



AS 5725:2015 Boarding Standard for Australian Schools and Residences

Briefing paper for Governors, Principals, Bursars and Business Managers of non-government schools that provide a boarding service.

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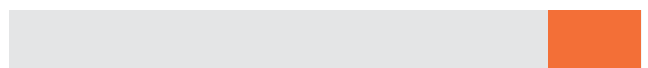


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Executive Summary

The legislative and regulatory requirements for boarding schools in Australia vary depending on the state or territory in which they are located. Due to the unique nature of boarding schools, in addition to the common law student duty of care, there is a complex array of legislation and regulations that apply to boarding school operations.

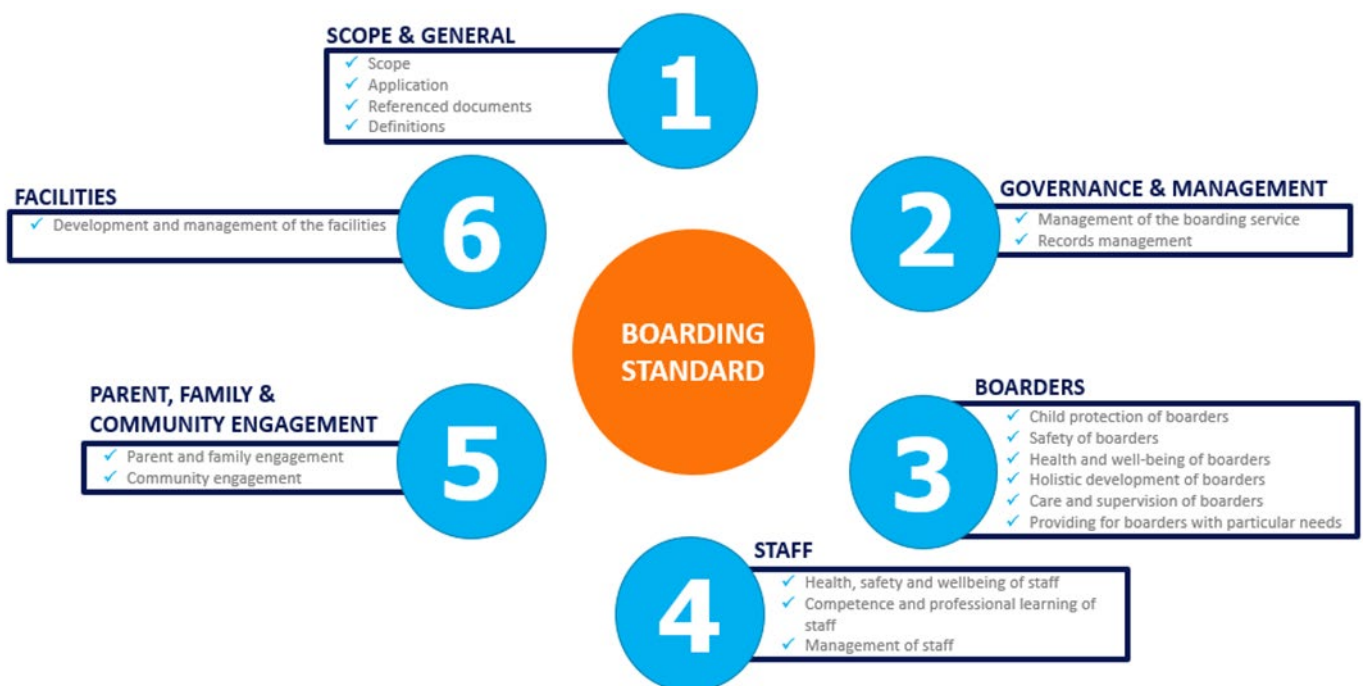
The publication of AS 5725:2015 Boarding Standard for Australian schools and residences (Standard) in July 2015 has introduced a common national framework that is designed to provide owners, operators, managers and staff of boarding services with guidance on the matters that need to be addressed in order to deliver a safe, healthy and productive environment for boarders.

