

| NSW Department of Education

Not-For-Profit Governance Compliance
Self-Check Tool

Preamble

It has been my great privilege to be the inaugural chair of the Non-Government Schools Not-For-Profit Advisory Committee. The Committee was established in 2016 following changes to the *NSW Education Act (1990)*. The aim of the changes were to ensure that financial assistance provided to non-government schools was directed towards the education of students and the operation of schools.

The measures in the Act strengthen the rules around the key requirement that schools operate not-for-profit, giving communities greater confidence in the focus of their schools. This does not mean that a school cannot make a surplus but rather that the income and assets of the school must be used for the operation of the school.

The guidelines, information sheets and newsletters the Committee publish help schools better understand what they need to do to comply with the not-for-profit requirements, including improving policies and governance practices. Much has been learned over the past four years following the changes to the Act. We now understand how to support schools in making improvements to school governance and accountability to strengthen the sector and best support their school communities.

The Not-For-Profit Governance Compliance Self-Check Tool has been developed to provide additional help for schools' governing body members to identify any potential areas of concern. The tool was developed jointly with our sector partners, the NSW Association of Independent Schools and Catholic Schools NSW. This governance tool and the background information allows schools to better understand and comply with their not-for-profit obligations, identify areas where further work may be needed and clear steps for improvement. The governance tool is also useful for schools in meeting their obligations to operate not-for-profit.

The first part of this document is background information to centre the self assessment in the context of the regulatory environment. The second part is a questionnaire covering all areas of school governance. Immediately following is a short list of reflective questions to act as bridge between the questionnaire and development of an action plan. The third part is a sample action plan that can assist schools to address any areas of concern. The last part is further information and links to useful information.

We welcome your feedback. Your experience and advice in using the self assessment will help us to further improve our guidance and resources to schools, ensuring a better outcome for all.

Elizabeth Crouch

Chair

Non-Government Schools Not-For-Profit Advisory Committee

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Not-For-Profit Self-Check Tool

Introduction

It is appreciated that members of school governing bodies are donating their time, energy and skills to the benefit of the school. Being involved in the governing of a school is an important and worthwhile endeavour. It does, however, come with significant responsibility for both the educational environment of the school and the oversight of the school's income and assets. As anyone involved in governing schools is aware, achieving good governance requires a commitment of time and effort.

Non-government schools in NSW receive funding from the NSW Department of Education for the benefit of students at the school. Under Part 7, Division 3 of the *Education Act 1990 (Act)*, to receive funding, a non-government school must not operate for profit. This means that the income and assets of the school must be used for the operation of the school and the education of its students. The complete not-for-profit requirements are contained in Section 83C of the Act.

Under the legislation, school governing body members have responsibility for ensuring not-for-profit requirements are met by the school. 'In nearly every instance of issues with not-for-profit compliance, the source of the problems stems from poor governance.'

Purpose

The overriding purpose of the Not-For-Profit Governance Compliance Self-Check Tool (NFP Tool) is to ensure good governance arrangements are in place at a school. Good governance allows schools to comply with their not-for-profit obligations under the Act and also other obligations they might have for example, under the Commonwealth Education legislation, Australian Charities and Not-for-Profit Commission (ACNC) (if registered as a charity) or the Australian Securities and Investments Commission (ASIC).

For a school to meet its not-for-profit legal obligations it must make sure that all financial transactions comply with the following requirements under the Act:

1. The use of school income and assets is for the operation of the school only.

2. That any payment for services, property or goods are at no more than reasonable market value.
3. That any payment for services, property or goods is reasonable in the circumstances, having regard to the fact that financial assistance is provided to the school.

To successfully comply with the Act's not-for-profit requirements a school must:

- Adopt and maintain clear and appropriate policies and procedures aligned with these requirements.
- Make clear, well documented decisions by the board/governing body.
- Maintain all relevant documentation.

Background Information

Regulatory Environment

The NSW Department of Education oversees the not-for-profit requirements of non-government schools as outlined in Sections 83C to 83L of the Act which states that to be eligible for funding, non-government schools must not operate for profit. Not-for-profit decisions are made by the NSW Minister for Education following a recommendation by the Committee.

