable undertakings
- prohibition notices directed at individuals

There is a significant asymmetry between the compliance tools available to the ESB for early childhood services — where the National Law provides a broad range of mechanisms — and those available in the school regulatory context. Similar tools are available to schools regulators in other comparable Australian jurisdictions. The Disability Royal Commission's findings reinforce the case for strengthening enforcement powers: it found that the absence of effective oversight and enforcement mechanisms contributed to situations where students with disability experienced harm that should have been identified and prevented earlier.

Comparative example: Victorian enforceable undertakings

The Victorian Act provides for a regulated party to give an undertaking in connection with any matter in relation to which the Authority has a power or function, including matters relating to non-compliance with a minimum standard for registration. If an undertaking is breached, the Authority may apply to a court for an order.

Question 7

Should the ESB have a broader suite of regulatory tools available for intermediate intervention? Should these mirror those available under the National Law?

3.3 The Complaints Framework

Under the Act, when a person makes a complaint to the Board it must be referred to the school to be dealt with under the school's own complaints procedures. The Board's jurisdiction is only triggered if, after the school's process has been exhausted, the Board forms the view that the subject matter of the complaint would — if proved — constitute grounds for disciplinary action.

The Act requires schools to have complaints management policies in place. However, the ESB currently has limited basis to assess whether those policies are adequate, monitor whether they are being applied, or respond if a school's complaint handling is poor. This creates a binary system: either a concern meets the serious complaint threshold, or the options available to the ESB and the parent are very limited. There is no provision for intermediate regulatory engagement — such as directing a school to address a concern, requiring evidence of remediation, or monitoring outcomes — without the matter having escalated to formal investigation.

The Disability Royal Commission made a specific recommendation about complaints management for students with disability in schools (Recommendation 7.10):

Disability Royal Commission — Recommendation 7.10 (c)

State and territory school registration authorities should embed new complaint handling duties and measures for compliance in registration requirements for all schools, as a basis to monitor and enforce compliance.

The preliminary view of this review is that the ESB's complaints role should focus on ensuring schools have effective internal processes — setting standards and monitoring their effectiveness — rather than acting as a first-instance complaints body. This is consistent with the principle that complaints are best resolved at the school or system level. Giving the ESB clearer powers to set standards for complaints handling, and to require data about how complaints are managed, combined with a broader suite of regulatory tools as described earlier, would allow proper oversight while maintaining local complaint resolution.

Question 8

A. Is specific provision required in relation to complaints about the inclusion and treatment of students with disability?
B. If the Act is changed to provide for standard-setting, monitoring, data-seeking, and a wider suite of investigatory powers and regulatory tools as per questions 6 and 7, would this strike the appropriate balance in enabling the ESB to take action when appropriate?

Part 4: Governance

4.1 The Board's Role: A Question of Design

A foundational question for this review concerns the nature of the ESB as a regulator and the role the Board plays. Currently, the Board performs four distinct types of role:

- Policy maker — setting the standards for registration
- Licensing body — deciding whether a school can be registered
- Regulator — investigating compliance with standards through authorised officers
- Adjudicator — determining whether a school has failed to comply with standards and imposing any penalty

In modern regulatory agencies, it is more common for these functions to be separated. If there is a board, its role is typically governance: setting strategic direction, appointing and overseeing the Chief Executive or Registrar, and ensuring the agency operates within its legal powers. Decisions about registration, compliance, investigations, and enforcement are usually made by the agency head and their delegates — not the board itself. However, given the organisation is independent and regulates government services, it is proper that there is independence from the Minister and a Board structure assists to provide this.

The current structure for adjudication creates conflict of interest risks. The Act requires that a Board member nominated by a particular school sector must participate in any disciplinary hearing involving a school from that sector. For example, a disciplinary hearing about a Catholic school must include a Board member nominated by Catholic Schools Incorporated. This places that member in an inherently difficult position. The Board is also not well-equipped in terms of expertise or facilities to conduct disciplinary hearings, which can involve summonsing witnesses, receiving evidence under oath, and referring questions of law to the Supreme Court.

