

Regulatory Framework Development and Not-For-Profit Guidelines Review Project

Frequently Asked Questions

Why is NSW financial assistance to non-government schools regulated?

Each year, the NSW Government provides approximately \$1.5 billion in financial assistance to non-government schools to educate approximately one-third of NSW school students. The provision of this financial assistance is regulated by the Minister for Education and Early Learning (the **'Minister'**) to meet the 'not for profit requirements' of the *Education Act 1990* (NSW) (the **'Act'**) (see next FAQ).

It is important to recognise that non-government schools are also regulated by other bodies, including the NSW Education Standards Authority (NESA), the Australian Department of Education, and the Australian Charities and Not-for-profits Commission (ACNC). Each authority has different roles and responsibilities and different areas of regulatory oversight.

What are the 'not for profit requirements'?

To be eligible for financial assistance from the NSW Government, a non-government school must not operate for profit (section 83C(1) of the Act). Section 83C(2) of the Act identifies (without limitation) a number of specific circumstances in which non-government schools will operate for profit. For instance, a school will operate for profit if any part of its assets or income is used for a purpose other than the operation of the school. A school will also operate for profit if it makes a payment for property, goods or services, and that payment is at more than reasonable market value or is in any other way unreasonable in the circumstances, given the fact that financial assistance is provided to or for the benefit of the school. Additionally, the regulations may specify further circumstances in which a non-government school will or will not operate for profit (section 83C(3) of the Act).

What are the 'NFP Guidelines'?

The [Not-For-Profit Guidelines for Non-Government Schools](#) (the **'NFP Guidelines'**) are published under section 83L of the Act by the Minister. The purpose of the NFP Guidelines is to assist non-government schools in receipt of NSW Government funding to understand the not for profit requirements of the Act, and how to meet these obligations.

What is the project about?

The NSW Department of Education (the '**department**') is developing an outcomes and risk-based regulatory framework for the not for profit requirements of the Act.

As part of this, we are also reviewing the NFP Guidelines to ensure that they continue to provide the necessary guidance for non-government schools and align with the public interest and legislative intent of Parliament.

By the end of the project, we will recommend the following to the Minister:

1. An outcomes and risk-based regulatory framework for the not for profit requirements of the Act
2. A new and updated version of the NFP Guidelines
3. Any policy and/or operational changes to improve the regulation of the not-for profit requirements.

Why is this project being undertaken?

As the not for profit requirements of the Act have been in place since 2014, it is timely that we review the way we regulate these requirements. Our goal is to ensure that we continue to remain effective and current in our regulatory approach and responsible to stakeholder needs. This is consistent with best practice regulation.

The development of an outcomes and risk-based regulatory framework is important for a number of reasons, including:

- to ensure consistency and transparency in the way we regulate and administer the legislation, including our approach, our principles, and our objectives
- to support non-government schools in meeting and understanding their not for profit obligations
- to ensure that the approach to applying the legislation continues to be reasonable, minimises unnecessary regulatory burden on non-government schools, and is responsive to risk
- to maintain public confidence that NSW Government financial assistance is not provided to non-government schools that operate for profit.

We are also reviewing the NFP Guidelines. This is to ensure that they continue assisting non-government schools to comply with the not for profit requirements of the Act.

How does the regulatory framework fit in with the NFP Guidelines and the legislation?

The regulatory framework articulates the core foundations of why and how we regulate the not for profit requirements of the Act (including our regulatory approach and principles). The NFP Guidelines are statutory guidelines to help non-government schools understand their not for profit obligations under the Act.

How will the regulatory framework impact non-government schools?

The regulatory framework will ensure a transparent, fair and consistent approach to regulating non-government schools with respect to their not for profit obligations. We will also strengthen our focus on the engagement and education of the non-government school sector to ensure the clear and effective application of the regulatory framework.

Who is involved in the project?

The department is leading the delivery of the project. Input from our stakeholders will inform and enrich the development of the regulatory framework and the review of the NFP Guidelines. The key stakeholders that the department has been consulting include:

- The Non-Government Schools Not-for-profit Advisory Committee
- The Association of Independent Schools of NSW
- Catholic Schools NSW
- The NSW Education Standards Authority
- NSW Parents' Council
- Council of Catholic School Parents.

How have stakeholder views been considered in the development of the regulatory framework and the NFP Guidelines review?

In October 2022, the department released a public [Discussion Paper](#) and held a series of workshops with key stakeholders across 2022 and 2023 to consult on the design of the regulatory framework and the NFP Guidelines. The feedback received through these processes was carefully considered and was used to inform the development of the draft Regulatory Framework and updates to the NFP Guidelines. A [Summary of Stakeholder Feedback](#) received through the Discussion Paper submission process is available.

Exposure drafts of the Regulatory Framework and NFP Guidelines were released for public consultation in October 2023. The department is considering stakeholders' submissions on the exposure drafts, which will inform the development of the Regulatory Framework and review of the NFP Guidelines..

Will the NFP Guidelines include information on the use of school income and assets for preschools, long day care and out of school hours care?

It is recognised that further clarity is needed for non-government schools on the use of school income and assets for preschools, long day care and out of school hours care. For this reason, the Education Amendment (Non-Government School Assets and Income) Regulation 2024 (NSW) has been added under clause 10B of the [Education Regulation 2017 \(NSW\)](#). The NFP Guidelines (March 2024) have been updated, further to the insertion of clause 10B in the Education Regulation 2017. This clause, and the accompanying NFP Guidelines (March 2024) content, provides regulatory clarity that a non-government school may use certain income and assets to provide recognised education and care programs (including preschool, long day care and out of school hours care programs). A new section 9.2 - Education and Care Program – Preschool, long day care, out of school hours care (Clause 10B), has been added to the Not-for-Profit Guidelines for Non-Government Schools (March 2024 revision). This section replaces previous guidance on onsite ancillary services included in the NFP Guidelines (2019 version).

How does the development of the regulatory framework and the NFP Guidelines review relate to the Section 83C review?

The NSW Government has appointed Mr Thomas Alegounarias to review s.83C of the Education Act 1990 (NSW) and its associated sections. The final report, with recommendations to the Minister, is anticipated by no later than 30 June 2024. As part of the Ministerial Terms of Reference, Mr Alegounarias' review of s.83C will also consider:

- the draft Regulatory Framework
- the draft revision of the Minister’s Not-for-Profit Guidelines
- other guidance material published on the department’s website, including the Regulatory Topic Index.

Accordingly, further work on the exposure drafts of the Regulatory Framework and NFP Guidelines (released for public consultation in October 2023) will be informed by the s.83C Review. In the meantime, non-government school and proprietors should continue to be guided by the NFP Guidelines (March 2024).

What are the indicative timeframes for the project?

Discussion Paper: consultation and analysis	Completed
Exposure draft of Regulatory Framework and NFP Guidelines: consultation and analysis	Completed
Education Amendment (Non-Government School Assets and Income) Regulation 2024 (NSW) made	Completed
NFP Guidelines (March 2024) with updated advice on Education and Care Programs (preschool, long day care, out of school hours care) released	Completed
Regulatory Framework and NFP Guidelines released	Informed by the s.83C Review.

Will these FAQs be updated?

As the project progresses, we will regularly review and update these FAQs. If you have any additional questions you would like us to consider, please email: ngsenquiries@det.nsw.edu.au.