The NSW Education Standards Authority (NESA) is responsible for monitoring the compliance of non-government schools with the registration and accreditation requirements of the Act.

The Commonwealth Department of Education, Skills and Employment (DESE) is responsible for the *Australian Education Act 2013* and for the provision of funding to non-government schools under this legislation.

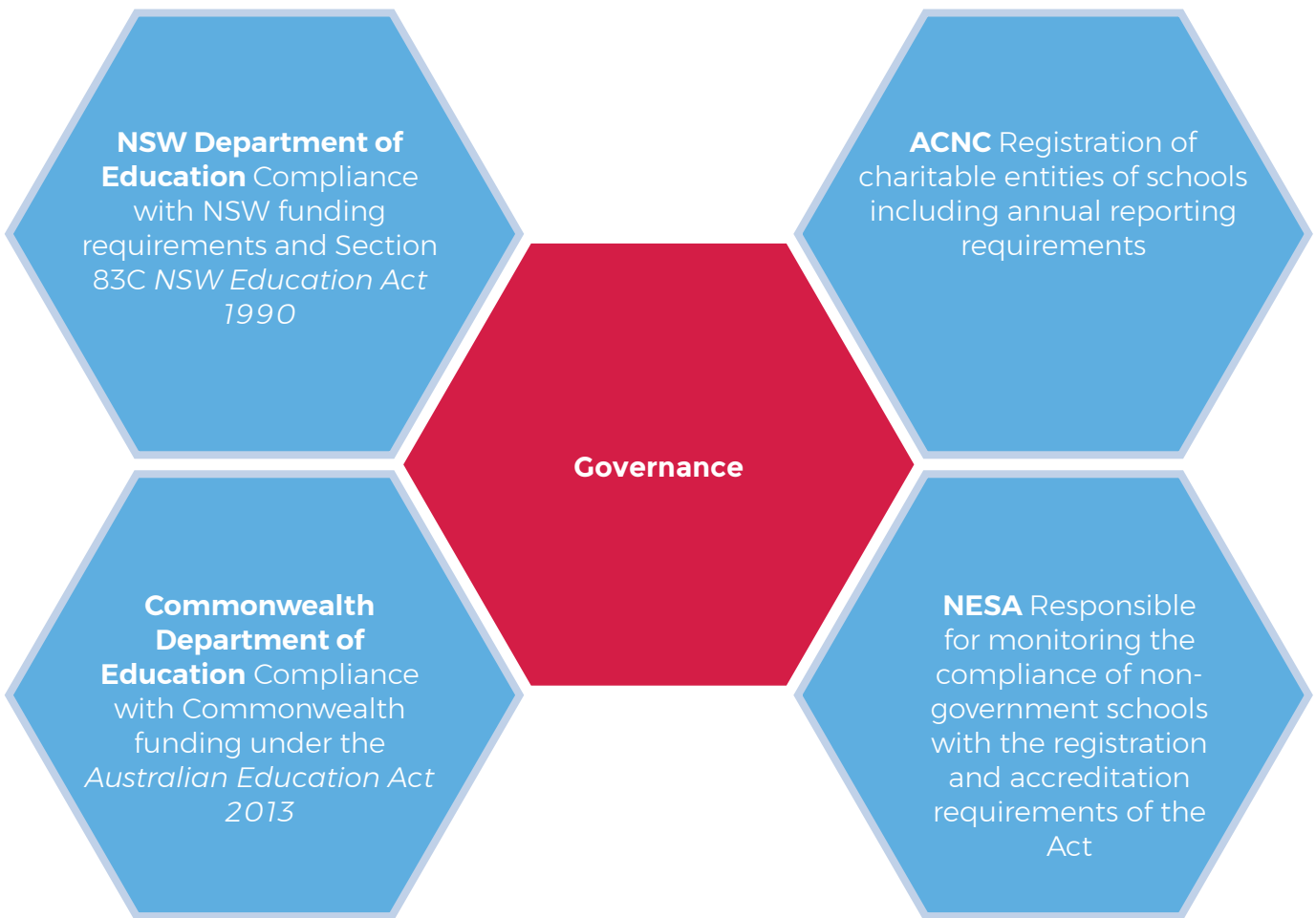
The Australian Charities and Not-for-profits

Commission (ACNC) is the national regulator of charities. The ACNC: Helps charities understand and meet their obligations through information, guidance, advice and other support. Registers organisations, including schools and/or their proprietors, as charities.

