



**Education  
Standards  
Board**

early childhood to  
senior schooling



**Government  
of South Australia**

# Education Standards Board Terms of Reference

Approved by the Education Standards Board on 26 May 2021

Approved by the Minister for Education on 1 July 2021

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## 1. Purpose

- 1.1 The purpose of this Terms of Reference is to set out the operating arrangements and priorities for the Education and Early Childhood Services Registration and Standards Board ('the Board').

## 2. Legislative context

- 2.1 The Board is responsible for the registration and regulation of early childhood services and registration of schools for domestic and overseas students. This work is carried out to ensure high-quality education services and high standards of competence and conduct by providers.
- 2.2 The Board administers the:
  - 2.4.1 *Education and Early Childhood Services (Registration and Standards) Act 2011 (SA)*, incorporating the *Education and Care Services National Law (South Australia)*
  - 2.4.2 Education and Care Services National Regulations 2011
  - 2.4.3 Education and Early Childhood Services (Registration and Standards) Regulations 2011 (SA).
- 2.5 As a designated state authority, the Board assesses and recommends schools for registration on CRICOS (Commonwealth Register of Institutions and Courses for Overseas Students) in line with Commonwealth legislation:
  - 2.5.1 *Education Services for Overseas Students Act 2000*
  - 2.5.2 Education Services for Overseas Students Regulations 2001.
- 2.6 The Board is responsible for the registration of Student Exchange Organisations under the *Education and Children's Services Act 2019*.
- 2.7 The Board is an independent statutory authority and has its functions detailed in the establishing legislation. In accordance with the Premier and Cabinet Circular *PC022 Establishment and governance requirements for government boards and committees*, the legislation satisfies the policy requirement for a terms of reference. This Terms of Reference provides supporting information/guidance in addition to the legislation.
- 2.8 The *Education and Early Childhood Services (Registration and Standards) Act 2011 (SA)* (the Act) should be referred to in the first instance and read in conjunction with this Terms of Reference. The Board shall have authority to interpret the meaning of this Terms of Reference and any other matter relating to the affairs of the Board on which this Terms of Reference is silent. The Board (through the Presiding Member) may make recommendations to the Minister about improvements or modifications to the Terms of Reference.
- 2.9 All terms are defined in the Act, however, for the purposes of this Terms of Reference, the administrative body, known as the Education Standards Board (ESB) is established as the agency to carry out the functions and decisions of the Board.

## 3. Governance context

- 3.1 In pursuing its statutory functions and exercising its powers, the Board shall:
  - 3.1.1 comply with lawful ministerial directions
  - 3.1.2 work to advance the government's vision and direction
  - 3.1.3 work collaboratively with other government agencies
  - 3.1.4 act in accordance with this terms of reference
  - 3.1.5 play its part to support the objectives, targets and priority actions of whole of government policies.

- 3.2 The following guide the Board's deliberations:
- 3.2.1 *Public Sector Act 2009*
  - 3.2.2 *Public Finance and Audit Act 1987*
  - 3.2.3 *Independent Commissioner Against Corruption Act 2012*
  - 3.2.4 *Public Interest Disclosure Act 2018*
  - 3.2.5 *Children and Young People (Safety) Act 2017*
  - 3.2.6 *Child Safety (Prohibited Persons) Act 2016*
  - 3.2.7 Treasurer's Instructions
  - 3.2.8 Premier and Cabinet Circulars
  - 3.2.9 Premier and Cabinet paper: Honesty and accountability for members of government boards
- 3.3 The Board aims to meet the following Australian and New Zealand Standard:
- 3.3.1 AS ISO 31000:2018 Risk Management – Guidelines.

#### 4. Board members

- 4.1 The establishment, composition and conditions of membership of the Board are set out under Subdivision 1 of the Act.
- 4.2 Board members hold positions on the Board as independent members, regardless of the basis upon which they have been appointed, with the purpose of furthering the Board's statutory and lawful objectives and in the interests of South Australians. Board members are not representatives of organisations by whom they may have been nominated for appointment.
- 4.3 The ESB will maintain a skills matrix which ensures Board members collectively have the knowledge, skills and experience necessary to enable the Board to carry out its functions effectively.
- 4.4 In accordance with Section 22(8) of the Act, the Governor may, on the nomination of the Minister, appoint a suitable person to be the deputy of a member of the Board.
- 4.5 A deputy may act as a member of the Board during any period of absence of the member in relation to whom the deputy has been appointed and participate as full Board members when they attend meetings in this capacity.
- 4.6 The requirements of qualification and nomination (if applicable) made in relation to the appointment of a Board member will apply to the deputy to that member.
- 4.7 The term of appointment of a Board member will apply to the deputy to that member.
- 4.8 Casual vacancies will be filled in the same manner as Board appointments as set out under Subdivision 1 of the Act.