The Standard applies to all boarding schools and residences across Australia, including those run by government and non-government schools. Compliance with the Standard is not legally mandated in most states and territories, but rather the Standard establishes a benchmark for best practice in providing a boarding service in Australia.

The Standard was developed in consultation with key stakeholders in the Australian boarding sector including Boarding Australia, the National Catholic Education Commission, the Association of Heads of Independent Schools of Australia, Anglican Schools Australia, Lutheran Education Queensland and government school bodies, as well as various associations representing principals and parents. The Australian Boarding Schools Association (ABSA) instituted and funded the Standard. ABSA also provided the drafting chair.

The Standard has six sections:

1. Scope and General
2. Governance and Management
3. Boarders
4. Staff
5. Parent, Family and Community Engagement
6. Facilities.



Together, these six sections contain over 100 requirements. This means that to comply with the Standard, most boarding schools will be required to have a much higher level of sophistication in the management of their boarding school practices than may previously have been the case.

Given the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), the adoption of the 10 National Child Safe Principles by COAG and the move towards their implementation in legislation in all states and territories, and the rapidly changing landscape with respect to child protection and child safety related laws in Australia, the Standard provides a framework through which all boarding schools can ensure sustainable compliance with evolving legislative and regulatory requirements.

Of note, there is an emphasis on the reporting of critical incidents and injuries to boarding services management, policies and procedures relating to the use of alcohol and drugs, a process to recognise and respect diversity and procedures outlining the manner and supervision of boarders in off-site and extra-curricular activities and excursions. In addition, there is a requirement for policies and procedures in relation to recruitment, employment and engagement of volunteers and a requirement that all policies and procedures are provided to staff at the commencement of employment.

Compliance with the Standard will enable a school to better identify and manage risks that may arise in relation to their boarders.

CompliSpace has developed a Boarding Program, based on the Standard and reviewed by ABSA, comprising policies, procedures and online training, which can be applied to boarding schools in all states and territories. Additional policies and procedures have been developed to help schools in affected states and territories comply with individual registration requirements relating to their boarding house. There is also a summary of the key legal obligations in relation to overseas students.

Background

The Standard sets out requirements for the management and operation of residential and school boarding services and is intended to apply to all schools across Australia, both government and non-government. The Standard is an industry-based standard and is not legally mandated.

The Standard was developed in consultation with key stakeholders in the Australian boarding sector including Boarding Australia, the National Catholic Education Commission, the Association of Heads of Independent Schools of Australia, Anglican Schools Australia, Lutheran Education Queensland and government school bodies, as well as various associations representing principals and parents. ABSA instituted and funded the Standard. ABSA also provided the drafting chair.

“What the Australian Boarding Standard offers is an evaluative instrument that brings together the best state and territory school boarding standards found throughout Australia. It also adds best practice from boarding schools overseas. Most importantly, the Australian Boarding Standard represents the collective wisdom from a large number of experienced boarding staff and administrators. The result is that the Australian Boarding Standard has great integrity. In essence, it represents standards determined by the boarding profession for the boarding profession.”
(ABSA@www.boarding.org.au)

The Standard has been recognised by the Department of Education Western Australia in its Guide To Registration Standards And Other Requirements For Non-Government Schools 2020 (which includes the WA Registration Standards) which requires schools with boarding facilities to benchmark their policies and procedures against contemporary best practice.

Boarding Schools and the Australian Legal Environment

Complex Combination of Laws

There are currently approximately 200 boarding schools across Australia. The legislative and regulatory requirements for boarding schools vary depending on the state or territory in which they are located. Due to the unique nature of boarding schools, in addition to the common law student duty of care, there is a complex array of legislation and regulations that can potentially apply including in relation to:

- ✓ Work health and safety (WHS)/Occupational Health and Safety (OHS)/Occupational Safety and Health (OSH)
- ✓ Child Safe Organisations
- ✓ Child Protection
- ✓ Privacy
- ✓ Human Resources/Employment
- ✓ Environmental Planning
- ✓ Building and Construction
- ✓ Food Preparation
- ✓ Contract Law
- ✓ Overseas Students
- ✓ Education Law (Registration).