Many schools are registered as charities and therefore must also meet the legislative requirements under the *Australian Charities and Not-for-Profits Commission Act (2012)*.

The ACNC has many helpful resources relating to good governance arrangements which can be found online.

Regulatory Environment for NSW Non-Government Schools



Key Definitions

Below are some key definitions from the list of definitions in the [Not-For-Profit Guidelines for Non-Government Schools](#).

There are also newsletters and information sheets to assist schools to understand how to comply with their legal obligations and further explain the obligations.

Responsible Person

Under the NSW Education Act, Responsible Person for a school means:

- a) the proprietor of the school and, if the proprietor is a corporation, each director or person concerned in the management of the school, or
- b) a member of the governing body of the school, or
- c) the principal of the school.

Responsible Person under the ACNC Act: It is important to note that a Responsible Person for a charity is not always the same as under the Act.

Related Entity

“Related Entity” means a person or a legal entity that is related to a proprietor or school (or ‘Responsible Person’) either as a result of office, membership, management, control or influence or a personal/ familial relationship.

Related entities are sometimes referred to as related parties.

Related Entity Transactions

A related entity transaction is a transaction through which a person acting on behalf of the school provides a financial or other benefit to a related entity. This may include a cash payment or in-kind benefit to a related entity in connection with the supply of property, goods or services for the school.

Related entity transactions pose a not-for-profit compliance risk if the school cannot demonstrate that the transaction was at market value and/or at ‘arms length’. The intent of Section 83C(2)(b) of the Act is to prevent related entities from receiving unfair payments at the expense of educational funding provided for the benefit of students.

A related entity transaction is a transfer of resources, services, liabilities or obligations between a proprietor/ school and a related entity. There does not need to be expenditure of money. Related entity transactions can include:

- a) purchases, sales, donations;
- b) receipt of goods, services or property;
- c) leases;
- d) transfers of property including intellectual property;
- e) loans;
- f) guarantees; or
- g) provision of employees on a paid or complementary basis.

Reasonable Market Value

Reasonable market value means what a knowledgeable and willing third party would pay for property, goods or services in an ‘arm’s length’ transaction from the seller.

Payments

Payments in this context is a broad term that encompasses more than just the transfer of money for goods and services. Payments include immediate transactions or agreement to pay by or on a certain date at terms agreed by both parties (i.e. loans and promises).

School Governing Body

School governing bodies, also referred to as boards, councils or committees, are the key decision-making bodies for non-government schools. These bodies are responsible for issues such as a school’s educational provision, current and future development and staffing. It is crucial that school boards provide strategic direction and guidance to the principals or CEOs and senior executives charged with managing the school.

How to complete the tool

We recommend each governing body member complete the self-evaluation individually or as a group. The results can then be discussed at a meeting or used as a basis for further training or to develop an action plan. A template for this is provided. There is an answer sheet at the end of the questions.

If you require additional advice or support please contact NGS-Compliance@det.nsw.edu.au

Important Note

Responses to the questionnaire are generally confidential in nature and not automatically collected by the Department. However individuals may be asked to provide their responses if they have been specifically asked to complete this tool as part of a not-for-profit compliance investigation/audit.

If you require additional advice or support please contact NGS-Compliance@det.nsw.edu.au

Not-For-Profit Governance Compliance Self-Check Tool: Questionnaire

1. Understanding the Regulatory Framework for Schools.

1.1 I understand the regulatory frameworks that apply to my school and my role on the school's governing body. Please select the one which most applies.