If the Board's role changes, more serious disciplinary proceedings could be heard by the South Australian Civil and Administrative Tribunal (SACAT), which has relevant expertise and independence from the sector, but the ability to sit with assessors drawn from the sector.

Options for change

The review identifies two options for reconsidering the Board's role:

- Governance body — responsible for appointing the Registrar, setting the ESB's strategic direction, monitoring regulatory performance, and maintaining accountability to the Minister and community. Regulatory powers — including registration decisions, investigation, compliance action, and enforcement — would vest in the Registrar with appropriate accountability to the Board.
- Advisory body — with whom the Registrar would be obliged to consult in setting standards and determining regulatory policy.

Either option would enable more nimble and responsive regulatory decision-making, reduce the governance risks that arise when a representative board directly exercises regulatory functions, and bring the ESB's governance model into line with contemporary practice across comparable regulatory agencies.

How other jurisdictions structure school regulators

Jurisdiction	Primary decision-maker	Governance model
South Australia	Registrar and the Board	Statutory authority with governing board. The Board determines registration matters and standards; the Registrar exercises operational, compliance and delegated regulatory powers.
New South Wales	CEO and delegates	Statutory authority with governing board. Registration and accreditation decisions made administratively through delegated officers.
Victoria	CEO and delegates	Statutory authority with board. The VRQA Board oversees strategic and regulatory functions; operational decisions are made by the CEO and authorised officers.
Queensland	The Board	Statutory authority with board. The Board itself makes accreditation decisions for non-state schools, supported by departmental staff.
Western Australia	Director General, Dept. of Education	Departmental model. Regulatory powers vest directly in the Director General.
Tasmania	Registrar	Independent statutory board model. The Board makes registration, renewal and enforcement decisions. The Registrar administers the scheme and advises the Board but is not the final decision-maker.
ACT	Executive Director	Registration functions vested with the Registrar, with advice from the Registration Standards Advisory Board.
Northern Territory	CEO and delegates	Departmental model. The Minister appoints a departmental officer as Registrar; no separate registration board.

Question 9

Should the role of the Board be:

- the regulator who supervises enforcement action (status quo) with matters that impact registration being heard by SACAT; or
- a governance body — responsible for appointing the Registrar, setting the ESB's strategic direction, monitoring regulatory performance, and maintaining accountability to the Minister and community — with regulatory powers vesting in the Registrar; or
- an advisory body with whom the Registrar must consult in setting standards and determining regulatory policy.

4.2 Board Composition

Once the Board's functions are determined, the next issue is its composition. The Act currently provides for a representative board of thirteen people, that includes two nominees from each of the key education sector bodies. If the member is unable to attend, a deputy may attend. For disciplinary decisions of the Board, the Act provides that a member from the relevant sector must participate in the hearing.

While this approach brings sector knowledge to the governance level, it can create tensions: conflicts between the affiliation with a sector and the Board's duty to act in the public interest; quality of deliberation when deputies attend in place of appointed members; and limitations on the Board's capacity to maintain strategic and independent focus.

Contemporary standards for government boards generally favour a skills-based composition — members appointed for the expertise needed to govern the agency effectively, alongside separate formal mechanisms for sector consultation.

The early childhood regulatory function has grown substantially since 2011 and now represents the largest and most complex component of the ESB's work. There are questions about whether the current board composition adequately reflects the skills and experience needed to govern both regulatory streams, albeit that the standards and regulations applying to early childhood and care are mostly determined nationally.

Any move to a skills-based board would need to be accompanied by robust mechanisms to ensure sector perspectives continue to inform the ESB's work — through advisory bodies, formal consultation requirements, or obligations on the Board to engage with sector stakeholders as part of its planning and performance monitoring. The Minister could still be required to seek nominees from the sectors but against a skills matrix rather than a representative model.

Comparative example: *TAFE SA Act 2025*

The TAFE SA Act provides that the Board consists of between 6 and 10 members, of whom two must be appointed following consultation with specified bodies. The Minister must ensure that the persons nominated to the Governor for appointment have expertise, abilities and experience required for the effective performance of TAFE's functions and the Act further sets out the skills and experience considered necessary.