#### 5. Responsibilities of the Board

- 5.1 Board members are required to:
  - 5.1.1 comply with all statutory and legal obligations
  - 5.1.2 abstain from any involvement in any decision where there may be a conflict of interest
  - 5.1.3 support and implement decisions of the Board

- 5.1.4 exercise a reasonable degree of care and diligence in the performance of their functions, and (without limiting the effect of the foregoing) for that purpose—
  - 5.1.4.1 obtain sufficient information and advice about matters to be decided by the Board or pursuant to a delegation to enable themselves to make informed decisions
  - 5.1.4.2 comply with any requirements as to confidentiality with respect to all matters to be decided by the Board or pursuant to a delegation
  - 5.1.4.3 attend and prepare for Board meetings
  - 5.1.4.4 model high levels of Public Sector ethics and values.
- 5.2 It is incumbent on each Board member to undertake:
  - 5.2.1 induction and training on appointment to the Board
  - 5.2.2 training and development as appropriate to ensure continuous improvement in their skills and knowledge.

## 6. Allowances and expenses

- 6.1 Board members (with the exception of government employees) are remunerated in accordance with the Department of the Premier and Cabinet Circular *PC016 Remuneration for Government Appointed Part-Time Boards and Committees* (PC016).
- 6.2 In addition to Board meetings, members are entitled to remuneration for attending committee meetings required by the Act and those established by the Board for specific purposes.
- 6.3 Board members required to attend an ad hoc committee are eligible for an hourly fee as set out in the Cabinet approved Boards and Committees Remuneration Framework.
- 6.4 Board members are also entitled to reimbursement of travel expenses necessarily incurred in accordance with the Department of the Premier and Cabinet Circular *PC016 Remuneration for Government Appointed Part-Time Boards and Committees* (PC016).

## 7. Relationship with the Minister

- 7.1 The Minister is the notional ‘shareholder’ of the Board for and on behalf of the people of South Australia.
- 7.2 The Board is responsible to the Minister for overseeing the operations of the ESB to:
  - 7.2.1 ensure efficient and effective performance of its registration and regulatory responsibilities
  - 7.2.2 ensure compliance with its legislative obligations
  - 7.2.3 ensure sound management of the ESB and its assets for and on behalf of its shareholders in accordance with the law
  - 7.2.4 ensure attainment of performance objectives as detailed in the Annual Report to Parliament.
- 7.3 Through the Chief Executive, the Board is obliged to:
  - 7.3.1 advise the Minister, as soon as practicable, of any material development that affects the financial or operating capacity of the ESB which may result in it not being able to meet its debts as and when they fall due
  - 7.3.2 ensure that all information furnished to the Minister by the ESB is accurate and comprehensive.

## 8. Registrar/Chief Executive

- 8.1 The Registrar is also the Chief Executive, appointed by the Presiding Member for and on behalf of the Board. The Registrar/Chief Executive's employment contract is determined by the Board who are/will be cognisant of Public Sector executive contracts.
- 8.2 The Registrar/Chief Executive's performance will be reviewed at least on an annual basis by the Presiding Member for and on behalf of the Board.
- 8.3 The Registrar holds the following three statutory positions in the Act:
  - 8.3.1 the Registrar for the government school education sector
  - 8.3.2 the Registrar for the non-government school education sector
  - 8.3.3 the Registrar for the early childhood services sector.
- 8.4 The Registrar/Chief Executive is accountable to the Board for day-to-day management of the ESB and the implementation of the Board's decisions, directions and policies.
- 8.5 In accordance with Section 32 of the Act, the Board has approved delegations for the Registrar/Chief Executive to effectively manage the ESB's operations in an appropriate and timely manner.
  - 8.5.1 The Board satisfies itself that delegations are properly carried out through the annual financial audit and the Registrar's annual performance review, through the Presiding Member.
  - 8.5.2 The Board's accounts must be audited at least once every financial year by an external auditor appointed by the Chief Executive as delegated by the Board. Approval is received from the Auditor General to appoint an independent external auditor for the provision of audit services for the Board for a three-year contract period (for a maximum of two terms).
  - 8.5.3 If required, the Board may in addition undertake an external audit function to satisfy itself that regulatory functions are being exercised appropriately.
  - 8.5.4 As required, some delegations are further delegated by the Board to managers and staff at various levels in accordance with their functions and general practice within the ESB.
  - 8.5.5 The ESB maintains a register of delegations which will be reviewed periodically by the Board and kept current.
  - 8.5.6 The Board's delegations are set out in the:
    - 8.5.6.1 Instrument of Delegations for Regulatory Powers and Functions
    - 8.5.6.2 Instrument of Operational Delegations for Financial Management
    - 8.5.6.3 Instrument of Operational Delegations for Human Resources Management
    - 8.5.6.4 Instrument of Delegations for Regulatory Powers and Functions (Student Exchange Organisations).
- 8.6 The Chief Executive will:
  - 8.6.1 ensure the ESB's Strategic Plan is communicated to all staff and stakeholders and will ensure that the expectations of the Minister and commitments from the Board to achieve those expectations are incorporated into team plans and implemented
  - 8.6.2 align resources against the Strategic Plan's objectives and priorities.