Strongly Agree

Agree

Disagree

Strongly Disagree

Unsure

Test your knowledge:

The NSW Department of Education is responsible for:

The NSW Educational Standards Authority (NESAs) is responsible for

The Australian Charities and Not-For-Profits Commission (ACNC) is responsible for

1.2 I understand what is meant by 'Responsible Persons' under NSW Education Act. Please select the one which most applies.

Yes

No

Unsure

Please select from the list (tick box) below who under the Act are considered 'responsible persons'

Principal

Business Manager

Teaching staff

Non-teaching clerical staff

Members of the governing board

Parents

The Proprietor/s of the school

1.3 I understand what is meant by ‘Responsible Persons,’ for my school under the ACNC. Please select the one which most applies.

Yes

No

Unsure

Please select from the list (tick box) below who under the ACNC can be considered ‘Responsible Persons’.

Principal

Business Manager

Each of the members of the committee of management of the Incorporated association

Each of the directors of the company

Each of the directors of the corporation

Each of the trustees

Teaching staff

Non-teaching clerical staff

Members of the governing board

Parents

The Proprietor/s of the school

1.4 I am aware of the types of financial reports my school is required to produce for external agencies during the year. Please select the one which most applies.

Yes

No

Unsure

Please select from the list (tick box) below the reports you are aware the school provides to external agencies.

NSW Department of Education.

NSW Financial Accountability Certification

Financial Questionnaire

Acquittal Statement (Confirms funding has been spent or committed to being spent in accordance with relevant provisions as at 31 December of the year the funding was received)

School’s Annual Reports

NESA

Evidence of compliance relating to management and operation of the school and financial reporting

Notification to NESA when change in proprietor and/or responsible persons

ACNC

Commonwealth requirements

Commonwealth Financial Questionnaire

2. Understanding School Governance Policies and Procedures.

2.1 I am familiar with my school’s/proprietor’s constitution (or relevant document outlining its governance structure). Please tick the one which most applies.

Yes

No

Unsure

2.2 To my knowledge, the constitution does allow for the appointment of independent governing body members.

Yes

No

Unsure

2.3 I am familiar with the governing body’s code of conduct. Please select the one which most applies.

Strongly Agree

Agree

Disagree

Strongly Disagree

Unsure

2.4 I am aware that the code of conduct has been reviewed within the last five years. Please select the one which most applies.

Strongly Agree

Agree

Disagree

Strongly Disagree

Unsure

2.5 I am familiar with the governing body’s plan to review all school policies and procedures that required Board approval for clarity. Please select the one which most applies.

Strongly Agree

Agree

Disagree

Strongly Disagree

Unsure

School does not have a plan to review all policies and procedures

2.6 I am aware that the school has established processes to assist the school to comply with all relevant legislation. Please select the one which most applies.

Yes

No

Unsure

2.7 I can confirm that the school provides the governing body with the annual not-for-profit compliance statements. Please select the one which most applies.

Yes

No

Unsure

3. Conduct of Governing Body Meetings relevant to Not-For-Profit Compliance.

3.1 I can confirm that the school maintains written minutes of all board meetings that accurately reflect discussions and have clear approvals/ actions. Please select the one which most applies.

Yes

No

Unsure

3.2 I can confirm that the governing body devotes time to regularly discuss and review the school's strategic plans. Please select the one which most applies.

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Unsure

3.3 I can confirm that the governing body receives in-person financial reports at each meeting. Please select the one which most applies.

- Yes
- No
- Unsure

4. Complaints Policy relating to fraud, corruption and whistle-blowers

4.1 I am aware that the school has an up-to-date complaints handling policy. Please select the one which most applies.

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Unsure

4.2 I am aware that this complaints handling policy/process is available to the school community. Please select the one which most applies.

- Yes
- No
- Unsure

4.3 I am aware that the school has a whistle-blowers' policy. Please select the one which most applies.

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Unsure
- School is developing a policy

4.4 I am aware that the school has policies and processes for raising potential fraud and corruption concerns. Please select the one which most applies.

