

Policy Title: Appointment and Functions of Authorised Persons
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 Legislation Act 2001
 Public Sector Management Act 1994

1. POLICY STATEMENT

- 1.1 The ~~Öä^&q |Ë^}^|æ^~~ of the Education and Training ~~Öä^&q |æ^~~ has the power to appoint a person under section 67 and section 119 of the *Education Act 2004* (the Act) to be an authorised person for the Act.
- 1.2 This person is appointed as an authorised person (government) or authorised person (non-government), depending on the section and/or sub-section/s of the Act from which they are appointed.
- 1.3 The ~~Öä^&q |Ë^}^|æ^~~ also has the power to determine under what provisions of the Act the person is appointed for, and therefore what powers can be exercised.

2. RATIONALE

- 2.1 The aim of this policy is to enable the ~~Öä^&q |æ^~~ to fulfil its responsibilities in appointing authorised persons who carry out a number of functions on behalf of the ~~Öä^&q |æ^~~.

3. DEFINITIONS

- 3.1 **Authorised person (government)** – a person who is an authorised person (government) appointed by the ~~Öä^&q |Ë^}^|æ^~~ under section 67 of the Act.
- 3.2 **Authorised person (non-government)** – a person who is an authorised person (non-government) appointed by the ~~Öä^&q |Ë^}^|æ^~~ under section 119 of the Act.
- 3.3 ~~8 jfYWcf!; YbYfU~~ – the person engaged under Division 3.4, ~~Öä^&q |Ë^}^|æ^~~ of the *Public Sector Management Act 1994* as the ~~Öä^&q |Ë^}^|æ^~~ of the ~~Öä^&q |æ^~~.
- 3.4 **Code of Ethics** – as established by section 9 of the *Public Sector Management Act 1994*.
- 3.5 ~~8 jfYWcfUH~~ – Education and Training ~~Öä^&q |æ^~~.

3.6 **Home Education** – education conducted by one or both of the child’s parents from a home base.

3.7 **Principal** – the person who is recognised as the principal of an ACT public school or an ACT non-government school.

3.8 **Staff of a school** – the principal, teachers and other people employed at the school.

4. PROCEDURES

4.1 Appointment

4.1.1 Under section 67(3) (government) and section 119(3) (non-government), the **Director** may appoint an authorised person only if:

- the person is an Australian citizen or a permanent resident of Australia, and
- the **Director** is satisfied that the person is a suitable person to be appointed, having regard to:
 - whether the person has any criminal convictions, and
 - the person’s employment records, and
- the person has satisfactorily completed adequate training to exercise the powers of an authorised person.

4.1.2 An authorised person may be appointed for a period of up to three years at the discretion of the **Director**.

4.1.3 An authorised person may be an employee of the **Director**, an employee of another ACT Government agency or a person external to the government.

4.1.4 A person may be an authorised person (government) and (non-government) by limiting the functions that an authorised person can carry out under each appointment to particular provision/s of the Act according to requirements designated by the **Director**.

4.1.5 A person appointed in a particular position who moves into another position, either temporary or permanent, which requires the holder of the position to be an authorised person, can retain the status of an authorised person until the normal expiry date.

4.1.6 Authorised persons may be reappointed as long as they continue to meet the criteria under section 67(3) (government) and/or section 119(3) (non-government).

4.2 Criminal records checks

4.2.1 The person being considered for appointment as an authorised person must undergo a criminal record check unless one has been conducted in the past 12 months.

4.2.2 In the case of departmental employees, this check will be conducted by the Workforce Management – Staffing and Recruitment section.

4.2.3 The cost of the criminal history check is the responsibility of the **Director** and **Director**.

4.3 Training

4.3.1 Persons must have satisfactorily completed adequate training to exercise the powers of an authorised person (government and/or non-government) proposed to be given to that person.

4.3.2 Training must be completed by persons nominated to be authorised persons prior to the appointment being made.

4.3.3 Training may be provided by another agency or Legal Liaison ~~and~~ personnel.

4.4 Appointment of ~~8~~ ~~of~~ ~~UNY~~ employees as Authorised Persons

~~4.4.1~~ The ~~Öä&q |EÖ^} ^|æ~~ may appoint individuals as authorised persons or identify positions within the agency which require the holder to be appointed an authorised person.

~~4.4.2~~ An authorised person who is a ~~ää&q |æ~~ employee may be appointed for a period of up to three years. This appointment may be reviewed on an annual basis or an as-required basis.

~~4.4.3~~ The ~~Öä&q |EÖ^} ^|æ~~ may appoint additional authorised persons on an as-required basis, for the period of time stated on the instrument of authorisation.

4.5 Appointment of non-ACT Government employees

~~4.5.1~~ The ~~Öä&q |EÖ^} ^|æ~~ may appoint a person who is external to the government as an authorised person. These appointments will generally be made to fulfil a specific purpose and will be for a specific (short-term) timeframe.

~~4.5.2~~ When appointing a non-ACT Government employee as an authorised person (government), the ~~Öä&q |EÖ^} ^|æ~~ must be satisfied that the eligibility criteria contained within section 67 of the Act have been complied with, including that person has completed the relevant training.

~~4.5.3~~ The ~~Öä&q |EÖ^} ^|æ~~ may appoint additional authorised persons on an as-required basis, for the period of time stated on the instrument of authorisation.

4.6 Identity card

~~4.6.1~~ The ~~Öä&q |EÖ^} ^|æ~~ must provide to an authorised person (government) an identity card that states the person is an authorised person (government) for the Act or stated provision/s of the Act.

~~4.6.2~~ The ~~Öä&q |EÖ^} ^|æ~~ must provide an authorised person (non-government) an identity card that states the person is an authorised person (non-government) for the Act or stated provision/s of the Act.

