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<b>POLICY TITLE:</b>	<b>APPOINTMENT AND FUNCTIONS OF AUTHORISED PERSONS</b>
<b>YEAR OF PUBLICATION:</b>	2006
<b>IDENTIFIER:</b>	AFA200604
<b>LEGISLATION:</b>	<i>Education Act 2004</i> <i>Legislation Act 2001</i>

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## 1. Policy Statement

- 1.1 The chief executive may appoint a person under sections 67 and 119 of the *Education Act 2004* (the Act) to be an authorised person for the Act. This person is known as an authorised person (government) or authorised person (non-government), depending on which section of the Act they are appointed under.

## 2. Rationale

- 2.1 These procedures and guidelines aim to detail the process for appointing authorised persons and outline the powers held by authorised persons (government and non-government).

## 3. Definitions

***Authorised person (government):***

A person appointed by the chief executive under section 67 of the Act.

***Authorised person (non-government):***

A person appointed by the chief executive under section 119 of the Act.

***Chief executive:***

The person engaged under division 3.4 of the *Public Sector Management Act 1994* as the chief executive of the Department of Education and Training.

***Department:***

The ACT Department of Education and Training.

***Home education:***

Education conducted by one or both of the child's parents from a home base. Parents take on full responsibility for planning, implementing, conducting and evaluating the learning program.

***Principal:***

The person who is the recognised principal of a government or non-government school.

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**Appointment and Functions of Authorised Persons**

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**Staff:**

The principal, teacher and other people employed at the school.

**Student:**

A person who is enrolled as a student in a school in accordance with section 33 of the Act.

**4. Procedures****4.1 Appointment**

4.1.1 Under sections 67(3) (government) and 119(3) (non-government), the chief executive may appoint an authorised person only if:

- the person is an Australian citizen or a permanent resident of Australia; and
- the chief executive 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 record; and
- the person has satisfactorily completed adequate training to exercise the powers of an authorised person

4.1.2 An authorised person may be an employee of the department, an employee of another ACT Government agency, or someone external to the government.

4.1.3 Whenever the chief executive appoints an authorised person, the chief executive must certify in writing that the person is suitable for the appointment.

4.1.4 The chief executive may appoint any number of authorised persons, government and non-government, according to the needs of the system at any given time.

4.1.5 The department's auditor may be appointed as an authorised person government and non-government for the purposes of carrying out an audit on a government or non-government school, having regard for the provisions of the Act in relation to authorised persons.

**4.2 Police Checks**

4.2.1 Persons being considered for appointment as authorised persons must undergo a police 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 ACT Department of Education and Training Workforce Management section.

**4.3 Appointment of DET employees as Authorised Persons**

4.3.1 The chief executive may appoint individuals as authorised persons or identify positions within the agency which require the holder to be appointed an authorised person.

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- 4.3.2 An authorised person who is a departmental employee may be appointed for a period of up to one year. This appointment may be renewed on an annual basis and a new identity card must be issued.
- 4.3.3 The chief executive may appoint additional authorised persons on an as-required basis, for the period of time stated on the authorised person's identity card.
- 4.3.4 Employees from other ACT Government departments may also be appointed as authorised persons on an as-required basis.

#### **4.4 Appointment of non-ACT Government Employees**

- 4.4.1 The chief executive 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.
- 4.4.2 Appointment of non-ACT Government employees requires the appointment to be tabled in the Legislative Assembly as a disallowable instrument under the *Legislation Act 2001*.
- 4.4.3 The disallowable instrument must be prepared with the assistance of Parliamentary Counsel's Office (PCO); forwarded to the Minister for Education for approval; then forwarded to PCO for notification on the Legislation Register and for tabling in the Assembly.
- 4.4.4 Once notified on the Legislation Register, the appointment may take effect, however it must be tabled and the Assembly has six sitting days to consider the instrument and can disallow it. Sufficient time should be allowed to enable the Assembly to consider the instrument prior to the appointment taking effect.
- 4.4.5 When appointing a non-ACT Government employee as an authorised person (government), the chief executive must be satisfied that the eligibility criteria contained within section 67 of the Act have been complied with, including having completed the relevant training.

#### **4.5 Cessation of Appointment**

- 4.5.1 An appointment as an authorised person ceases when:
- the expiry date on the person's identity card is reached; or
  - the chief executive rescinds the appointment; or
  - the authorised person no longer occupies a position which has been identified as requiring the authority.
- 4.5.2 The chief executive may rescind the appointment of an authorised person when:
- a conflict of interest arises: or
  - an authorised person no longer meets the eligibility criteria for appointment as an authorised person under section 67 of the Act, or
  - the actions of the authorised persons are proven to be in breach of any law or Act of the Territory, or

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- for any other reason at the discretion of the chief executive.

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

#### **4.6 Training**

4.6.1 Training must be completed by persons nominated to be authorised persons prior to the appointment as an authorised person being made.

#### **4.7 Identity Card**

4.7.1 The chief executive must give an authorised person (government) an identity card that states the person is an authorised person (government) for the Act or stated provisions of the Act. The chief executive must also give an authorised person (non-government) a similar identity card, stating that the person is an authorised person (non-government).

4.7.2 In both cases, the Identity card must show, as required by Sections 68(1) and 120(1) of the Act:

- a recent photo of the person
- the name of the person
- the date of issue of the card
- an expiry date for the card
- anything else prescribed under regulations

4.7.3 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.
- An authorised person may not remain in a school if they fail to show an identity card when asked by the principal of the school.

#### **4.8 Register of Authorised Persons**

4.8.1 A register of all current authorised persons will be kept by the department.

4.8.2 The register will include details of receipt of an identity card.

#### **4.9 Receipt of Identity Card**

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

## 4.10 Powers

4.10.1 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))
- Inspect any education programs, materials or other records proposed to be used for home education of children of compulsory school age in order to decide whether the conditions for registration will be complied with (Section 131 (4))

Further information is contained in the department's enrolment and attendance procedures and guidelines and the guidelines for home education.

4.10.2 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))

Further information is contained in the enrolment and attendance guidelines for non-government schools.

4.10.3 Obligations of authorised persons (non-government)

4.10.3.1 Before asking for the consent, the authorised person (non-government) must tell the principal, as set out in Section 124(2) of the Act:

- the reason for the entry; and
- that the principal is not required to consent.

4.10.3.2 Under Section 124(3) of the Act, if the consent is given, the authorised person (non-government) must ask the principal to sign an acknowledgment of the consent.

4.10.3.3 Section 124(4) requires that 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.

4.10.3.4 Section 124(5) states that if the principal signs an acknowledgment of consent, the authorised person (non-government) must immediately give a copy to the principal.

#### 4.10.4 Role of the Courts

4.10.4.1 A court may assume, under Section 124(6), that the principal did not consent if:

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

### 4.11 Application of Powers on Entry

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

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

4.11.3 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.

4.11.4 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.

### 4.12 Obligations of Principals

4.12.1 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.

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

**Contact:** Manager, School Policy Unit  
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**Related policies:** Enrolment and Attendance: Government Schools  
Enrolment and Attendance: Non government schools  
Home Education