Changes to the NSW Education Act
Non-Government School Not-for-profit Requirements

What is being changed?

Not-for-profit requirements for non-government schools in receipt of NSW Government funding are being strengthened.

For most schools, there will not be any changes.

Amendments to the legislation make clear that school assets and income must only be used for the operation of the school.

All payments made by a school for property, goods or services (including to related parties) must be:

- at reasonable market value; and
- required for the running of the school.

Payments to members of school governing bodies will now be prohibited.

The Minister will have increased powers to investigate and give directions to schools suspected of operating for profit, set funding conditions on those found non-compliant and reduce or stop payments.

Schools must agree to audits, cooperate with investigations and provide information to the Department of Education and Communities as required, or risk being found non-compliant.

Any school found to be operating for profit will be required to repay NSW Government funding received in the period it operated for profit. This can be deducted from future payments.

A new Advisory Committee will be established to advise the Minister for Education on individual school compliance with the not-for-profit requirements under the Act and on any decision to suspend, reduce or stop payments or impose funding conditions. The non-government school sector will be represented on this Committee.

The Advisory Committee will also assist the Minister to develop guidelines to assist schools understand their obligations under the Act.

Why are these changes needed?

The existing legislation has highlighted a number of areas where strengthened regulation is needed to ensure non-government schools operate on a not-for-profit basis.

When will the changes take effect?

All non-government schools in receipt of NSW Government funding are required to comply with all the requirements within three months of the commencement of the Act. The existing rules for not-for-profit will continue to apply during this period.

The Minister’s new powers of investigation and the advisory role of the Committee apply immediately. The new investigations process also applies to any breaches of the existing rules for not-for-profit, including conduct occurring prior to the commencement of the new legislation.

Do non-government schools support the changes?

Both the Association of Independent Schools NSW and the Catholic Education Commission NSW have given their full support to the amendments.

How will schools be funded in 2015?

Non-government schools that meet the legislative requirements under section 83C will continue to receive per capita funding from the NSW Government. The Building Grants Assistance Scheme and committed payments under the former Interest Subsidy Program will also continue.

Schools that do not meet the requirements within three months of the Act’s commencement may not be eligible for NSW Government funding.
What does it mean to operate “for profit” under the new rules?

If a school is:

- making payments above reasonable market value or not required for the running of the school;
- diverting school income or assets for purposes other than the operation of the school;
- making payments that are unreasonable given that NSW Government funding is provided to benefit the school; or
- making payments to members of a governing body;

then the school would be considered to be operating for profit under the Act and funding would cease.

What does it mean to be “non-compliant” under the new rules?

If a school:

- fails to cooperate with an audit of its financial affairs;
- fails to provide specific information relating to the school when requested by the Department;
- fails to follow a Minister’s direction to cease action that places the school in breach of not-for-profit requirements; or
- engages in other minor infringements of the Act;

then the school would be considered to be non-compliant and funding may cease, be reduced or funding conditions may be imposed.

Can a school operate for profit and still receive funding from the NSW Government?

No. To continue to receive funding from the NSW Government, non-government schools must operate not-for-profit.

Whilst for profit schools can still operate in New South Wales, they cannot receive State Government funding.

Will the Government be determining what schools can spend their funding on?

No. The Act will continue to support diversity. The amendments do not contravene the right of the non-government sector to deliver religious, sporting or performing arts. These schools would rightly be purchasing goods and services that support their particular focus.