~~4.6.3~~ In both cases, the identity card must show, as required by section 68(1) and section 120(1) of the Act:

- a recent photograph of the person

- the name of the person
- the date of issue of the card (as stated on the instrument of authorisation)
- the expiry date of the card (as stated on the instrument of authorisation)
- the specific parts of the Act under which the person is authorised.

4.6.4 An authorised person must acknowledge the receipt of an identity card and be provided with an acknowledgement on return of the card.

4.6.5 As required in sections 69(1) and (2) (government) and 121(1) and (2) (non-government):

- an authorised person must show his or her identity card to the principal of a school prior to entering the school and exercising any powers under the legislation, and
- an authorised person must not remain in a school if they fail to show an identity card when asked by the principal of the school.

4.7 Register of Authorised Persons

4.7.1 A register of all current authorised persons must be kept by the Directorate.

4.7.2 The register must record under which provisions of the Act a person is appointed.

4.7.3 The register must include details of receipt and return of an identity card.

4.8 Cessation of appointment

4.8.1 An appointment as an authorised person ceases when:

- the expiry date on the instrument of appointment is reached, or
- the Director-General revokes the appointment.

4.8.2 The Director-General must revoke an appointment of an authorised person when:

- a person no longer meets the conditions set out in section 67 or section 119 of the Act, including if the Director-General determines that a person is no longer a suitable person to be appointed
- there is no longer a need for the appointment, or
- the person is no longer employed in a position appropriate to perform the duties of an authorised person.

4.8.3 The factors that the Director-General may consider in determining whether or not to revoke an appointment may include:

- breach of law
- breach of government or departmental policies, or
- breach of Code of Ethics.

4.8.4 As required under section 68(2) and section 120(2) of the Act, an authorised person must return their identity card within 21 days of cessation of appointment. Failure to do so is a strict liability offence and may incur a fine.

4.9 Powers

4.9.1 After showing their identity card an authorised person (government) may:

- enter a government school at any time (section 70)
- inspect the school or anything in it (including the register of enrolment and attendance) (section 71)

- make copies of the register of enrolments and attendances or any part of the register (section 34(3))
 - meet with student not attending school regularly and student's parent/s (section 35(3)). Template letter provided. (Attachment 3)
 - inspect any education programs, materials or other records proposed to be used for home education of children of compulsory education age in order to decide whether the conditions for registration will be complied with (section 131(4)).
- 4.9.2. Further information is contained in the Directorate's *Manual for Registration of Home Education ACT* Appendix 2 – Registration Visits.
- 4.9.3 An authorised person (non-government) may:
- enter a non-government school at any time when it is being used as a school under the Act to find out whether the Act is being complied with (section 122)
 - an authorised person may enter a non-government school at any other time if the principal of the school consents to the entry (section 123(1))
 - an authorised person (non-government) may without the consent of the principal of a non-government school, enter the non-government school to ask for consent to enter the school (section 123(2))
 - an authorised person (non-government) who enters a non-government school with consent, or for inspection purposes, may inspect the school or anything in it, including the register of enrolments and attendances (section 125)
 - an authorised person (non-government) may make copies of the register of enrolments and attendances or any part of the register (section 101(3))
 - meet with student not attending school regularly and student's parent/s (section 102(3)). Template letter provided.
- 4.9.4 Further information is contained in the *Manual for Registration of Non-government Schools in the Australian Capital Territory* (MRNGS) Appendix 2 Form 9 Consent to Entry Non-government Schools.
- 4.10 Obligations of authorised person (non-government) – consent to entry**
- 4.10.1 Under section 124 the following obligations apply if the authorised person (non-government) intends to ask the principal (non-government) to consent to the entry of the authorised person.
- 4.10.2 Before asking for consent to enter, the authorised person (non-government) must tell the principal:
- the reason for the entry, and
 - that the principal is not required to consent.
- 4.10.3 If the consent is given, the authorised person (non-government) must ask the principal to sign an acknowledgement of the consent.
- 4.10.4 The acknowledgement must state that:
- the principal was told –
 - the reason for the entry, and
 - that the principal is not required to consent, and
 - the principal gives an authorised person (non-government) consent to enter the school and exercise powers under the Act, and
 - the time and date the consent was given.

4.10.5 Under section 124(5) if the principal signs an acknowledgement of consent, the authorised person (non-government) must immediately give a copy to the principal. (MRNGS Form 9).

4.11 Role of the courts

4.11.1 Under section 124(6), a court may assume that the principal did not give consent to an authorised person if:

- a question arises in a proceeding court whether the principal consented to the authorised person (non-government) entering the school under the Act, and
- an acknowledgement is not produced in evidence for the entry, and it is not proved that the principal consented to the entry.

4.12 Application of powers on entry

4.12.1 The Act provides for an authorised person to inspect the school and anything in it.

4.12.2 This does not include students' lockers/bags, or personal property of staff.

4.12.3 It does include anything which can reasonably be considered as being part of the school's property or required for the operation of the school and the education of its students.

4.12.4 Where an authorised person has requested to view documents, and at that time accessing those documents would mean accessing either a student's or teacher's personal property (eg bag/locker or vehicle), the principal must endeavour to have that student or teacher provide the documents within a reasonable timeframe set by the authorised person or seek the permission of that student or teacher to search the stated location.

4.13 Obligations of principals

4.13.1 The principal of a school has an obligation under the Act to give the authorised person information that has been requested and must take reasonable steps to assist the authorised person in exercising their functions under the Act.

4.13.2 Failure to do either of these things is a strict liability offence and may incur a fine.

5 POLICY OWNER

Director, Information, Communications and Governance

6 RELATED POLICIES

- Attendance at Government Schools
- Attendance at Non-government Schools
- Ensuring Compliance with Education Participation Requirements