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Unsure
- School is developing a policy

5. Managing Conflicts of Interest.

Conflicts of interest occur when your personal interests conflict with your responsibility to act in the best interests of the school. The term 'personal interests' does not need to be your own interest, but may also arise from the interests of your family, friends, or other organisations with which you are involved. It also includes a conflict between your duty to the school and another duty that you have in another role. As the definition implies, it is nearly impossible to avoid conflicts of interests, and so the management of conflicts are crucial for meeting the best interests of the school.

5.1 I can confirm that at my school's governing body meetings, each member is required to raise any conflict of interest with regard to items on the meeting agenda. Any conflicts raised are recorded. Please select which one most applies.

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Unsure

Conflicts of interest can be one of three types: real, potential or perceived conflict of interest.

Test your knowledge:

A real conflict of interest:

A perceived conflict of interest: .

A potential conflict of interest: .

5.2 I am aware that the school has a clearly identified policy on identifying and managing conflicts of interest. Please select the one which most applies.

- Yes
- No
- Unsure

5.3 I am aware that the school maintains an up to date conflict of interest register. Please select the one which most applies.

- Yes
- No
- Unsure

5.4 I am aware that the school keeps each Responsible Person's annual conflicts of interest declaration for at least seven years. Please select the one which most applies.

- Yes
- No
- Unsure

5.5 I can confirm that I provide annually written declarations of any conflicts of interest. Please select the one which most applies.

Yes

No

Unsure

6. Related Entity Transactions.

Related party transactions, also known as related party relationships are a common feature of commercial transactions. For example, entities frequently carry out parts of their activities through subsidiaries, joint ventures and associates. In those circumstances, there is the possibility of the entity having the ability to affect the financial and operating policies of the school through the presence of control, joint control or significant influence.

A related entity transaction could influence the normal business operations of school. For example, a school may enter into a transaction with a related entity that it would not with an unrelated entity. This could include, goods supplied to school on terms that might not be offered to other customers.

The normal financial operations of the school may be affected by a related entity relationship even if related entity transactions do not occur. The mere existence of the relationship may be sufficient to affect the transactions of the school with other parties.

6.1 I understand the terms ‘related entity, and ‘related entity transactions’ and how they relate to school governance. Please select the one which most applies.

Strongly Agree

Agree

Disagree

Strongly Disagree

Unsure

Scenario 1: A school is seeking legal advice regarding staff employment. A board member contacts his son, who works at a law firm in Sydney CBD, to provide this legal advice. Two (2) other quotes are commissioned to confirm reasonable value for money is being achieved in using the son’s firm and these quotes are kept on file. The agreement is made in writing and is reasonable market value.

Your answer:

Scenario 2: The sister of a current employee of a school applies for an advertised position at the school. The position was advertised on the school’s website, in the local newspaper and through various job seeking platforms. The sister and three (3) other people were interviewed for the position. The current employee discloses their conflict of interest, and does not take part in the recruitment process. Records of the merit based selection process are recorded and kept. The sister is employed based on her skills and experience and is awarded a salary that is at reasonable market value.

Your answer:

Scenario 3: The Chair of the Board awards the cleaning contract to his brother-in-law’s company. No quotes are sought from either his brother-in-law or any other contractors. There is no documentation to show that the contract was market value tested.

Your answer:

Scenario 4: The School sells two parcels of unused land belonging to the school. The school does not seek independent valuation of the land and sells the land to a relative of one of the members of the Board. There is no documentation to confirm that the purchase price was market value or above.

Your answer:

6.2 I can confirm that my school has a related entity transactions policy. Please select the one which most applies.

Yes

No

Unsure

6.3 I can confirm that the school keeps a related entity transactions register. Please select the one which most applies.

Yes

No

Unsure

6.4 Does my school have a high dependency on related entities for significant transactions, such as purchasing or leasing of property? Please select the one which most applies.

Yes

No

Unsure

6.5 I am aware that related entity transactions have been independently market value tested and that decisions regarding the transactions have documented approvals. Please select the one which most applies.

