

Information Sheet: Not-For-Profit Requirements

For-Profit Declarations

Non-government schools receive financial assistance (funding) from the NSW Department of Education for the benefit of students at the school.

Under the *Education Act 1990 (NSW)* (Act), to receive funding, a non-government school **must not operate for-profit** and comply with the provisions contained under Division 3, Part 7 of the Act (sections 83C to 83L), commonly referred to as the “Not-For-Profit” (NFP) requirements. A copy of the Act can be found [here](#).

Under the NFP requirements, a school must ensure all income and assets of the school (including any surpluses) are used for the operation of the school only.

This requirement is consistent with the community expectation that public funding provided to educate school students is used for that purpose. Parents have the same expectation concerning the fees they pay.

What does ‘for-profit’ mean?

‘For-profit’ under the Act has a specific definition.

A school is considered to operate for-profit if it:

- Uses any part of the school’s or proprietor’s assets (that relate to the school) or the proprietor’s income (that arises from the operation of the school) for any purpose other than for the operation of the school.

- Makes any payment/s to a related entity or other person or body for property, goods or services that is:
 - at more than the reasonable market value
 - not required for the operation of the school
 - or in any other way unreasonable.
- Pays board members for their role on the board. This does not include reimbursement for reasonable (and fully documented) expenses incurred as a necessary part of conducting school business.

A definition of a related entity can be found in the [Not-For-Profit Guidelines for Non-Government Schools](#).

What is a for-profit declaration?

For-profit declarations are a formal statement made by the Minister under section 83D of the Act that a school has breached the NFP requirements of the Act.

For-profit declarations are only made after this is recommended to the Minister by the Non-Government Schools Not-for-Profit Advisory Committee (Advisory Committee).

A for-profit declaration can be made for the current period, a specified previous period or both.

How is a for-profit declaration different from a non-compliance declaration?

Some schools that participate in for-profit activity may instead be declared non-compliant by the Minister under section 83E(3) of the Act due to the minor nature of the conduct or because more appropriate action can be undertaken under a non-compliance declaration. The table below shows the potential actions the Minister can take under a non-compliance or for-profit declaration.

Action	For-profit declaration	Non-compliance declaration
Cease NSW funding	Yes, if ongoing. Potentially, if past activity	Potentially
Recovery of NSW funding	Yes	As above
Apply conditions	No	As above

More information can be found in the [Non Compliance Declarations and Conditions on Financial Assistance information sheet](#).

How is a school declared for-profit?

First, an investigation will be carried out under section 83H of the Act (more information in the [Investigations information sheet](#)) and may result in the Advisory Committee recommending the Minister make a for-profit declaration.

Schools have the right to seek a review of the Advisory Committee's recommendation to the Minister (more information in the [Not-For-Profit Compliance Process information sheet](#)).

What happens to a school's funding once declared for-profit?

NSW funding ceases for schools declared for-profit for the current period. Schools declared for-profit for a specified previous period may potentially have their funding ceased, even if they no longer operate for-profit.

Under section 83J of the Act, the Minister may recover funding paid to a school for the period it was operating for-profit.

What happens after a for-profit declaration is made?

Schools that wish to become eligible again for NSW funding will be required to work with the department to resolve the for-profit activities/issues. Schools should be proactive in working to resolve the for-profit activities/issues.

As each school's declaration is specific to its circumstances, the actions expected of the school and the timeframes for undertaking these will vary. A school's progress in resolving for-profit activities/issues will be provided to the Advisory Committee for advice and recommendation to the Minister. Schools that do not resolve their for-profit activities/issues will remain ineligible for NSW funding.

What kind of activities may be considered for-profit?

For-profit activities can result from the decisions and actions of the board, or an individual of the school, or a group of individuals that breach the NFP requirements of the Act.

Some examples of activities that may be found to be for-profit include, but are not limited to:

- Using school income to purchase and run a business not for the operation of the school.
- Paying board members for their role on the board (not including reimbursement payments).
- Transferring a land asset for less than market value, including nil value.
- Selling an asset for less than reasonable market value.
- Purchasing an asset for more than reasonable market value.
- Using school income to pay for non-school expenses, such as the utility bills of a related entity of the school.
- Paying school and board staff's non-school related travel expenses.
- Entering into contracts without first market testing the cost of the service, goods or asset, to ensure they are at no more than reasonable market value.
- Money received from Commonwealth or State government grants or assistance programs (funding).
- Income received from the use of a school's assets.
- Donations received for the operation of the school.
- Income received from investments.
- Sale of assets.

Assets can be defined as anything owned by the school/proprietor that has value and includes but is not limited to land or property.

Income does not include:

- Money held in trust for another entity i.e. third-party transaction where a school may be holding funds for a Parents & Friends (P&F) Association or book club.
- Donations received for a specified purpose that do not include the operation of the school. i.e. clearly articulated request for donations to a specified charity.

A school that is undertaking, or has undertaken, any of these activities may instead be found non-compliant and have conditions placed upon them. The Act provides this possibility based on either:

- The minor nature of the for-profit activity or
- If the Advisory Committee recommends the for-profit activity is more appropriately resolved through a non-compliance declaration.

What is meant by school income and assets?

School income may include, but is not limited to:

- School fees.

All school income and assets include not only the income and assets of the school but also the income and assets of the proprietor that are related to the operation of the school.

Proprietors may also run other businesses or community services and the income and assets for the other business is **not** included in this definition.

It is crucial for proprietors to maintain clear and separate accounts and records for each business in order to demonstrate how school income is being used **only** for the operation of the school.

Is my school operating for-profit if it carries a surplus?

Recurrent school funding must be spent or committed to be spent by 31 December in the calendar year that funding was received. Recurrent school funding must also be spent for specific Educational Purposes (more information is available on the [website](#)).

The NFP requirements do not mean that a school cannot make a surplus (not including funding), but that any surplus must be used for the operation of the school.

Additional resources

There are a number of resources to assist schools in meeting the NFP requirements under the Act. The Advisory Committee:

- Recommends schools become familiar with the [Not-for-Profit Guidelines for Non-Government Schools](#).
- Supports a set of ten (10) governance principles that, if followed, provide the foundation for schools to govern for NFP compliance.
- Recommends school boards use the [NFP Self-Check Tool](#) to help identify the areas of governance that are in need of improvement.

Who can I contact if I need further advice?

If you have any questions or require assistance you can contact the Secretariat at: NGS-Compliance@det.nsw.edu.au

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