Education Law

Four states and one territory now have legal obligations prescribing how non-government schools should operate their boarding houses: the Australian Capital Territory, New South Wales, Tasmania, Victoria and Western Australia. In the Northern Territory and Queensland, legislation or registration requirements in relation to boarding houses now apply to government schools.

In South Australia, there currently are no prescribed obligations applicable to boarding schools but schools must comply with general law obligations to ensure the safety and welfare of students. However, according to The Australian: “Boarding schools get behind duty of care”, the article mentions that South Australia is also working on boarding school regulation but no legislation has been drafted at the time of publication of this briefing paper.

ACT

The Education Amendment Act 2020 (ACT) amends the Education Act 2004 (ACT) to include a requirement that, as part of the registration and regulation process of non-government schools, all schools with boarding facilities are required to adhere to AS 5725:2015 - Australian Standard: Boarding Standard for Australian schools and residences. Adherence to the Standard will need to be demonstrated through appropriate policy and procedures at the individual school level. These amendments will commence on 1 January 2021.

These amendments to the ACT Education Act and Regulations implement a recommendation from the Royal Commission. “The purpose of these amendments is to include a requirement within the Act stating that as part of the operation of government schools and the registration and regulation process of non-government schools, all schools with boarding facilities are required to adhere to AS 5725:2015 - Australian Standard: Boarding Standard for Australian schools and residences (the Australian Standard). Adherence to the standards will need to be demonstrated through appropriate policy and procedures at the individual school level.”

Victoria

The Education and Training Reform Amendment (Regulation of Student Accommodation) Act 2020 (Vic) will commence on a date to be proclaimed. The main effect of this Act is to amend the Education and Training Reform Act 2006 (Vic) to expand the powers of the Victorian Registration and Qualifications Authority (VRQA) to regulate school boarding premises. The 2020 Act will create a new, separate, regime for the regulation of boarding schools, which will include some new requirements. The 2020 Act does not make reference to the Standard – rather, it says the VRQA will issue guidelines.

A public consultation on accompanying Regulations was undertaken between 11 December 2020 and 5 February 2021. According to the Engage Victoria webpage, the Amendment Act and Amendment Regulations will commence in June 2021.

NSW

Section 47(1)(i) of the Education Act 1990 (NSW) prescribes that if a school provides boarding facilities, whether itself or by contractual arrangement, it must have policies and procedures that are satisfactory to ensure the safety and welfare of boarders.

The NSW Education Standards Authority (NESA)'s Registered and Accredited Individual Non-Government Schools (NSW) Manual and Registration Systems and Member Non-government Schools (NSW) Manual (NSW Manuals) provide further compliance information for schools with boarding facilities. The NSW Manuals prescribe a set of eight minimum standards for the safety and welfare of boarders that cover topics such as accommodation, boarder rights and responsibilities, and training staff on child protection responsibilities.

The Standard addresses the same topics and expands on the requirements in the NSW Manuals.

WA

Under section 159(1)(j) of the School Education Act 1999 (WA) the Minister for Education and Training may determine standards for non-government schools about various matters including the arrangements (if any) for board and lodging for students on school premises or premises associated with schools. The WA Registration Standards include a standard (Standard 8) dealing specifically with boarders. Standard 8 has four requirements that address a range of topics including that boarders are consulted on several matters that affect them, communication, diet and ensuring staff are qualified, competent, fit and proper persons who meet child protection and child safe organisation requirements.

Tasmania

The Education Regulations 2017 (Tas) (Tasmanian Regulations), made under the Education Act 2016 (Tas) include a section on Student Welfare in the Standards for Renewal of Registration of Registered Individual Schools (Schedule 4, Clause 6 to the Tasmanian Regulations). Clause 6(3)(b) of Schedule 4 to the Tasmanian Regulations states that “a registered individual school must have one or more policies relating to... if the individual registered school operates a boarding house, the safety and welfare of students accommodated at the boarding house.” The same obligation applies to a system of non-government schools (Schedule 2 to the Tasmanian Regulations). The Standard addresses the broad boarder safety and welfare requirements of the Tasmanian Regulations and other general registration requirements including the provision of safe facilities (Schedule 4, Clause 9 to the Tasmanian Regulations).