Yes

No

Unsure

6.6 To the best of my knowledge all of the school's responsible persons have disclosed any related party transactions made on behalf of the school's proprietor or governing body. Please select the one which most applies.

Yes

No

Unsure

6.7 I am aware that the school has a policy of engaging an independent, registered external auditor to audit the school's register of all related party transactions. Please select the one which most applies.

Yes

No

Unsure

7. School Governing Body: Composition and Skills

7.1 I can confirm that the school has written policies and procedures for the requirement for the school's 'Responsible Persons' and governing body to be 'fit and proper'. Please select the one which most applies.

Yes

No

Unsure

7.2 I am aware that the school has reviewed its 'fit and proper' policies and procedures in the last five years. Please select the one which most applies.

Yes

No

Unsure

7.3 I can confirm that I have submitted declarations, on commencement and annual thereafter, of my 'fit and proper' status. Please select the one which most applies.

Yes

No

Unsure

7.4 I am aware that the school maintains a policy that all board members are provided with a letter OR equivalent outlining their obligations and duties. Please select the one which most applies.

Yes

No

Unsure

7.5 I am aware that the school's governing body regularly discusses its current and future skills composition and needs. Please select the one which most applies.

Yes

No

Unsure

7.6 I understand and am committed to NESA training requirements for board members.

Yes

No

Unsure

Next Steps

After completing the self-check tool, you and your fellow governing body members may have identified areas for improvement.

You may wish to complete the self-reflection questions on the next page to ascertain your current level of comfort with Section 83C compliance and its associated governance needs.

You and your governing body may wish to use the action template (also included in this Tool) to help develop practical steps to address any areas that may need improvement.

Self-Reflection Questions

1. Has completing the tool raised any concerns for you regarding your role and the regulatory environment?
2. Has completing the tool raised any concerns for you regarding your understanding of school governance policies and procedures?
3. Has completing the tool raised any concerns for you regarding the conduct of your governing bodies meetings relating to not-for-profit requirements?
4. Has completing the tool raised any concerns for your school's complaints policies (i.e. fraud, corruption and whistle-blowers)?
5. Has completing the tool raised any concerns for you regarding your school's policies and processes for managing conflicts of interest?
6. Has completing the tool raised any concerns for you regarding your school's policies and processes for related entity transactions?

7. Has completing the tool raised any concerns for you in terms of your school's governing body's composition and mix of skills?

8. Do you now feel more comfortable with your understanding of Section 83C and its associated governance responsibilities?

Self-Check Tool: Answer Sheet for Test Your Knowledge Sections

Question 1.1

The NSW Department of Education is responsible for Section 83C compliance under the Act.

The NSW Educational Standards Authority (NESAs) is responsible for accreditation and registration of schools.

The Australian Charities and Not-For-Profits Commission (ACNC) is responsible for registration and regulation of charities.

Question 1.2

The list of people who under NESAs requirements are considered 'responsible persons';

Principal;

Members of the governing board; and

The Proprietor/s of the school.

Question 1.3

The list of people who under ACNC can be considered 'Responsible Persons'

Each of the members of the committee of management of the incorporated association; or

Each of the directors of the company; or

Each of the directors of the corporation; or

Each of the trustees.

Question 5.1

A real conflict of interest: You are being influenced by a conflicting interest.

A perceived conflict of interest: You could be influenced by a conflicting interest.

A potential conflict of interest: You could appear to be influenced by a conflicting interest.

Question 6.1

Scenario 1:

This related entity transaction is consistent with Section 83C.

Scenario 2:

This related entity transaction is consistent with section 83C.

Scenario 3:

This related entity transaction is not consistent with Section 83C.

Scenario 4:

This related entity transaction is not consistent with Section 83C.

Sample Plan Template

Action Item No.	Issue	Action Required	Timeframe	Assigned to	Completed
'Conflicts of Interest'	Example: Our process for managing conflicts of interest is not documented	Example: Create and implement a conflicts of interest policy	1 July 20XX	Business Manager	

Additional Information

There are a number of sources of information available to your school to assist with not-for-profit compliance and good governance arrangements. We have listed these sources below.

