

## Development of a regulatory framework for the oversight of financial assistance provided to non-government schools in NSW

### Terms of Reference

#### Context

Non-government schools form an integral part of the education landscape in NSW, providing a diverse range of choices for parents considering the educational needs of their children. Each year, the NSW Government provides \$1.5 billion to assist non-government schools that educate approximately one third of NSW school students.

Financial assistance to non-government schools in NSW is regulated by the NSW Department of Education ('the Department') under Part 7 Division 3 of the *Education Act 1990* ('the Act'). Section 83C of the Act requires non-government schools in receipt of financial assistance to not operate for profit. This is a longstanding requirement that was first introduced in 2006, then later strengthened in 2014 with the enactment of the *Education Amendment (Not-for-profit Non-Government School Funding) Act 2014*. Part 7 Division 3 of the Act is supported by the Education Regulation 2017.

Further to the strengthening of the not for profit requirements of the Act, the operating environment of non-government schools has become more nuanced and complex. This requires the Department to continuously review and adapt its regulatory approach.

Given this complex context, and in accordance with these Terms of Reference, the Department will seek to recommend a regulatory framework to enhance the regulation of financial assistance to non-government schools under Part 7 Division 3 of the Act. This will include a review of the 'Not-For-Profit Guidelines for Non-Government Schools' ('the NFP Guidelines'). The Minister for Education and Early Learning ('the Minister') has been briefed on the commencement of this work.

An outcomes-focused and risk-based regulatory framework would provide for:

- The flexibility to respond to challenging and changing circumstances (as guided by risk)
- A consistent and transparent approach to compliance education, engagement, monitoring and enforcement
- A practice of continuous improvement.

#### Terms of Reference

- (1) Develop an outcomes-focused and risk-based regulatory framework for Part 7 Division 3 of the Act that includes:

- (a) The Department's core regulatory purpose under Part 7 Division 3 of the Act
  - (b) Regulatory principles that will guide how the Department will carry out its roles and responsibilities under the Act and engage with the non-government school sector
  - (c) A statement on the available regulatory interventions and activities, interactions with the NFP Guidelines, and a decision-making guide to support the Department (as the regulator) and the non-government school sector
  - (d) A regulatory approach that is proportionate and responsive to risk, and focused on outcomes
  - (e) The roles and responsibilities of key parties, including the Non-Government Schools Not-for-profit Advisory Committee ('the Advisory Committee')
  - (f) Accountability arrangements, including key performance indicators
  - (g) Measures to improve the engagement and education of the non-government school sector to ensure the effective application of the regulatory framework.
- (2) Coordinate a review of the Minister's NFP Guidelines in consultation with non-government schools and key stakeholders.
  - (3) Having regard to the above, recommend policy and/or operational changes to improve the regulation of financial assistance to non-government schools under Part 7 Division 3 of the Act.

## Consultation

The Department will coordinate a series of public consultations with key stakeholders. It will also draw on the unique expertise of the Advisory Committee. Key stakeholders to be engaged include (but are not limited to):

- The Advisory Committee
- The Association of Independent Schools of NSW
- Catholic Schools NSW
- Non-government schools that receive financial assistance under Part 7 Division 3 of the Act
- The NSW Education Standards Authority
- NSW Parents' Council
- Council of Catholic School Parents.

## Methodology

- Review current regulatory approach and NFP Guidelines
- Consult with key stakeholders
- Prepare draft regulatory framework and revised NFP Guidelines for public consultation
- Receive public submissions
- Incorporate feedback on the regulatory framework and NFP Guidelines

- Present recommendations to the Minister
- Consider resourcing implications of recommendations.

It is anticipated recommendations will be made to the Minister by December 2022.

## Scope

For this current scope of work in the development of a regulatory framework and the review of the NFP Guidelines, outside of scope will be:

- A comprehensive review of the operation of Part 7 Division 3 of the Act – this will be considered following the development of a regulatory framework, review of the NFP Guidelines, and any subsequent policy/operational recommendations;
- A review of the *Criteria for expenditure of NSW funds for non-government schools* – this will be considered by the Department as part of the terms of the *Memoranda of Understanding to Strengthen Accountability for Non-Government Schools* (2020).

## Secretariat

Secretariat support is provided by the Department's Non-Government Schools Policy Unit.

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