NT

Division 10, Section 101 of the Education Act 2015 (NT) prescribes that “any person or body providing facilities for the accommodation of students enrolled in a Government school must ensure that the facilities meet any relevant Australian Standard.” The phrase “Australian Standard” is undefined in the legislation but guidance from the NT Department of Education confirms that it refers to the National Boarding Standard for Australian Schools – i.e. the Standard. It is unclear why this requirement is limited to government schools in the NT.

Queensland

The Queensland Government has produced a procedure document, “Safety and wellbeing of students residing at a state school operated residential boarding facility” (Procedure). The responsibilities and processes outlined in the document are “informed by the Australian standards: 5725: 2015: Boarding standard for Australian schools and residences (Department of Education (DoE) employees only).” As with the Northern Territory, it is unclear why this requirement is limited to Queensland state schools only.

Lack of Uniformity Created Opportunity

The lack of uniform guidance as to how schools around Australia are required to manage their boarding services was a key motivation behind the creation of the Standard. The lack of uniformity also created a challenge in drafting the Standard, to make sure that it did not undermine any state or territory laws and regulations that specifically deal with boarding (i.e. NSW and WA). This challenge has led to the drafting of a broadly worded, yet comprehensive Standard.

For schools in the ACT, NSW, WA, Tasmania and the NT and Queensland, the framework of areas addressed by the Standard provides a benchmark of best practice against which to measure existing policies and procedures and identify needed additions to existing programs.

For schools in other states, the introduction of the Standard represents a valuable opportunity to adopt a best practice governance framework.

All schools that comply with the Standard will have the assurance that they meet a national standard that has been developed to deliver a safe, healthy and productive environment for boarders.

Future Legal Reform

Many boarding schools around Australia have been somewhat “in the spotlight” since the public hearings held by the Royal Commission. Many schools providing boarding services were required to give evidence in relation to incidents of historical sexual abuse involving boarding students and how the schools managed those incidents. Generally, the Royal Commission found that those incidents were handled poorly.

The release of the Royal Commission’s final report in December 2017 and the National Principles for Child Safe Organisations are now driving legislative change in the states and territories. It is therefore not unrealistic to expect that this area of law will continue to be in a state of flux for many years to come, as Australia seeks to achieve some level of uniformity in its approach to child protection and making organisations child safe. Other Royal Commission reports and case studies emphasised the importance of the effect of organisational culture in relation to institutional child sexual abuse.

Schools with boarding services, which are already required to comply with a complex and constantly changing combination of laws, regulations and regulatory guidance notes regarding child protection and child safe organisations, should welcome the uniform benchmarks offered by the Standard. Section 3 of the Standard includes specific provisions on the topic of child protection.

In the face of seemingly endless jurisdictional variables, and at a time when schools are looking to “raise the bar” in the level of service they provide to their boarders, the Standard provides timely national benchmarks to which schools providing a boarding service can aspire. Compliance with the Standard will also demonstrate a school’s commitment to developing and implementing a “child safe” culture and be a proactive step towards compliance with child safe organisation legal reform in Australia.¹

The Australian Boarding Standard

The Australian Boarding Standard consists of six sections:

1. Scope and General
2. Governance and Management
3. Boarders
4. Staff
5. Parent, Family and Community Engagement
6. Facilities.

The Standard is brief in length, but extensive in terms of requirements for boarding residences and schools. In this section, we go into more detail about what is included in each section of the Standard.

1. Scope and General

This section of the Standard contains various explanatory subsections. It dictates that the five sections that follow are the “minimum requirements” for a boarding school’s policy framework. This section reiterates that schools need to be able to demonstrate compliance with federal and state or territory legislation that may go beyond the requirements of the Standard.