## 9. ESB staffing and management

- 9.1 Staff of the ESB are employed pursuant to Section 28 of the Act and their employment is covered by Part 7 of the *Public Sector Act 2009*.
- 9.2 Staff of the ESB must comply with relevant legislation, adhere to whole of government policy directions and uphold the Public Sector Values outlined in the Code of Ethics for the South Australian Public Sector.
- 9.3 As delegated by the Board, the Chief Executive is responsible for the staffing and management of the ESB in accordance with the Instrument of Operational Delegations for Human Resources Management and having regard to available funding.

## 10. Setting and reviewing strategic directions

- 10.1 The Board will set a strategic plan to guide the ESB which outlines the ESB's performance requirements and a commitment to:
  - 10.1.1 regulatory approach – to utilise a contemporary risk and standards based model
  - 10.1.2 customer service – to deliver quality services and be responsive to the needs of regulated entities
  - 10.1.3 people & culture – to develop/maintain a high achieving culture with a talented and diverse workforce and aspire to a zero-harm workplace.
- 10.2 The Board will consider reports by the ESB on attainment of its strategic, financial and risk management objectives and consider recommendations to adjust its strategies to ensure achievement of its objectives.
- 10.3 The Board may develop customer service standards for the ESB in addition to the regulatory timeframes set out in the administered legislation.
- 10.4 The Board will review and approve the ESB's annual report. As set out in Section 40 of the Act, the Board must, on or before 31 October in each year, deliver to the Minister an annual report on the administration of the Act and the work of the Board during the financial year ending on the preceding 30 June. However, the *Public Sector Act 2009* requires the report to be delivered by 30 September. Crown Law advice established that the requirements of the *Public Sector Act 2009* takes precedence over those of the Act.

## 11. Board decision-making

- 11.1 The Board is empowered under the Act to make binding decisions for the implementation of the Act.
- 11.2 Board members are expected to make all decisions for the benefit of the Board and its responsibilities. The decisions will also look to minimise the negative possible consequences of identified risks and maximise the possible positive consequences of opportunities in the long run.
- 11.3 Questions arising at any meeting of the Board shall be decided by a majority of votes. In the event of equality of votes the Presiding Member shall have a casting vote in addition to a deliberative vote.
- 11.4 Resolutions will be put to a formal vote at the meeting at the conclusion of any discussion regarding the resolution and associated submission. The Board may move an alternative resolution regarding a topic based on the discussion at the Board meeting.

- 11.5 The right to vote at the meeting is vested in the Board member personally. In the event of a Board member not being able to attend a meeting and a Deputy Board Member is in attendance in their absence the Deputy Board Member has full voting rights.
- 11.6 Unless a poll is demanded by at least five members prior to the determination of the resolution, a question for decision at a meeting may be determined by a show of hands or oral statement.
- 11.7 A proposed resolution of the Board becomes a valid decision of the Board despite the fact that it is not voted on at a meeting if notice of the resolution is given to all members and a majority of the members express concurrence by letter, email, facsimile or other written communication. A nil response constitutes concurrence with the proposed resolution.

## 12. Conflict of interest

- 12.1 Conflict of interest requirements are set out under Section 34 of the Act. Members who believe that they may have any conflict of interest in a paper that is being proposed must declare the nature and extent of their conflict as soon as it is apparent.
- 12.2 The Board member must:
- 12.2.1 as soon as practicable after the relevant facts have come to his or her knowledge, fully declare the fact and the nature, character and extent of that interest to the Board
  - 12.2.2 avoid any informal discussions that might influence fellow Board members on the matter
  - 12.2.3 when the matter is raised formally during a Board meeting, declare his or her interest and leave the room and not wait to be asked
  - 12.2.4 not take part in any consideration of, or the making of a decision in relation to, that matter.
- 12.3 Any disclosure of a conflict of interest and the steps taken regarding the conflict must be recorded in the minutes of the meeting.