Question 10

Should Board members be appointed according to skills and experience rather than the current model of selecting 2 from a panel of 4 nominated by each sector?

Part 5: Registrar Functions

5.1 The Three-Registrar Model

The Act currently establishes three separate Registrar roles: the Registrar of Non-Government Schools, the Registrar of Government Schools, and the Registrar of Early Childhood Services.

The rationale for maintaining separate statutory roles has become less clear. In practice, these roles have been held by one person since the ESB was established in 2012, with delegations within the agency.

A single Registrar model - would simplify matters and reflect the oversight of all services – government and non-government – in line with community expectation.

Question 11 — Interim view for comment

The Act should provide for a single Registrar rather than three Registrars.

Part 6: Information Sharing

6.1 Inter-Agency Information Sharing

Effective regulatory action often requires the ESB to access information held by other agencies — and information held by the ESB may be relevant to other oversight bodies. The Act currently provides a limited basis for inter-agency information sharing that does not adequately facilitate the cross-agency collaboration required for effective child safety oversight.

The Disability Royal Commission identified information sharing between regulatory agencies as a critical enabler of effective oversight of the safety and inclusion of students with disability. It found that the absence of effective sharing mechanisms contributed to failures to identify and respond to harm in educational settings.

Agencies with whom the ESB may have legitimate need to share information include:

- Department for Child Protection
- Office of the Public Advocate
- SA Police
- Teachers Registration Board of South Australia (TeachSA)
- SafeWork SA
- Equal Opportunity Commission
- Australian Children's Education and Care Quality Authority (ACECQA)
- Commonwealth education funding and regulatory bodies

The Act should provide a clear and comprehensive legislative basis for such sharing, with appropriate safeguards to protect the privacy and interests of individuals.

Comparative example: Skills Act information sharing model

The *South Australian Skills Act 2008* authorises the sharing of information if it is reasonably believed that doing so would assist in performing functions under the Act or managing any risk to an apprentice or trainee. A similar model could be adopted for the ESB, enabling information sharing for the purposes of protecting the safety and wellbeing of children and young people.

Question 12 — Interim view for comment

The Act should provide the ESB with the ability to share information with other agencies responsible for the safety and wellbeing of children and young people, when the ESB considers it necessary or appropriate to do so.

6.2 Public Communication of Safety and Quality Concerns

The ESB's current ability to communicate publicly about safety and quality concerns is limited. There is no clear legislative basis for the ESB to proactively advise the community of concerns about a registered provider's safety or quality — even where there may be significant risk to children and young people that families would benefit from knowing about.

The ability to make appropriate public statements is an important regulatory tool used by many comparable regulators. It supports informed family decision-making, provides an incentive for regulated parties to address compliance issues proactively, and reinforces the ESB's role as an authoritative source of information about quality in the sector.

Case Study: Communicating in the public interest

The media have reported concerns regarding the quality of education received by a child due to allegations of bullying at a particular school. While these matters may be of significant public interest, the ESB's current legislative framework limits its ability to respond unless the ESB has reasonable grounds for suspecting that an offence has been committed or there is proper cause for disciplinary action It is difficult for the ESB to determine whether the concerns have a foundation if information is not provided directly to the ESB. The ESB can't therefore provide meaningful information to the community about its regulatory assessment of the matter.

This can create uncertainty for parents, carers and prospective students seeking to make informed decisions about enrolment, as well as for existing school communities who may be seeking assurance that concerns are being appropriately addressed. The inability to investigate or publicly communicate the ESB's position may result in community members relying solely on media reporting, without the benefit of an independent regulatory assessment.

By contrast, under the National Quality Framework for early childhood education and care services, the ESB has broader powers to initiate investigations where information comes to its attention that suggests a potential risk to children's safety, wellbeing or educational outcomes. Where concerns are substantiated, the ESB can take regulatory action and, where appropriate, make information about compliance and enforcement outcomes publicly available. This enables the regulator to provide greater transparency, support informed decision-making by families, and maintain public confidence in the regulatory system.