Key Organisations and Contacts

NSW Department of Education

Website: <https://education.nsw.gov.au/about-us/our-people-and-structure/non-government-schools>

Email: NGS-Compliance@det.nsw.edu.au

Phone: (02) 7814 1226

NSW Education Standards Authority (NESA)

Website: www.educationstandards.nsw.edu.au

Email: schoolrego@nesa.nsw.edu.au

Phone: (02) 9367 8866

Association of Independent Schools NSW (AISNSW)

Website: www.aisnsw.edu.au

Email: <https://www.aisnsw.edu.au/contact-us>

Phone: (02) 9299 2845

Catholic Schools NSW (CSNSW)

Website: www.csnsw.catholic.edu.au

Email: <https://www.csnsw.catholic.edu.au/contact/>

Phone: (02) 9287 1555

Australian Charities and Not-for-Profit Commission (ACNC)

Website: www.acnc.gov.au

Email: <https://public-forms.acnc.gov.au/form/5ad806e3a71dbe39443cbf65/app/5ea0d868b3624e29049b0ce7>

Phone: 13 ACNC (13 22 62)

Key Documents and Links

NSW Department of Education

Guidelines have been developed to help schools understand their not-for-profit obligations under the Act.

The Guidelines can be found at https://education.nsw.gov.au/content/dam/main-education/about-us/our-people-and-structure/media/documents/DOC19_563153__Not-For-Profit_Guidelines_for_Non-Government_Schools_June_2019.pdf

The Guidelines provide assistance in terms of guidance on complying when carrying out common financial transactions and documents relating to the following types of transactions:

- Related entity transactions
- Determining reasonable market value
- Policies and procedures for procurement
- Documents that show compliance relating to land (for mortgages/ loans/leasing/rent)
- Documents that show compliance relating to ground rent/leases for unimproved land
- Purchase of plant and equipment
- Building and related works
- Intellectual property
- Payment for goods
- Consultancy and professional services
- Payments to members of governing bodies
- School-related travel
- Compensation, settlements and other one-off payments
- Ex-gratia payments
- Student scholarships and prizes
- Student fee concessions
- School fundraising and donations
- Sponsoring registered charitable organisations
- Credit/monetary loans
- Outstanding debts
- Shared or joint use of assets
- Use of income or assets for onsite ancillary

services

- Leasing school-owned property and assets.

For information on helping schools to understand their obligations, please see the Non-Government Schools Not-For-Profit Advisory Committee newsletters. The newsletters can be found at https://education.nsw.gov.au/content/dam/main-education/about-us/our-people-and-structure/media/documents/DOC19_563153__Not-For-Profit_Guidelines_for_Non-Government_Schools_June_2019.pdf

The newsletters provide more in-depth guidance on questions and concerns often raised and also provide useful case studies to assist understanding of the actions that may or may not be compliant with Section 83C of the Act.

NESA Manuals for Registration

The requirements for registration and accreditation are detailed in the registration manuals:

- Further information on non-government schools not-for-profit requirements can be found at <https://education.nsw.gov.au/about-us/our-people-and-structure/non-government-schools/non-government-schools-not-for-profit-requirements-information>
- Registered and Accredited Individual Non-government Schools (NSW) Manual is at <https://www.educationstandards.nsw.edu.au/wps/portal/nesa/regulation/school-registration/registration-and-accreditation-individual-non-government-schools-manual>

Legislation

The Education Act 1990 No 8 is at <https://www.legislation.nsw.gov.au/#/view/act/1990/8>

Keep the right records

The Department of Industry, Science and Innovation has a useful web page on keeping records. <https://www.business.gov.au/New-to-business-essentials/Keep-the-right-records>

Record keeping for charities

Charities registered with the ACNC have particular record keeping requirements. More information can be found at: <https://www.acnc.gov.au/for-charities/manage-your-charity/obligations-acnc/keep-charity-records>