The Standard, in this section, states that a boarding school’s framework and processes must be “established, documented, disseminated, implemented, maintained and reviewed”. This text speaks to the need for a comprehensive governance, risk, compliance and policy (GRC&P) management framework rather than a suite of “set and forget” policies and procedures.

¹ The value of establishing a strong child safe culture is discussed in the paper [Compliance with Current and Future Child Protection Laws –Embedding a Child Protection Culture](#) which was presented by Mr. James Field, CompliSpace Managing Director at the Australia & New Zealand Education Law Association (ANZELA) Conference held in Auckland in September 2016.

Section 1 also includes a list of definitions that are used throughout the Standard.

2. Governance and Management

This section of the Standard sets out the minimum requirements for governance, management and day-to-day operation of a boarding house, including requirements relating to staff, records and financial management.

There are three subsections, being:

- ✓ Section 2.1 General: which outlines various mandatory requirements in relation to the governance and management processes used to oversee the strategic planning and operation of a boarding service. Included in this subsection is the requirement for schools to implement:
 - risk management processes following the guidance set out in the Australian Risk Management Standard AS/NZS ISO 31000; and
 - procedures and actions that will deliver continuous improvement.
- ✓ Section 2.2 Records Management: which requires the development and implementation of a records management policy, system and procedures which identify the record-keeping, back-up, storage, security, retention, disposal and confidentiality requirements.
- ✓ Section 2.3 Financial Management: which outlines financial management requirements including independent financial auditing requirements.

3. Boarders

This section includes requirements in relation to the protection, safety, health, care and development of boarders. It is the most comprehensive section of the Standard.

There are seven subsections. The first one (Section 3.1) is (in summary) a general statement regarding the boarders being the “focus for all boarding services”. The other six sections are:

- ✓ Section 3.2 Child Protection of Boarders
- ✓ Section 3.3 Safety of Boarders
- ✓ Section 3.4 Health and Well-being of Boarders
- ✓ Section 3.5 Holistic Development of Boarders
- ✓ Section 3.6 Care and Supervision of Boarders
- ✓ Section 3.7 Providing for Boarders with Particular Needs.

Boarders with “Particular Needs”, as referenced in Section 3.7, include overseas boarders, indigenous boarders, boarders from isolated country areas, boarders with disabilities and boarders with specific education needs.

When applying this section, schools must be cognisant of the National Principles for Child Safe Organisations and the laws and regulations that apply in their state or territory jurisdiction. They must also be cognisant of the Standard’s requirement for boarding schools to implement formal risk management systems, especially when dealing with the safety of boarders and their care and supervision.

It is important to note that while most schools will already have policies and procedures relating to these areas of student duty of care for their day students, the Standard requires that schools also have boarder- specific policies and procedures.

4. Staff

“Boarding Staff” as defined in the Standard are: “persons undertaking a variety of duties in the delivery of the boarding service”. The practical application of this definition to a boarding house means that “staff” would include not only those staff traditionally considered to be boarding staff, but also day school staff, volunteers, contractors and external service providers (for example cleaning and catering services) who have boarding house duties.

Section 4 of the Standard requires schools to have a framework of boarding staff-related provisions regarding staff health, safety, well-being, competence, professional learning and management.

There are four subsections. The first one (Section 4.1) is a general statement regarding the importance of staff in the delivery of a quality boarding service. The other three sections are:

- ✓ Section 4.2 Health and Well-being of Staff: which requires a school to consider their current work health and safety procedures and risk management system, within the context of the boarding school and its staff
- ✓ Section 4.3 Competence and Professional Learning of Staff: which requires the provision of annual professional learning for all boarding staff, as defined in the Standard, relevant to their role and context
- ✓ Section 4.4 Management of Staff: which requires boarding staff recruitment policies and procedures, a code of conduct, job descriptions and a boarding staff handbook.

