

INFORMATION SHEET: NOT-FOR-PROFIT REQUIREMENTS

Non-Compliance Declarations and Conditions on Financial Assistance

Non-government schools in NSW receive financial assistance (funding) from the NSW Department of Education for the benefit of students at the school. Under the *Education Act 1990* (Act), to receive funding, a non-government school **must not operate for-profit**. The not-for-profit requirement does not mean that a school cannot make a surplus. It means that the income and assets of the school (including any surplus) must be used for the operation of the school.

Conditions are like a 'road-map' for schools to meet their compliance obligations now and into the future.

What is a Non-Compliance Declaration?

The Minister may make a declaration that a school is, and/or was, not complying with the not-for-profit requirements of the Act for a specified period of time. This is called a non-compliance declaration.

The Minister may also make a 'non-compliance' declaration if the school fails to comply with a direction issued by the Minister.

The Minister may make a 'non-compliance' declaration only after it has been recommended by the Non-Government Schools Not-for-Profit Advisory Committee (Advisory Committee).

As part of making a non-compliance declaration the Minister may decide to suspend or reduce or impose conditions on funding provided to the school (although the Minister may choose not to do so in certain circumstances).

What are Conditions?

Conditions are a series of actions that the school must meet in order to continue to receive funding or have their funding reinstated.

The actions that must be completed by a set date and to a specified standard.

While the Act does not limit what kind of actions the Minister may impose on a school, actions broadly relate to resolving the identified areas of non-compliance with the not-for-profit provisions in the Act.

Actions are generally set out in a 'Conditions on Future Assistance' document that must be signed by a responsible person at the school.

A responsible person means one of the following:

- The proprietor, and if the property is a corporation, each director or person concerned in the management of the school.
- A member of the school governing body; or
- The principal of the school.

The conditions declaration includes other important information such as when the Minister will lift the conditions placed on the school, how the school can show that it has undertaken certain actions and the consequences if a school does not meet the conditions.

What is the purpose of Conditions?

The purpose is to give schools a clear set of actions to help them meet their compliance obligations under the not for profit provisions of the Act as well as build the schools governance capacity into the future. Conditions are like a 'road-map' for fixing policies and practices.

Successfully meeting the conditions provides schools with the confidence and ability to meet their compliance obligations now and into the future.

When would Conditions apply?

Conditions apply once the Minister makes a non-compliance declaration and the school receives notification of this from the Secretariat for the Advisory Committee. The date that the declaration is provided to the school becomes the 'Effective Date' of the conditions.

The Effective Date is important as it is the starting point for the timeline for actions in the conditions to be completed.

What happens to my funding once my school has met the Conditions?

If your schools NSW funding has been suspended or reduced as part of the non-compliance declaration, then in most circumstances funding will be reinstated once the school has met all conditions. The Minister will only make this decision on the recommendation of the Committee.

What sort of actions can be part of your Conditions?

Actions will be specific and relevant to the reasons related to the non-compliance declaration. Some typical actions or requirements that may be applied are outlined below.

Non-Compliance acknowledgement

An action stating the School acknowledges and agrees that it was not compliant with the Act.

Independent Compliance Assessor

An action that the school must appoint a qualified and independent compliance professional (Assessor) to review the schools governance and financial policies and processes.

The Assessor provides guidance and support to the school to resolve the identified issues.

The appointment will need to be approved by the Advisory Committee.

Compliance Review and Risk Assessment

An action that the Assessor undertakes a compliance review comparing the schools policies, practices and governance with the requirements of the Act. The review will also include a risk assessment.

Compliance Program / Mitigation Plan

This action requires the school develop and implement a plan addressing issues and risks identified in the compliance review and risk assessment.

Board governance and skills

Effective school board governance is a vital to a school becoming and maintaining compliance with the Act. Actions to improve board governance and skills may include:

- Training for all board members/senior school officers to ensure they have the necessary skills and experience in the areas corporate governance, business management and ethics. The training is required to be approved by the Advisory Committee.
- Appointment of new independent board members.
- Signed board member letters of appointment stating the obligations and duties of the role.
- That all Board members confirm they have read and understood:
 - Section 83 of the NSW Education Act and the Non-Government Schools Not-For-Profit Guidelines;
 - The Australian Charities and Not-For-Profits Commission's (ACNC) guide Governance for good: The ACNC's guide for charity board members; and
 - NESA's Non-Government Schools registration materials.

Conflicts of Interest

Actions relating to the ongoing management of conflicts of interest (both real and perceived) such as adding conflicts of interest as a standing item for all board meetings and maintaining a Conflicts of Interest Register.

Related Entities Register

Actions relating to how the school manages any business undertakings with related entities (also called related parties), including a requirement to maintain an audited register of Related Entities and any transactions to the satisfaction of the Assessor and Advisory Committee.

Audited Financial Statements

The school may be required to provide annual or more frequent (six monthly) financial statements audited by an auditor approved by the Advisory Committee for a specified number of years.

Audited statements will also need to certify that the proprietors and/or schools income and assets are used only for the purpose of operating the school. The scope of the audit may vary depending on each schools compliance issues and this will be included in the actions as required.

Public Statements

Schools may be required to make a public statement to their community regarding their non-compliance with the Act. This is important in respect of accountability and transparency, allowing the school to acknowledge what has happened in the past and understand how they need to act in the future.

The statement generally includes details of the non-compliance (what occurred and when) and a summary of the actions the school is required to complete to resolve the issues.

Schools may be required to issue the public statement in one or several ways. For example, by loading the statement in a prominent location on their website, including it in their regular newsletter and/or sending a copy out to all families of students currently enrolled at the school.

Public statements will also be required to be issued in other languages which are spoken in the school community.

Repayment of funding

Actions relating to funding may include (but are not limited to):

- A requirement to repay a specific amount of funding relevant to the period of non-compliance.
- A reduction in funding paid to the school for a set period.
- Adjusted payment schedules until the school demonstrates it has completed actions addressing the identified non-compliance.
- Suspension of funding until the non-compliance declaration is lifted or the Minister makes a decision to reinstate funding.

Other Actions relating recovery of funds and property transactions

Actions may include (but are not limited to):

- A requirement that the school endeavours to recover monies paid by the school for actions that did not comply with the Act.
- A requirement that the school sell or dispose of specific property, land or assets.
- A requirement to waive or recover undocumented loans.

Ongoing monitoring and further compliance action

An action that the school will be subject to further compliance monitoring for a period of time after the conditions and non-compliance declaration are lifted by the Minister. This is to ensure that the changes the school has made to improve its governance and compliance with its not-for-profit obligations continues.

Schools may be required to have additional annual compliance or financial audits undertaken by independent assessors or auditors (approved by the Advisory Committee) and further action from the Minister may be taken if non-compliance continues at the school.

Meeting actions within specified timeframes

Most actions have an identified timeframe which the school must meet.

However, there may be unforeseen circumstances which affect the schools capacity to complete actions within the timeframes. Where this occurs the school can request an extension.

Requests must be made before the due date in writing by emailing the Secretariat. Each request will be considered on its individual merits. You will be advised as soon as possible if the request has been approved or not and including reasons if refused.

Not meeting actions

Failure to meet actions may result in the Advisory Committee recommending to the Minister that further actions/conditions be applied to your school.

When can conditions be lifted?

The conditions will apply until one of the following:

- The Minister determines that the School is no longer subject to the terms and conditions of the declaration.
- Unrelated to the any action associated with the school's compliance with the Act, the school no longer receives government funding.

The Minister determines to cease funding to the school.

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