## 13. Formation of committees

- 13.1 In accordance with Section 31 of the Act, the Board may form committees to consider specific matters to:
- 13.1.1 advise the Board or the Registrar on any matter; or
  - 13.1.2 carry out functions on behalf of the Board.
- 13.2 Any committee formed must have terms of reference approved by the Board.
- 13.3 The procedures to be observed in relation to the conduct of the business of a committee will be determined by the Board and recorded in the terms of reference.
- 13.4 Membership of a committee will be drawn from the Board, the deputy members, the ESB and elsewhere. Membership of standing committees (if any) must be approved by the Board.
- 13.5 Deputies may participate as full Board members when they attend sub-committee meetings established by the Board.
- 13.6 The committee will determine who will be the Presiding Member of a committee.
- 13.7 Members of committee/s must have appropriate relevant technical skills and knowledge.

- 13.8 Minutes of decisions or actions of committee meetings will be recorded and authorised by the Presiding Member of the Committee.
- 13.9 A decision related to varying the Board's standards for registration and review of registration of schools in South Australia will be referred by the Board to an ad hoc committee, comprised of Board Members representing the three school sectors, to reach a unanimous agreement on the amendment. In making the final decision, the Board will act on the advice of its committee.

## 14. Meeting protocols

- 14.1 The Board's procedures are set out under Section 33 of the Act.
- 14.2 If within 15 minutes after the time appointed for the meeting a quorum of members is not present, those assembled will confer with the Presiding Member and refer to the items on the agenda. In regard to each of the items they will decide which should be managed by:
- 14.2.1 notice of the resolution circulated in accordance with Section 33(7) of the Act
  - 14.2.2 deferred to the next scheduled Board meeting
  - 14.2.3 call of a special meeting in accordance with Part 15 of this Terms of Reference.
- 14.3 If the Presiding Member is not present within five minutes after the time appointed for holding the meeting, or he or she is present but declines to take or retires from the chair, the Deputy Presiding Member may chair the meeting. Failing the presence of the Presiding Member and the Deputy Presiding Member, a Member may be chosen by the Members to chair the meeting.
- 14.4 Meetings may occur by telephone/video conference provided a notice of the conference is given to all members in a manner determined by the Board and each participating member is capable of communicating with each of the other participating members.
- 14.5 Other parties including Deputy Board Members may be invited to address the Board and provide information. Parties lodging submissions for consideration may make presentations with the permission of the Presiding Member. Advisers in attendance should only speak when called upon for information or advice by a member of the Board.

## 15. Schedule of meetings

- 15.1 The scheduling of meetings will be at the direction of the Presiding Member and at the convenience of all members where possible.
- 15.2 An annual schedule will be agreed by the Board in advance.
- 15.3 The annual schedule replaces the need for calling meetings.
- 15.4 Special meetings of the Board may be requested by any member of the Board with a seconder and will only be held with the permission of the Presiding Member.
- 15.5 Notice for the special meeting can be sent by email or phone but the method must take into account the duration of the notice. Every effort will be given to ensure that the Board members are given as much notice as possible for the meeting but it can be as little as one day's notice.

## 16. Papers to the Board

- 16.1 Whilst not in any way limiting the capacity of the Board to make decisions about the business of the agency, generally, papers to the Board should concern material strategic matters that affect the ESB and by their nature and gravity should be placed before the

Board. The Chief Executive will be appropriately empowered by the Board to implement the Board's decisions.

- 16.2 Papers will be circulated at least three business days prior to the meeting unless the Presiding Member approves the late distribution.
- 16.3 Papers may have any of the following purposes:
  - 16.3.1 to seek direction
  - 16.3.2 to seek endorsement for action to be taken
  - 16.3.3 to seek approval for the implementation of recommendations
  - 16.3.4 to provide information.
- 16.4 The resolution that is being put to the Board for decision must be clearly stated in the paper.

## 17. Meeting minutes

- 17.1 The Board must have accurate minutes of its meetings, including resolutions achieved out of session, stored in accordance with the ESB Records Management Policy as approved by the Board.
- 17.2 All resolutions considered and associated decisions made must be clearly minuted with details of whether the proposal was passed or not.
- 17.3 An actions and decisions register will be updated and maintained.
- 17.4 Minutes must be confirmed by the Presiding Member of the meeting prior to circulation to other Board members as part of the next meeting's papers.
- 17.5 Minutes shall be signed by the Presiding Member of the next succeeding meeting at which the minutes are confirmed.
- 17.6 Where minutes are entered and signed they shall, until the contrary is proved, be evidence that the meeting was convened and duly held and that all resolutions and decisions made at a meeting shall be deemed to be valid.

## 18. Date of operation

- 18.1 This Terms of Reference comes into operation upon signing by the Minister, replaces the previous approved Charter and is binding on the Board and the ESB.
- 18.2 This Terms of Reference will be reviewed by the Board as required but in any event within 5 years of the date of signing by the Minister.