Modern regulatory frameworks typically include explicit powers for public communication about compliance concerns, subject to procedural safeguards such as notice to the regulated party and consideration of the interests of individuals. Given the reputational impact of such statements, safeguards would be important if this power is provided.

Question 13 — Interim view for comment

The Act should provide an explicit legislative basis for the ESB to communicate publicly about safety and quality concerns in the sector, including the ability to identify regulated parties where this is necessary to protect children and young people.

Part 7: Summary of Questions

Stakeholders are invited to respond to any or all of the questions below. You do not need to address every question — please focus on those most relevant to your organisation, sector, or experience.

Question	Section	Summary
1	**Regulatory Principles**	Are there any other key areas that the objects of the Act should incorporate? Should the objects and principles for schools be more closely aligned with those for early childhood services, as set out in the National Law? In particular, should improvement be an explicit object of schools regulation — or is this better addressed through other means?
2 (Interim)	**Registration**	The requirement for schools to physically display their certificate of registration should be replaced by an obligation on the ESB to make this information available via its website.
3 (Interim)	**Standards and Codes**	The Act should explicitly require the ESB to develop and review standards (or codes) for school registration. The new framework should specify: • that standards can address all matters relevant to registration • the process for making and reviewing standards, including consultation with the sectors and other relevant parties • that the current power of veto by peak bodies is removed
4 (Interim)	**Monitoring and Assurance**	The ESB should be able to seek information about any matter relevant to registration — not just 'education services'.
5	**Monitoring and Assurance**	Should the Act give the ESB the ability to require schools to provide data or information of a particular category or threshold, either periodically or on an ad hoc basis?
6 (Interim)	**Information Gathering Powers**	Authorised officers should have powers to determine whether there is a basis for taking compliance action, rather than needing reasonable grounds to suspect a breach before they can investigate. These powers should be modelled on those available to authorised officers under the National Law.
7	**Compliance Framework**	Should the ESB have a broader suite of intermediate regulatory tools, mirroring those available under the National Law?
8	**Complaints**	A. Is specific provision required in relation to complaints about the inclusion and treatment of students with disability? B. If the Act is changed to provide for standard-setting, monitoring, data-seeking, and a wider suite of investigatory powers and regulatory tools as per questions 6 and 7, would this strike the appropriate balance in enabling the ESB to take action when appropriate?

9	**Board Governance**	Should the role of the Board be: • the regulator who supervises enforcement action (status quo) with matters that impact registration being heard by SACAT; or • a governance body — responsible for appointing the Registrar, setting the ESB's strategic direction, monitoring regulatory performance, and maintaining accountability to the Minister and community — with regulatory powers vesting in the Registrar; or • an advisory body with whom the Registrar must consult in setting standards and determining regulatory policy.
10	**Board Composition**	Should Board members be appointed according to skills and experience rather than the current model of selecting 2 from a panel of 4 nominated by each sector?
11 (Interim)	**Registrar Functions**	The Act should provide for a single Registrar rather than three Registrars.
12 (Interim)	**Information Sharing**	The Act should provide the ESB with the ability to share information with other agencies responsible for the safety and wellbeing of children and young people, when the ESB considers it necessary or appropriate to do so.
13 (Interim)	**Public Communication**	The Act should provide an explicit legislative basis for the ESB to communicate publicly about safety and quality concerns in the sector, including the ability to identify regulated parties where this is necessary to protect children and young people.

Appendix: Key Terms and Abbreviations

Term	Meaning
the Act	*Education and Early Childhood Services (Registration and Standards) Act 2011 (SA)*
ACECQA	Australian Children's Education and Care Quality Authority
Disability Royal Commission	Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability
ESB	Education Standards Board
National Law	Education and Care Services National Law (South Australia)
OSHC	Outside School Hours Care
SACE Board	South Australian Certificate of Education Board
SACAT	South Australian Civil and Administrative Tribunal
TeachSA	Teachers Registration Board of South Australia
TEQSA	Tertiary Education Quality and Standards Agency
Terms of Reference	Terms of Reference for the review of the Act, approved by the Minister, June 2023