Many of these obligations relate to underlying employment laws that apply to a school generally and also to registration requirements that address staff competency. Compliance with the Standard, however, requires the development of boarding-house specific policies and procedures that reflect the unique role played by boarding staff in the delivery of boarding services.

5. Parent, Family and Community Engagement

This section of the Standard requires boarding schools to engage with parents, families, other boarding schools and community organisations to enhance their boarding service, including in relation to boarder support and well-being.

There are three subsections. The first one (Section 5.1) is a general statement on the importance of community partnerships contributing to boarder support and well-being. The other two sections are:

- ✓ Section 5.2 Parent and Family Engagement: which outlines requirements for a boarding school's interactions with a boarder's parents and family, and the need to seek and promote their engagement in policy development and decision-making
- ✓ Section 5.3 Community Engagement: which includes the requirement to develop and implement communication protocols for building relationships with partner schools and community services and organisations.

6. Facilities

Section 6 of the Standard includes various requirements for boarding schools regarding required facilities, accommodation and amenities, security arrangements for boarders and live-in staff, maintenance and cleaning, as well as the improvement of boarding facilities. Many of these obligations relate to underlying work health and safety laws which apply to a school generally, and registration requirements that address school facilities.

About CompliSpace

CompliSpace combines specialist governance, risk, compliance and policy (GRC&P) management consultancy services with practical, technology-enabled solutions. We are the leading provider of GRC&P services to non-government schools and educational authorities in Australia, working with over 650 schools and educational authorities across all Australian states and territories.

Our team of lawyers, subject matter and industry experts actively monitor changes to relevant laws and standards enabling us to deliver a full suite of online policies, procedures and governance programs that enable schools to continuously comply with their legal and regulatory obligations.

CompliSpace's Boarding Program

CompliSpace has developed a comprehensive and practical Boarding Program for schools around Australia that systematically addresses each of the requirements of the Standard while considering jurisdictional legal variables.

The creation of the Boarding Program involved a comprehensive research and development process through which CompliSpace undertook extensive research on the Australian boarding school industry and reviewed and analysed the policies and procedures of over 40 boarding schools to gain greater insight into how schools manage their legal and regulatory obligations. The result is a program that is as robust as it is practical.

The Boarding Program is delivered online and is purposely designed to be tailored to each school's specific requirements. It is kept up to date with legal and regulatory changes as they occur, which allows boarding schools to focus on the management of the day-to-day delivery of their boarding service while having assurance that they are compliant with their key legal and regulatory responsibilities.

CompliSpace's Boarding Program has six sections that map to each Section of the Standard. There is an additional seventh section on overseas boarders that includes policies and procedures that address the additional legal and regulatory obligations that apply to schools that have overseas boarders living in the boarding house. CompliSpace has also developed a separate Overseas Students Program for Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) Registered Schools.

The Boarding Program includes online training to assist with the induction of boarding staff.

The broad framework of topics included in the Standard means that the Boarding Program does not exist in a vacuum. The CompliSpace Boarding Program is therefore purposefully designed to integrate with other programs and policies that should already exist in a school including those relating to:

- ✓ Risk Management
- ✓ Compliance
- ✓ School Registration
- ✓ Child Protection
- ✓ Child Safe Organisations
- ✓ WHS
- ✓ Student Duty of Care (Safety, Health and Wellbeing)
- ✓ Critical Incidents
- ✓ Privacy
- ✓ Complaints Handling
- ✓ Human Resources
- ✓ Continuous Improvement.

CompliSpace clients can either choose to link directly to their own existing content or alternatively, the Boarding Program integrates seamlessly with other CompliSpace content modules that have been implemented within their school.

We acknowledge that each boarding school is unique, and for this reason CompliSpace is committed to a process of contextualisation for schools using the Program.

There is a high degree of contextualisation allowed within the Program to ensure that each policy, process or procedure accurately reflects the characteristics of the boarding school in question. CompliSpace also works with schools to tailor compliance and risk management systems to a school's individual needs and characteristics, ensuring meaningful compliance with their legal and regulatory obligations.

If you are looking to update your existing boarding school content, please contact us on:

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